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Court : Chennai

Decided On : Mar-09-1994

Reported in : AIR1995Mad8

Judge : Kanakaraj, J.

Acts : Tamil Nadu Town and Country Planning Act, 1971 - Sections 47, 48, 49, 56 and 85; [Constitution of India](#) - Article 226; [Limitation Act, 1963](#) - Sections 3

Appeal No. : W.P. Nos. 5670 to 5673 of 1988

Appellant : S. Radhakrishnan and Others

Respondent : Govt. of Tamil Nadu and Others

Advocate for Def. : Mrs. N.G. Kalaiselvi, Govt. Adv., ;Mr. N. Kannadasan and; Mr. M.V. Venkataseshan, Adv.

Advocate for Pet/Ap. : Mr. Ravindran and ;Mr. C. Lakshmi Narain, Adv.

Judgement :

ORDER

1. These four writ petitions raise an interesting question which has a considerable impact on the present day developments of land and/or building in the City of Madras vis-a-vis. The Tamil Nadu Town and Country planning Act 1971 and the Development Control Rules. In particular the construction of flats by promoters

offering attractive benefits and convenient living and attracting purchasers and allottees and later on going back on the promises and causing all kinds of inconvenience to the flat owners, is one of the aspects which is brought out in this case.

2. The petitioners in W.P. No. 5670 of 1988 claim to be the flat purchasers in respect of two flats, one in the ground floor and the other in the third floor of Door No. 16, Saravana Mudali Street, T. Nagar, Madras-17. Respondents 4 to 10 are the other flat owners who got themselves impleaded in these writ petitions. I do not think that it is seriously disputed that the writ petitioners are speaking for and on behalf of one R. Raju who is carrying on business under the name and style of 'R.R. Construction.' It is stated that the said 'R.R. Construction' applied to the authorities for planning permission to construct 12 flats, four flats in each floor, (first, second and third floors), the ground-floor being left for the use of parking vehicle for the flat owners. The claim of the promoters of the flats was that as and when the 12 flats are purchased by 12 persons, the entire building shall stand vested with the flat owners in common. Each of the flat owners purchases an undivided share in the land thus giving him an indefeasible right in the block of flats and the land over which it is constructed. In this case the sale deeds were executed in or about 1982 in respect of the undivided share to the respective purchasers. The sanction for the construction of the flats seems to have been obtained in 538/80 dated 3-12-1980.

3. After the completion of the flats, the ground floor which was meant for Car Parking had been partly converted for certain commercial purpose and partly for two additional residential portions. For this purpose there was absolutely no sanction from the second or third respondents. The flat purchasers of the 12 flats were also prevented from going to the terrace portion of the building and have been greatly handicapped by this obstruction. It is stated that the promoter of the building has put a shed with asbestos sheet and some strangers are allowed to stay in the said terrace portion. Apparently intrigued by this action of the promoter, respondents 4 to 10 had made a complaint to the second respondent, on 9-3-1988. Based on the said complaint the second respondent had issued a notice on 20-4-1988 which is said to be notice under Section 56 read with Section 85 of the

Act requiring demolition of the construction which had been carried out without permission of the authority under Section 49 of the Act. In the subject portion of the notice, reference is made to the additional residential ground-floor construction in the said premises. The writ petition is for the issue of a writ of certiorari to quash the said notice dated 20-4-1988 with regard to the construction in the ground-floor of the premises.

4. The petitioner in W.P. No, 5671 of 1988 is seeking the same relief and he claims to be the flat owner of Flat No. 14 in the third floor. The said flat is said to have been leased out to a tenant. The petitioner in W.P. No. 5672 of 1988 claims to be flat owner of Flat No. 16 and 16A in the third floor of the premises. The petitioner in W.P. No. 5673 of 1988 claims to be the flat owner of Flat No. 13 in the third floor of the premises.

5. Even a bare perusal of the facts set out above will disclose that there are several contradictions because the original sanction was only for 12 flats. It is rather surprising how there can be a 13th flat or 16th flat in the premises. Apparently, the promoter has unauthorisedly increased the number of flats and it is only the allottees of such unauthorised flats who are supporting him in these writ petitions. In effect the fight is between the flat owners who are occupying the authorised flats as per the original sanction dated 3-12-1980 on the one hand and the promoter as well as the persons who had subsequently induced upon the property by virtue of the mechanisation of the promoter, on the other. There is little difficulty in finding out where the equity lies and which are the persons who are entitled to get relief from the Court. Without proceeding to discuss the arguments advanced on both sides and without going into the legal provisions, common sense tells us that the rights of the flat owners who are occupying the 12 sanctioned flats should be protected from the invasion sought to be made by the promoter and the subsequent allottees. The conversion of the ground-floor into commercial and residential portions is totally unauthorised and can never be permitted. I would like to make it clear that I have absolutely no sympathy for the writ petitioners or the promoter who tries to safeguard the subsequent additions made in the ground floor.

