W.P.No.17011 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2025

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CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

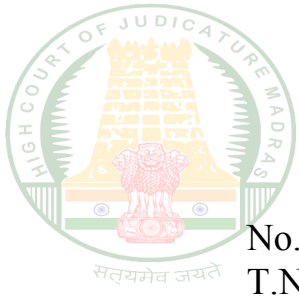
W.P.No.17011 of 2024

M/s Janpriya Builders
rep.by Partner, Ameya Joseph Aluvila
No.49, 5th Cross, 1st Main Road
Someshwarapura
Cambridge Layout
Bangalore 560 008

.. Petitioner

v.

1. The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai 600 003
2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Assistant Executive Engineer
Greater Chennai Corporation
Division No.126



No.12, Masilamani Street
T.Nagar, Chennai 600 017

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4. The Zonal Officer
Zone X, Greater Chennai Corporation
T.Nagar, Chennai 600 017

5. N.Bava .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent's notice dated 28.11.2023 under Letter No.EC/C-11/6795/2018 and to quash the same as illegal and invalid, in so far as it concerns the 4th to 8th floor, 9th floor part and 10th floor part in premises bearing Old Door No.61, New No.34, Sir Thyagaraya Road, Pondy Bazar, T. Nagar, Chenani 600017 in respect of which the petitioner has applied for regularization to the 2nd respondent dated 24.05.95 and 26.05.95 and consequently direct the respondents 2 and 3 to take expedite action to demolish the illegal super structure put up by the 5th Respondent in the set back area of the building bearing Old Door No.61, New No.34, Sir Thyagaraya Road, Pondy Bazar, T.Nagar, Chennai 600 017.

For Petitioner :: Mr.Ashok Menon

For Respondents :: Mr.A.Arun Babu
Standing Counsel for R1, R3 & R4
Mr.R.Sivakumar
Standing Counsel for R2
R5-Not ready in notice

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

W.M.P.No.18745 of 2024 seeking to dispense with the production of



the original impugned order, stands ordered.

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2. The order passed by the Chennai Metropolitan Development Authority (CMDA) vide proceedings dated 28.11.2023 for removal of the unauthorized structure put up by the petitioner is under challenge in the present writ proceedings.

3. Originally, planning permission was granted to the petitioner construction company for construction of basement floor, ground floor, mezzanine floor plus three floors commercial building in proceedings dated 09.02.1990. However, the petitioner constructed basement floor, ground plus eight floors plus 9th floor (part) and 10th floor (part) buildings. The unauthorized commercial structures have been erected by the petitioner in the busy commercial area in Chennai city bearing Old Door No.61, New Door No.34, Sir Thyagaraya Road, Pondy Bazaar, T.Nagar, Chennai-17.

4. Application after application were filed before the second respondent seeking regularization of the unauthorized construction of huge



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extent by the petitioner. However, the applications were not considered nor the unauthorized constructions have been regularized by the CMDA, on the ground that such regularization is not feasible under law. The developer constructed the commercial buildings in violation of the approved plan in respect of fourth to eighth floors plus ninth floor (part) and tenth floor (part). The additional floors were completed in all respects prior to 01.07.2007. Therefore, soon after the completion of unauthorized constructions, application seeking regularization was filed, which was rejected vide letter dated 09.02.2007. Thereafter, 50th Monitoring Committee meeting was held on 19.11.2014 and the issue regarding enforcement action on developments completed prior to 01.07.2007 was discussed. In the present case, the petitioner developer had not produced any credible evidence. Therefore, the application seeking regularization was rejected.

5. The second regularization application was submitted by the petitioner and the earlier decision taken by the CMDA rejecting the regularization request, was reiterated in letter dated 27.02.2014. Since both



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the applications seeking regularization were rejected, locking and sealing and demolition notice was issued vide letter dated 10.07.2014 followed by locking and sealing and demolition cum de-occupation notice dated 04.07.2019. Consequently, the unauthorized floors, namely, fourth to eighth floors plus ninth floor (part) and tenth floor (part) and the unauthorized ground floor structure on setback space on western side hot and cold (part) were locked and sealed on 24.10.2019.

