

(2015) 02 MAD CK 0194

In the Madras High Court

Case No : Writ Petition No. 20591 of 2013 and M.P. Nos. 1 to 4 of 2014

M. Gnanam

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Town and Country Planning Act, 1971 — Section 113, 113A, 113-A,
113A(6), 113-A(6)

Citation : (2015) 3 MLJ 291

Hon'ble Judges : M. Venugopal, J.; Satish K. Agnihotri, J.

Bench : Division Bench

Advocate : S. Prabakaran and S. Ramesh, for the Appellant; P.S. Sivashanmugasundaram, Special Government Pleader, Advocates for the Respondent

Judgement

M. Venugopal, J.—The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records of the 1st Respondent comprised in G.O.(3D) No. 47, Housing and Urban Development (UD-VI) Department, dated 10.07.2013 passed by the 1st Respondent, confirming the order of the 2nd Respondent dated 09.03.2011 in Letter No. REG. I/B4/(BC2)/37571/2001 and to quash the same as arbitrary and illegal. Further, she has sought for passing of a consequential order in directing the Respondents to consider her regularisation application in the light of the statutory amendments to the Tamil Nadu Town and Country Planning Act, 1971 and the Government Orders issued in G.O.(Ms). Nos. 234 and 235, Urban Development Department, dated 30.10.2012.

2. Writ Factual Matrix:

(i) According to the Petitioner, one Nagalakshmi Ammal, wife of V. Rangasamy purchased portion of Flat No. 4 in the 1st Floor of the building in Block No. 41, erected on the land in Survey No. T.S. 71, Block No. 14, part of Kodambakkam

Village Madras City, flat measuring 565 sq.ft. with stated boundaries, which is subject matter of the proceedings, from the 3rd Respondent/Tamil Nadu Housing Board, as per schedule, through registered sale deed dated 28.02.1981. The said Nagalakshmi, in turn, sold the property through registered sale deed to one G. Vijayalakshmi on 22.04.1981. Later the said Vijayalakshmi sold the property in question to Mrs. Uma Rama Durai on 28.08.1986 through registered sale deed.

(ii) The 5th Respondent had purchased the property in the Ground floor of the Petitioner's property from the 3rd Respondent/Tamil Nadu Housing Board, by means of registered sale deed dated 16.03.1992. After that, Mrs. Uma Rama Durai had conveyed the property in dispute through registered sale deed dated 07.04.1997 to one P.G. Krishnamurthy and Tmt. Komalavalli Krishnamurthy, as per registered Document No. 529 of 1997. In turn, the said Krishnamurthy and Komalavalli Krishnamurthy conveyed the property described in the schedule to and in favour of the Petitioner by means of registered sale deed dated 30.11.1998.

(iii) After purchase of the flat in the first floor, the Petitioner with an idea of putting up additional construction approached the 5th Respondent and accordingly, a Memorandum of Understanding was entered into between herself and the 5th Respondent on 23.08.1999. By means of the said Understanding, the 5th Respondent was to allow her to make additional construction on the northern side and also gave "No Objection Certificate" to the 4th Respondent/Corporation of Chennai for construction. On the basis of "No Objection Certificate" furnished by the 5th Respondent, the Petitioner had put up additional construction on the northern side of their property in the Ground and First floors.

(iv) It comes to be known that the Petitioner on 31.12.2000 applied for regularisation of the additional construction on the northern side under the Regularisation Scheme of the 2nd Respondent/CMDA. In the meanwhile, she obtained NOC from the 3rd Respondent/Tamil Nadu Housing Board for putting up additional construction on 27.12.2001 and thereafter the value of the property had increased. Soon thereafter, the 5th Respondent, who gave consent, entered into "Memorandum of Understanding", and initiated one after the other.

(v) As a matter of fact, the 5th Respondent filed four Writ Petitions, one Suit and an Appeal and numerous representations to various authorities for pulling down the additional construction mentioning that he had revoked the consent given on 23.08.1999.