6. Let me now consider the arguments of the learned counsel for the petitioners and the learned counsel for the respondents. The argument is that the construction was completed during 1981-82 and therefore, the second respondent has no right to issue the notice under Section 56, after the passage of three years after the development. The other point raised in the writ petitions relating to the power of the second respondent to take action on the ground that the third respondent has already assessed the property and the Electricity Board has given electricity supply to the premises, not have any substance and learned counsel for the petitioners has not seriously pressed those points. The only other point that requires mention is that no notice was given before the impugned action. The last ground can also be disposed of easily because the notice under Section 56 itself is an information given to the petitioner to rectify the unauthorised construction or to have it ratified by filing an application under subsection (3) by seeking permission under Section 49 of the Act, for the retention of the land and the building. Therefore, as soon as a notice under Section 56 is issued, it is not necessary for the persons receiving such a notice to rush to the court and seek redress on the ground that the building is going to be demolished. On the other hand it is open to the recipients of such notices, either to convince the authorities that the development is in accordance with the sanction or to apply sub-section (3) of Section 56. It cannot therefore, be said before the issue of the notice under Section 56. there must be a prior notice giving an opportunity to the persons concerned. In other words, the issue of notice under Section 56 itself provides necessarily opportunity to convince the concerned authorities.

7. Therefore, the one and only ground on which the petitioner can prevent the threatened action under Section 56 of the Act is to hang on to the plea of limitation prescribed in the said section itself. Therefore, it is necessary for me to quote the Section 56(1) of the Act which is necessary for the purpose of appreciating the argument-

'56. Power to require removal of unauthorised development. (1) where any development of land or building has been carried out-

(a) without permission required under this act; or

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land or building has been duly revoked; or

(d) in contravention of any permission which has been duly modified, the appropriate planning authority may within three years of such development serve on the owner a notice requiring him within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice.

(i) in cases specified in clause (a) or (c) above to restore the land to its condition before the said development took place;

(ii) in cases specified in clause (b) or (d) above to secure compliance with the permission or with the conditions of the permission, as the case may be.'

The argument is that the notice can be issued only within three years of the offending development. In this case, the allegation in the affidavit of the writ petitioners is that the development was made in the year 1981-82. Learned counsel for the second respondent sought to argue that they became aware of the offending development only by a complaint received from other flat owners on 9-3-1988 and therefore, the impugned notice dated 20-4-1988 is within the prescribed time, reckoned from 9-3-1988. This contention cannot at all be accepted because the section says that the notice must be issued within three years from the date of the offending development. Learned counsel appearing for the respondents 4 to 10 gives an ingenious explanation by slating that there was a rectification deed on 8-4-1985 and the offending construction could have taken place after 8-4-1985. The construction could not have been completed within 12 days from 8-4-1985. Therefore, it is argued that the impugned notice dated 20-4-1988 is within the time. For this purpose, learned counsel has referred to the rectification deed dated 8-4-1985. A perusal of the said rectification deed that the first petitioner in W.P. No. 5670 of 1988 had purchased on 27-5-1982 and an undivided share in the land comprised in Door No. 15, Sarvana Mudali Street, for the construction of a

residential portion to the extent of 1100 square feet and the portion in the ground floor. The rectification deed seeks to amend the incorrect mention of the third floor instead of the ground floor. There is absolutely no scope for inferring that the offending construction could have commenced only after the rectification deed dated 8-4-1985. Therefore, on facts, I am unable to hold that the development had been completed within three years prior to the impugned notice dated 20-4-1988. There are absolutely no documents before me to come to the conclusion that the offending developments had been made within three years prior to the impugned notice. Consequently, I have no other alternative except to hold that the impugned notice is barred by limitation.

8. In this connection must say that parties who seek to uphold their legal rights should be vigilant and should consult legal experts as quickly as possible. They cannot sleep over the matter and at a later stage seek to enforce their rights which is likely to cause prejudice to the older parties. This is precisely the reason why periods of limitation are prescribed in many statutes. It is for the authorities also to be vigilant and take action, then and there, when violations of the Development Control Rules are noticed. In this case, I have a feeling that respondents 4 to 10 as well as the second respondent have missed the bus. Even so I have no hesitation in holding that if respondents 4 to 10 and the second respondent have other remedies to have the offending construction demolished or removed, it is always open to them to pursue such other remedies. All that I am saying is that the action under Section 56 of the Act is barred by limitation. I do not see how respondents 4 to 10 cannot take action under the common law seeking a prayer of mandatory injunction to remove the offending construction. The time spent in this court can be sought to be excluded under the relevant provisions of the Limitation Act. These observations, are only the result of my anguish, in upholding a totally unauthorised construction.

9. The judgment in *Bakshish Kaur Saini v. Union Territory, Chandigarh*, lays down only this proposition and does not in any way advance the case of the respondents 4 to 10 on the plea of limitation.

10. Learned counsel for the respondents 4 to 10 sought to validate the impugned notice by referring to the Section 85 of the Act. I am of the opinion that this is a futile attempt. The primary section under which the notice is issued is Section 56. Secondly, Section 85 refers to contravention of Sections 47 and 48. Those sections relate to the use and development of a land contrary to a development plan published in the Gazette. Apparently, that section relates to the user of the land contrary to the zoning of the area under the development plan. Therefore, this argument of the respondents 4 to 10 are also rejected.

11. In fine, the argument based on limitation urged by the petitioner is upheld. The writ petitions are allowed. There will however, be no order as to costs.

12. Petitions allowed.