6. The petitioner filed an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act before the Government. The Government also considered the issues on merits and passed a speaking order rejecting the appeal vide letter dated 13.02.2020. The said rejection order states that it is multi-storeyed commercial building with large scale deviation/violation with unauthorized and deviated construction of basement floor plus ground floor plus eight floors plus ninth floor (part) and tenth floor (part) commercial building at Old No.61, New No.34, Sir Theyagaraya Road, Pondy Bazar, T.Nagar, Chennai and there is a dispute between the owner M/s Janpriya Builders (petitioner) and tenant



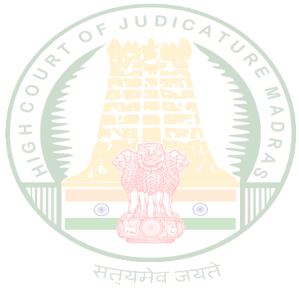
W.P.No.17011 of 2024

Thiru.N.Bava, Proprietor of M/s Hot & Cold (Chips & Chats), Chennai.

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7. Mr.R.Sivakumar, learned Standing Counsel appearing on behalf of the second respondent would submit that the large scale unauthorized constructions made by the petitioner cannot be brushed aside. They were dealt with by the CMDA and the Government also considered the issue as serious. In the writ petition filed by the petitioner on earlier occasion in W.P.No.13097 of 2018, this Court passed an order on 21.06.2023, wherein the following observations are made in paragraph No.4:-

“4. This Court by order dated 14.06.2023 specifically directed the CMDA to file counter affidavit and also status report before this Court. Today the learned standing



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counsel appearing for the CMDA has filed a status report before this Court, wherein it is stated that a locking and sealing and demolition cum de-occupation notice dated 04.07.2019 was issued to the deviated portion of the entire building including the shed put up by the 4th respondent, and requested to restore the building as per the approval plan by giving 30 days time and subsequently, the unauthorised constructed portion of buildings were locked and sealed on 24.10.2019.”

8. Even before this Court, the petitioner is not in a position to submit any building plan permission for the unauthorized construction as stated in the order impugned. The impugned order for removal of unauthorized structure intimation (enforcement notice) clarifies that in pursuance of the locking and sealing and demolition notice issued to the petitioner, the fourth to eighth floors plus ninth floor (part) and tenth floor (part) and ground floor shop were locked and sealed on 24.10.2019. The impugned order was passed pursuant to the appellate order passed by the Government under Section 80-A of the Town and Country Planning Act. Thus the issues regarding the unauthorized constructions made by the petitioner reached



finality.

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9. Regularization of unauthorized construction cannot be claimed as an absolute right. It is a concession granted as an one-time measure through special schemes. The Government is not expected to regularize the unauthorized buildings in a routine manner by invoking the provisions of exemption under the Town and Country Planning Act. The very purpose and object of the building plan permission at no circumstances be allowed to be defeated. On the one hand, the authorities are insisting for building plan permission and to construct the building strictly in terms of the building plan permission. On the other hand, they are going on entertaining applications seeking regularization and collecting fees and keeping them pending or granting regularization, thereby legalising the illegal act and compromising the very concept of Master Plan Scheme and the provisions of the Town and Country Planning Act.

10. The public interest concept has not been considered by these authorities at the time of entertaining regularization applications. Power to



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grant exemption is an exception and cannot be exercised in a routine manner to legalise the illegal constructions. Illegal constructions are not only causing environmental damages, but also posing a threat to the safety and security of the neighbours and the citizens who are all residing in the particular locality. The road users are also suffering on account of such illegal constructions. The Government is not expected to be a mute spectator in respect of all such illegal constructions which are causing greater inconvenience to the people living in that locality.

11. Recently, the Hon'ble Supreme Court of India in the case of *Rajendra Kumar Barjatya and another v. U.P.Avas Evam Vikas Parishad and others* (Civil Appeal No.14604 of 2024 dated 17.12.2024) elaborately considered the principles relating to unauthorized constructions. The legal principles considered therein are reproduced hereunder:-

“19. In a catena of decisions, this Court has categorically held that illegally of unauthorized construction cannot be perpetuated. If the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under the ruse of the passage of time or citing inaction of the authorities or by



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taking recourse to the excuse that substantial money has been spent on the said construction. The following decisions are of relevance and hence cited herein below to drive home the point that unauthorized constructions must be dealt with, with an iron hand and not kid gloves.