(vi) In the first Writ Petition No. 18131 of 2001 filed by the 5th Respondent for taking action as against the Petitioner's construction, this Court, on 01.10.2001 disposed of the Writ Petition by directing the 2nd Respondent herein (CMDA) to consider the 5th Respondent's representation dated 06.09.2001. Subsequently, the 5th Respondent filed O.S. No. 3577 of 2001 seeking a relief of declaration that the additional construction made by the Writ Petitioner in the suit property is an illegal one and for consequential injunction from putting up for further

construction and for mandatory injunction to demolish the additional construction.

(vii) The 5th Respondent projected W.P. No. 13755 of 2001 (after filing the suit in O.S. No. 3577 of 2001) and on 07.02.2003, this Court dismissed the Writ Petition by observing that no further adjudication is required in the Writ Petition because of the pending regularisation application and also in view of the fact that the 5th Respondent had given "No Objection Certificate" for putting up additional construction.

(viii) The 2nd Respondent/CMDA, through letter dated 24.05.2002, had stated that the construction put up by the Petitioner is regularisable under Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 and because of the interim order obtained in W.P. No. 13755 of 2001, it is not in a position to consider the application. Later, the 5th Respondent had addressed several communications to the 3rd Respondent/Housing Board officials and without making an enquiry with the Petitioner, the 3rd Respondent issued letters stating that the construction put up by the Petitioner could not be regularised and the two officials viz., 1. Raghavan, Surveyor, K.K. Nagar Division and Manoharan, Head Surveyor, K.K. Nagar Division demanded bribe from the Petitioner. As such, the Petitioner addressed a complaint to the 3rd Respondent on 01.09.2003 and the said officials were placed under suspension and a departmental enquiry was ordered.

(ix) The Petitioner made a request with the 3rd Respondent/Housing Board for issuance of a fresh orientation sketch, (which is akin to that of patta), disclosing the dimensions of the property, (including the road width and the boundaries of property). In fact, the 3rd Respondent issued an orientation sketch on 03.09.2003 which disclosed that the eastern side boundary of the Petitioner's property is a 20" road. The 3rd Respondent after making an enquiry had stated that they have no objection for regularisation of the planning permission in respect of the additional construction made by the Petitioner in Flat No. 41/4 and an endorsement was made on the Petitioner's plan on 23.09.2003.

(x) The stand of the Petitioner is that the suit in O.S. No. 3577 of 2001 filed by the 5th Respondent after a detailed trial was dismissed by the XI Assistant Judge, City Civil Court, Chennai on 27.07.2004 holding that the construction is regularisable. The 5th Respondent preferred an appeal in A.S. No. 501 of 2004 which was also dismissed on 11.09.2007 whereby and whereunder the Judgment of the trial Court in O.S. No. 3577 of 2001 dated 27.07.2004 was confirmed. In short, as against the decision of the trial Court in regard to the issues pertaining to encroachment and additional construction, no further Appeal was filed and the same is final.

(xi) When the matter stood thus the 5th Respondent filed W.P. No. 32686 of 2007 for the very same cause of action and on 12.10.2007 the Division Bench of this Court observed and held that since the suit was dismissed and the first appeal was also dismissed, the Petitioner could not invoke jurisdiction under

Article 226 of the Constitution of India. However, liberty was granted to the 5th Respondent to work out his remedy before the Civil Court and this order was suppressed by the 5th Respondent in all subsequent proceedings. After the dismissal of W.P. No. 32686 of 2007 on 12.10.2007 at the admission stage itself, the 5th Respondent filed another W.P. No. 6837 of 2010 for the very same cause of action and in fact, the Petitioner was not aware of the Division Bench order of this Court passed in W.P. No. 32686 of 2007 dated 12.10.2007.

