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Mrs.R.Chandra and ors. Vs. Chennai Metropolitan Development Authority and ors.

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Court : Chennai

Decided On : Apr-26-2012

Judge : R.Sudhakar, J.

Acts : Constitution of India - Articles 226; Development Control Rules

Appeal No. : Writ Petition No.12513 of 2012

Appellant : Mrs.R.Chandra and ors.

Respondent : Chennai Metropolitan Development Authority and ors.

Advocate for Def. : Mr.Raja Srinivasan, Adv.

Advocate for Pet/Ap. : Mr.S. Ramesh, Adv.

Judgement :

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to receive, consider, process and approve the petitioners' application for demolition and reconstruction by issuing planning permission, building permit for developing the lands at Flats in Block Nos. 138 to 148 Geethanjali colony, 7th Avenue, Anna Nagar West, Chennai.40 comprised in S.No. 185 (part) 186 (Part) and 187 (part) in Padi Village at Anna Nagar, admeasuring 70618 sq. ft. For putting up a residential building

without insisting upon the No Objection Certificate from the third respondent or any other Authorities so long as the proposed new construction activities is in accordance with the Development Control Rules.

ORDER

1. Writ Petition is filed praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to receive, consider, process and approve the petitioners' application for demolition and reconstruction by issuing planning permission, building permit for developing the lands at Flats in Block Nos. 138 to 148 Geethanjali colony, 7th Avenue, Anna Nagar West, Chennai.40 comprised in S.No. 185 (part) 186 (Part) and 187 (part) in Padi Village at Anna Nagar, admeasuring 70618 sq. ft. For putting up a residential building without insisting upon the No Objection Certificate from the third respondent or any other Authorities so long as the proposed new construction activities is in accordance with the Development Control Rules.

2. Mr.Raja Srinivasan , learned counsel takes notice on behalf of the first respondent; Mr B.B. Senthilkumar, learned counsel takes notice on behalf of the second respondent and Mr Jayaseelan, learned counsel takes notice on behalf of the third respondent. By consent, the writ petition is taken up for final disposal.

3. Petitioners are owners of the property which was originally developed by Tamil Nadu Housing Board and sold to the individuals. The present owners are either original allottees or subsequent purchasers. The undisputed fact is that the Tamil Nadu Housing Board has no lien over the property. For the purpose of developing the property, the first respondent orally insisted the petitioners that no objection certificate issued by the Tamil Nadu Housing Board should be submitted along with the application for the purpose of demolition, planning permission and for issuance of planning and building permit to put up new construction.

4. Similar issue with regard to the insistence of no objection certificate from Tamil Nadu Housing Board was considered by a Division Bench of this Court in W.A.No.1052 of 2007 (The Managing Director - vs. - Lancor G:Crop Properties Limited & another) where it has been clearly held that the Housing Board has no

right over property developed and sold to the individual allottees. The petitioners have enclosed sale deeds to show absolute ownership. The only restriction appears to be that the property developed for residential purpose should not be commercial use. The petitioners' plea is only for demolition and reconstruction as residential property.

5. Petitioners' counsel states that the development of the property is for residential use only and petitioners are willing to file an affidavit to that effect. Following the Division Bench Judgment as above, several orders have been passed by this Court, viz., W.P.No.15170 of 2010 dated 20.7.2010, W.P.No.14784 of 2008 dated 6.8.2008 where the Chennai Metropolitan Development Authorities were directed to accept the application without insisting on no objection certificate.

6. Since the property in question undisputedly has been sold to the individual allottees by way of proper sale deeds, the Tamil Nadu Housing Board can have no right over the property and therefore, the question of issuing no objection certificate does not arise.

7. In view of the above, the first respondent is directed to proceed with the application submitted by the petitioners without insisting no objecting certificate from the third respondent Tamil Nadu Housing Board subject to condition that the property will be developed only for residential purpose. The petitioners, however, are directed to submit the individual sale deeds of all the land owners to the competent authority to get planning permission. The Writ Petition is ordered as above. No costs.

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