(i) In *K. Ramadas Shenoy v. Chief Officers, Town Municipal Council*, (1974) 2 SCC 506, after having found that the impugned resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme and hence, it has no legal foundation, this Court held that the High Court was wrong in not quashing the resolution on the surmise that money might have been spent. The relevant passage reads as follows:

“29. The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction.

30. The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because Respondent No.3 is likely to have spent money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in *Maddison*



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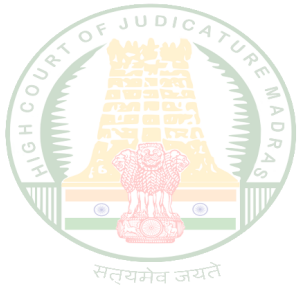


v. Alderson [1883] 8 App. Cases 467 said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable.

31. For the foregoing reasons, the appeal is accepted. The order of the High Court leaving resolution dated 19 June, 1970 being Annexure 'D' to the petition undisturbed is set aside. The resolution dated 19 June, 1970 being Annexure 'D' to the petition before the High Court is quashed. The parties will pay and bear their own costs.”

(ii) Dr.G.N.Khajuria and others v. Delhi Development Authority and others, (1995) 5 SCC 762 in which, the Authority concerned misused the power and allotted the plot earmarked for park for a nursery school. This Court vehemently condemned the same and ordered for cancellation of the said allotment, besides recommending penal action against the authority concerned. The relevant paragraphs are extracted below:

“8. We, therefore, hold that the land which was allotted to Respondent 2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of Respondent 2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of Respondent 2 should be cancelled and we order accordingly. The fact that Respondent 2 has put up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention



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of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by Respondent 2 or by any other body.

9. The appeal is, therefore, allowed by ordering the cancellation of allotment made in favour of Respondent 2. It would be open to this respondent to continue to run the school at this site for a period of six months to enable it to make such alternative arrangements as it thinks fit to shift the school, so that the children are not put to any disadvantageous position suddenly.

10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happen for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly



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punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite.”

(iii) In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*, (1999) 6 SCC 464, this court in clear terms, held that there is no alternative to the construction which is unauthorised and illegal to be dismantled. The relevant paragraphs read thus:

“13. There is no alternative to the construction which is unauthorised and illegal to be dismantled. The whole structure built is in contravention of the provisions of law as contained in the Development Act. The decision to award contract and the agreement itself was unreasonable. The construction of the underground shopping complex, if allowed to stand, would perpetuate an illegality. Mahapalika could not be allowed to benefit from the illegality. A decision of this Court in *Seth Badri Prasad and others vs. Seth Nagarmal and others*, (1959 (1) Supp. SCR 769 at 774 was referred to, to contend that the court could not exclude from its consideration a public statute and since the construction of the underground shopping complex was wholly illegal it had to be dismantled. No question of moulding a relief can arise as the builder made construction on the basis of the interim order of this Court and at its own risk.”

“73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be



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shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand, we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”

“81. A number of cases come to this Court pointing to unauthorised constructions taking place at many places in the country by builders in connivance with the corporation/municipal officials. In a series of cases, this Court has directed demolition of unauthorised constructions. This does not appear to have any salutary effect in cases of unauthorised construction coming to this Court. While directing demolition of unauthorised construction, the court should also direct an enquiry as to how the unauthorised construction came about and to bring the offenders to book. It is



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not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the High Court, we would certainly have directed an enquiry to be made as to how the project was conceived and how the agreement dated 4-11-1993 came to be executed.”

(iv) In *Esha Ekta Apartments Coop Housing Society Limited v. Municipal Corporation of Mumbai*, (2013) 5 Supreme Court Cases : (2013) 3 Supreme Court Cases (Civil) 89, it was observed by this Court that the courts are expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions and the relevant passage of the said decision is extracted below:

“1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal construction by way of compounding and otherwise.”