(xii) Indeed, the Petitioner filed R.A. No. 126 of 2010 consequent to the dismissal of W.P. No. 6837 of 2010 dated 07.07.2010 wherein a direction was issued to the 2nd Respondent therein (CMDA) to take decision on merits without being influenced by the orders passed in the Writ Petition. Also, a direction was issued to consider all the claims of the Petitioner including the boundaries mentioned in the document and the sale deed executed by the 3rd Respondent/Housing Board. Moreover, liberty was granted to the Petitioner to canvass all the aspects available under law and on facts in regard to the regularisation application and the right of the 5th Respondent to object to the additional construction put up by her in the light of the decree passed by the Civil Court which had become final.

(xiii) On receipt of notice from the 2nd Respondent, the Petitioner produced all the required documents. But the 2nd Respondent on 09.03.2011 rejected the regularisation application ascribing the following reasons: (i) no evidence was furnished for completion of the building prior to the cut-off date of 28.02.1999 and the MOU with the 5th Respondent was on 23.08.1999, which was after the cut off date; (ii) the ownership right for the property was not produced and as per the stand of this Court, the Petitioner does not have an exclusive right over the property; and (iii) the 3rd Respondent/Housing Board had contended that the additional construction was put up by encroaching on a portion of the road.

(xiv) Feeling aggrieved of the order dated 09.03.2011 passed by the 2nd Respondent/CMDA in rejecting the application, the Petitioner preferred statutory Appeal under Section 113-A(6) before the 1st Respondent/State Government on 29.03.2011. The 1st Respondent passed the impugned order, by means of G.O. (3D) No. 47, Housing and Urban Development (UD-VI) Department, dated 10.07.2013 in rejecting the Appeal on the very same grounds cited by the 2nd Respondent/CMDA without even advertent to the factual and legal aspects canvassed by the Petitioner and also G.O.(Ms). Nos. 234 and 235 dated 30.10.2012.

The Petitioner's Submissions:

3. According to the Learned Counsel for the Petitioner, the order of the 1st Respondent/State Government in confirming the order of the 2nd Respondent/CMDA is an arbitrary, illegal and unconstitutional because of the reason that the said order runs contra to the Government Orders and the stand taken by them in numerous proceedings.

4. The Learned Counsel for the Petitioner contends that the covenants of the sale

deed, the rights conferred therein and the circular issued by the 3rd Respondent/Housing Board were not taken into consideration by the Respondents and that apart, the site under reference is a 4-in-1 type flat and only a few of them were constructed during the year 1970s by the 3rd Respondent/Housing Board.

5. The Learned Counsel for the Petitioner brings it to the notice of this Court that in regard to the usage of the open areas in 4-in-1 apartments, the 3rd Respondent clarified the same through their letter dated 04.01.1993 addressed to the 2nd Respondent/CMDA, in and by which, the ground floor allottees were permitted to make additional construction in the front and rear open space to the existing ground floor level. The first floor allottees were permitted additional construction on the side of the first floor level and moreover, the single flat parameter was to be applied treating both the ground and the first floor apartments as a single unit.

6. The Learned Counsel for the Petitioner contends that going by the explanation of the 3rd Respondent/Housing Board, the Petitioner as owner of the first floor with a right over of the undivided share of the land has a right to put up additional construction on the side portion, which in the instant case, is situated on the northern side and the 5th Respondent, being the owner of the ground floor, is entitled to put up construction on the front and rear side. That apart, the proof of ownership of the Petitioner is very much available in the circular of the 3rd Respondent/Housing Board as well as in the sale deed executed in favour of Nagalakshmi, the predecessor-in-title of the Petitioner. Added further, it is also brought to the notice of this Court that the Circular issued by the 3rd Respondent was addressed to the 2nd Respondent/CMDA in the year 1993 to deal with cases similar to that of the Petitioner and although this fact was argued and placed on record before the authorities, the same was not even adverted to.