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of



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the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their own hands and get away with it.”

“56. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

(v) The aforesaid view was reiterated in *Supertech Limited v. Emerald Court Owner Resident Welfare Association and others*, (2021) 10 SCC 125 by holding that illegal constructions have to be dealt with strictly to ensure compliance with rule of law. The relevant paragraphs read as under:

"159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the



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structural integrity of the structures under construction, obtaining clearances from the different departments (fire, garden, sewage etc.,) and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations - the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach of the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have



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to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns."

(vi) In Kerala State Coastal Zone Management Authority vs. Maradu Municipality, (2021) 16 SCC 822, it was once again reiterated that illegal and unauthorised constructions put up with brazen immunity, cannot be permitted to remain. The relevant passage of the said decision is quoted below:

"107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safeguards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations is not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification



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cannot present, but a highly vulnerable argument. We find that the view taken by the Kerala High Court in aforesaid decision is appropriate. Permission granted by the Panchayat was illegal and void. No such development activity could have taken place. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

(vii) In *State of Haryana v. Satpa*, (2023) 6 SCC 643, it was held that the High Court committed a very serious error in directing to legalise the unauthorized occupation and possession made by the original writ petitioners on payment of market price and hence, it deserved to be quashed. The operative portion of the judgment is reproduced below:

"19. Under the circumstances, the High Court has committed a very serious error in directing to legalise the unauthorised occupation and possession made by the original writ petitioners on payment of market price. Even the other directions issued by the High Court are not capable of being implemented, namely, to segregate the vacant land from the residential house and which can be separated and utilised for earmarked purpose i.e. school premises. The unauthorised construction is in such a manner and even some areas are not used for residential purpose and some of the area is covered by vegetation and therefore, it is not possible to segregate and separate the same, which can be used for school premises. There is no other panchayati land and/or other land, which is available, which can be used as school premises/playground. The adjacent land belongs to some private persons and they are not ready to part with their land to be used as school premises/playground.



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20. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court and the directions issued (reproduced hereinabove) directing to legalise the unauthorised occupation and possession made by the original writ petitioners on the land, which is earmarked for school premises/playground is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. However, the original writ petitioners are granted 12 months' time to vacate the land, which is occupied by them unauthorisedly and if within one year from today, they do not vacate the lands in question, the appropriate authority is directed to remove their unauthorised and illegal occupation and possession.”

(viii) Finally, in a recent decision in Re: Directions in the matter of demolition of structures, 2024 SCC OnLine SC 3291, while determining a question whether the executive should be permitted to take away the shelter of a family or families as a measure for infliction of penalty on a person, who is accused in a crime under our constitutional scheme, this Court has extensively analysed all the aspects and issued certain directions to the authorities. The penultimate paragraphs read as under:

“IX. DIRECTIONS 90. In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time



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needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.

91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

A. NOTICE i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.



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- v. The notice shall contain the details regarding:
- a. the nature of the unauthorized construction.
 - b. the details of the specific violation and the grounds of demolition.
 - c. a list of documents that the noticee is required to furnish along with his reply.
 - d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;
- vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.
- B. PERSONAL HEARING i. The designated authority shall give an opportunity of personal hearing to the person concerned.
- ii. The minutes of such a hearing shall also be recorded.
- C. FINAL ORDER i. Upon hearing, the designated authority shall pass a final order.
- ii. The final order shall contain:
- a. the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;
 - b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;
 - c. if the designated authority finds that only part of the construction is unauthorized/noncompoundable, then the details thereof.
 - d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.



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D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER. i. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

92. Needless to state that the authorities hereinafter shall strictly comply with the aforesaid directions issued by us.

93. It will also be informed that violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution.



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94. The officials should also be informed that if the demolition is found to be in violation of the orders of this Court, the officer/officers concerned will be held responsible for restitution of the demolished property at his/their personal cost in addition to payment of damages.”

“20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity



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to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.”