7. The Learned Counsel for the Petitioner refers to the Full Bench decision of this Court in The Tamil Nadu Housing Board Vs. Mrs. Mary Rani Immanuel and Others, wherein it is held that in respect of the additional constructions, no "NOC" is required from the Tamil Nadu Housing Board and the owners have a right to develop the property as earmarked in the orientation sketch.

8. The Learned Counsel for the Petitioner emphatically submits that the plan submitted by the Petitioner to the 2nd Respondent/CMDA for regularisation was endorsed by the 3rd Respondent/Housing Board on 23.09.2003 and after making such an endorsement on the plan of the Petitioner, after enquiry cannot be retracted to give a different statement in the year 2013. Also that, in the very next block to that of the Petitioner, similar certificates were issued and constructions were completed after obtaining approval from the 2nd Respondent/CMDA. However, the Petitioner's case is singled out merely because she had failed to oblige the officials' demand who were later kept under suspension.

9. The Learned Counsel for the Petitioner vehemently contends that the Petitioner is not claiming regularisation of the building in terms of 1999

Regularisation Scheme and in fact, the said scheme alone found to be valid by this Court and all other schemes of the year 2000-2002 were quashed and now the matter is pending before the Hon"ble Supreme Court.

10. It is the submission of the Learned Counsel for the Petitioner that the State Government has brought in an amendment to the Tamil Nadu Town and Country Planning Act, by introducing Section 113(C) and by means of the said amendment, all the buildings constructed prior to 01.06.2007 can be regularised and the said amendment was challenged before this Court in W.P. No. 1664 of 2013 and 16785 to 16787 of 2013, which were disposed of by this Court on 10.02.2014 by upholding the validity of the Section 113(C) of the Act and struck down the rules made thereunder. Furthermore, the State Government was directed to constitute a fresh committee or utilise the services of the very same committee for framing appropriate rules and guidelines for processing the regularisation application under Section 113(C) of the Tamil Nadu Town and Country Planning Act.

11. In effect, the categorical plea taken on behalf of the Petitioner before this Court is that once the Government frames the rules, the application for regularisation is to be decided in accordance with the Section 113(C) and the rules and this vital aspect of the matter was totally brushed aside by the 1st Respondent.

12. Coming to the aspect of exclusive ownership right for the land in respect of which additional construction was made, it is the submission of the Learned Counsel for the Petitioner that the Proof of ownership of the Petitioner pertains to the portion marked as "C" in the rough sketch over which 2500 sq.ft. of additional construction was made and in fact, the Respondents 1 and 2 had failed to take note of the circular letter No. TP 1/042937/92, dated 04.01.1993 wherein the guidelines for additional construction in such type of apartments by the owners were spelt out and in fact, the ground floor allottee can be permitted to raise construction on the front and rear portion.

13. The Learned Counsel for the Petitioner draws the attention of this Court that the 5th Respondent had entered into "MOU" in accordance with the circular dated 04.01.1993 issued by the 3rd Respondent and in fact, the Petitioner being the owner of the first floor with a right over the undivided share of the land has a right to put up additional construction on the side portion which in the instant case, is situated on the northern side and the 5th Respondent being the owner of the ground floor is entitled to put up construction in the rear side.

14. The Learned Counsel for the Petitioner takes yet another stand that even today the vacant land on the front and rear side is available to the 5th Respondent and this particular fact was not appreciated by the Respondents 1 and 2 notwithstanding the fact that the circular dated 04.01.1993 issued by the 3rd Respondent/Tamil Nadu Housing Board is very much available with them.

15. Moreover, it is also contended on behalf of the Petitioner that in the

Judgment passed by the Competent Civil Court, it was categorically observed that the MOU entered into between the Petitioner and the 5th Respondent was binding and further that in the said suit, the Respondents 2 and 4 were parties and as such, the finding rendered in the said suit is binding on the Respondents 2 and 4. Also that, the impugned Order G.O.(3D) No. 47, dated 10.07.2013 is passed by the 1st Respondent contrary to the findings rendered by the Civil Court and moreover, the NOC and orientation sketch were not adverted to by the Respondents 1 and 2.