12. The Apex Court reiterated that while issuing the building plan permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owner/beneficiary only after completion certificate or occupation certificate from the authorities concerned. The Apex Court in the larger public interest issued the following directions in addition to the directives issued by the Supreme Court in Re: Directions in



the matter of demolition of structures (supra):

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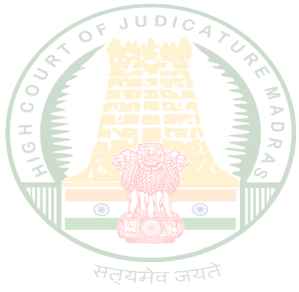
21. Therefore, in the larger public interest, we are inclined to issue the following directions, in addition to the directives issued by this Court in Re: Directions in the matter of demolition of structures (supra):

(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.

(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the 32 authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of



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the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible 33 for issuance of wrongful completion /occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission /licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.

(ix) In the event of any application / appeal / revision being filed by the owner or builder against the non-issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the



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authority concerned, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.

(x) If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal / Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

(xi) Banks / financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.

(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.”

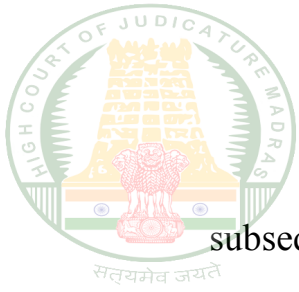
13. The above directives issued by the Apex Court have become the law of the land and they are to be followed by the Chennai Metropolitan Development Authority (CMDA) and the Greater Chennai Corporation (GCC) and the other local bodies under the provisions of the various statutes for granting building plan permission proceedings etc.



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14. No unauthorized construction shall be allowed to remain and the authorities are bound to initiate appropriate actions on receipt of information or complaint from any person. Since the law has been declared by the Supreme Court, no leniency or misplaced sympathy can be shown by the Courts merely on the ground that the person violated has invested some amount. The builders and contractors are emboldened to commit such illegalities at the cost of the people with the fond hope that they can escape from the clutches of proceedings or by submitting regularization application, they can avoid any demolition of the unauthorized construction. They are emboldened because of large scale collusion on the part of the officials of CMDA, Corporation and other competent authorities under various enactments for their omissions, commissions, inactions and lapses.

15. In the present case, the initial application filed by the petitioner seeking regularization was rejected in the year 2007 and the second application was rejected in the year 2014. Both the rejection orders remain unchallenged. Thereafter, the appeal filed under Section 80-A of the Town and Country Planning Act was also rejected by the Government. The



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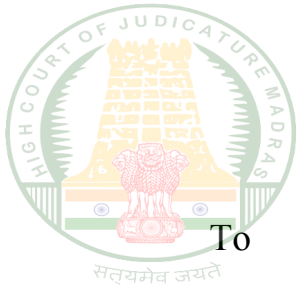
subsequent action initiated by the CMDA for removal of unauthorized structures dated 28.11.2023 alone is under challenge in the present writ proceedings. Admittedly, the unauthorized portions are locked and sealed by the CMDA. Therefore, there is no impediment for the CMDA to proceed with the demolition of the unauthorized constructions, by retaining the approved portion of the building as per the building plan approval granted. Hence, the respondents 1 to 4 are directed to demolish the unauthorized portions of the construction as per the impugned order dated 28.11.2023, within a period of eight weeks from the date of receipt of a copy of this order.

16. With the above direction, the writ petition stands dismissed. Consequently, interim order stands vacated and the W.M.P.No.18747 of 2024 is also dismissed. No costs.

Index : yes
Neutral citation : yes

(S.M.S.,J.) (K.R.S.,J.)
10.02.2025

SS



W.P.No.17011 of 2024

To

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1. The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai 600 003
2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Assistant Executive Engineer
Greater Chennai Corporation
Division No.126
No.12, Masilamani Street
T.Nagar, Chennai 600 017
4. The Zonal Officer
Zone X, Greater Chennai Corporation
T.Nagar, Chennai 600 017



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W.P.No.17011 of 2024

S.M.SUBRAMANIAM,J.

AND

K.RAJASEKAR,J.

SS

W.P.No.17011 of 2024

10.02.2025