16. Apart from the above, the Learned Counsel for the Petitioner submits that the view of the Respondents 1 and 2 based on the pleading of the 5th Respondent that the Petitioner had encroached on the common road and put up additional construction is not correct, because of the reason that the road which is referred to and marked as "AB" in the rough sketch at page 225 of the first typed set is not a public road, road gifted to the 4th Respondent/Corporation of Chennai or road vested with the 3rd Respondent/Tamil Nadu Housing Board. Further, the whole area encompassed within the boundaries marked as "WXYZ" was sold to the eight allottees, viz., flat owners in 41/1 to 41/4 and 42/1 to 42/4 and therefore, the alleged passage is also a part of the undivided land owned by all eight members.

17. The Learned Counsel for the Petitioner contends that the 3rd Respondent/Housing Board, while executing the sale deed in favour of Nagalakshmi, had specifically mentioned that the passage is 20 feet road and in fact, the Petitioner, being successor-in-title, is bound by the clauses specified in the sale deed executed by the Housing Board and in fact, the boundaries set out in the sale deed will prevail. Moreover, it is projected on the side of the Petitioner that the 20 feet road is a private passage and if all the eight owners decide, they can alter the width of the passage since they jointly own the same. Besides that, on ground, the eight members are maintaining it as a 20 feet passage and the same is a private passage and even in front of the 5th Respondent's house, he maintains it is a 20 feet passage and to suit his convenience, he pleads that it is a 30 feet passage and that the Petitioner had encroached on a public road.

18. The Learned Counsel for the Petitioner submits that the nature of the road, being a private passage, the 2nd Respondent, while regularising additional construction of the 6th Respondent, had confirmed that it is a 20 feet road. In fact, the Respondents 6 and 7, while submitting the plan for additional construction, had shown the road as 20 feet road and applying for regularisation as 20 feet road in 2001, the 7th Respondent had filed an affidavit before this Court that the road is 30 feet passage to support the 5th Respondent. Also that, the Respondents 6 and 7 had not obtained consent from the Petitioner while putting up additional construction and they need not obtain the consent based on the reason that as per the Tamil Nadu Housing Board Circular of the year 1993 single plot parameter would apply and that the 6th Respondent being the ground floor owner of Flat No. 41/3 and the 7th Respondent being the first floor owner of

Flat No. 41/1, need not obtain consent from the Petitioner who is the owner of Flat No. 41/4.

19. The Learned Counsel for the Petitioner, by referring to the orientation sketch (enclosed at page 72 of the first typed set of Petitioner's side), contends that in the sketch, the passage is shown as "20 feet" and therefore, it is quite clear that the passage is only a 20 feet and not 30 feet and in any event, it is not a public road.

20. The Learned Counsel for the Petitioner submits that the 20 feet passage which is disputed by the Respondents is not a public road and in fact, the 2nd Respondent/CMDA had granted planning permission for the special building which is the adjacent property to that of the Petitioner.

21. The Learned Counsel for the Petitioner contends that the Decree of the trial Court in O.S. No. 3577 of 2001 dated 27.07.2004 and the Judgment in Appeal dated 11.09.2007 squarely bind the parties and as such, the issues pertaining to encroachment and additional construction which had attained finality cannot be reopened by the Respondents 1 and 2 and in this regard, the plea of res judicata would apply. To lend support to this contention, the Learned Counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in Makhija Construction and Enggr. Pvt. Ltd. Vs. Indore Development Authority and Others, , wherein it is held that "res judicata operates to bind parties to proceedings for the exclusive reason that there should be an end to litigation".

22. Lastly, the Learned Counsel for the Petitioner contends that as on today, the Petitioner cannot be non suited in respect of a road to have an additional construction under Section 113(C) of the Tamil Nadu Town and Country Planning Act, 1971.

Contentions of the 1st Respondent:

23. In response, it is the submission of the Learned Special Government Pleader for the 1st Respondent that the Petitioner's application for regularisation (under the Regularisation Scheme 2000) was rejected in Letter No. Reg. I/ B4(BC2)/4666/2001 dated 05.12.2001 and again the Petitioner applied under Regularisation Scheme 2001 which was rejected in Letter No. Reg. I/ B4(BC2)/37571/2001 dated 02.04.2002.

24. It is represented on behalf of the 1st Respondent/State Government that the 2nd Respondent/CMDA had regularised the constructions completed prior to 28.02.1999 subject to the condition that the Applicants concerned were to furnish the documents: (i) Date of Planning permission and proof of completion; (ii) Electricity Service Connection and Water connection; and (iii) Registration of Sale Deed conveying constructed area/plot.

25. The Learned Special Government Pleader for the 1st Respondent contends that the 2nd Respondent, through letter dated 09.03.2011 addressed to the Petitioner, had rejected her Planning Permission Application for regularisation of

building constructed adjacent to the Flat No. 41/2 and 41/4, LIG Block, Vaigai Colony, 11th Avenue, Ashok Nagar, Chennai based on the reasons that she has not furnished the evidence for having completed the building prior to the cut-off date i.e., 28.02.1999 and further, as per available records, the Memorandum of Understanding (MOU) for additional construction between the Petitioner and the 5th Respondent (Flat No. 41/2) was made on 23.08.1999 which is admittedly after the cut-off date i.e. 28.02.1999. Also, the Petitioner had not furnished the ownership right for the site under reference in her favour i.e. Right over the property as requested by the 2nd Respondent/CMDA through letter dated 03.11.2010 and also that, the 3rd Respondent/Housing Board, in their letter No. TP1/21431/202 dated 08.02.2011 had also clarified that she had no right over the property and that the Managing Director, Tamil Nadu Housing Board, through his letter dated 08.02.2011 had clarified that the Petitioner had constructed the additional construction by encroaching the road portion.

26. The Learned Special Government Pleader for the 1st Respondent brings it to the notice of this Court that being aggrieved against the rejection order of the 2nd Respondent/CMDA dated 09.03.2011, the Petitioner filed an Appeal before the Government and the said Appeal was referred to the 2nd Respondent on 29.03.2011 with a view to obtain remarks.

27. The Learned Special Government Pleader for the 1st Respondent proceeds to state that in the meanwhile on behalf of the 5th Respondent, his counsel addressed a letter dated 03.02.2012 to the Government stating that the Writ Petitioner had not furnished the evidence in respect of the building completed prior to 28.02.1999 and that she had constructed additional construction by encroaching the road and made a request to dispose of the Appeal filed by the Writ Petitioner.

28. The Learned Special Government Pleader for the 1st Respondent submits that the Petitioner was provided with an opportunity of personal hearing on 12.06.2012 and 19.06.2012 and during the course of personal hearing, the Secretary had instructed the Officials of the 3rd Respondent/Housing Board to provide the original layout approved by the 2nd Respondent for the site at No. 41/2 and 41/4 LIG Block (Tamil Housing Board Flats), Vaigai Colony, 11th Avenue, Ashok Nagar, Chennai - 83 and that the Managing Director of the 3rd Respondent/Housing Board was required to furnish the original layout approved by the 2nd Respondent/CMDA.

29. The Learned Special Government Pleader for the 1st Respondent adds that the Chief Engineer i/c, Tamil Nadu Housing Board, Chennai - 35 had stated that the Executive Engineer and Ado/K.K. Nagar Division had informed that the Scheme viz., Vaigai Colony consisting of 39 blocks (156 Nos of flats 4-in-1 Type LIG and MIG) at 11th Avenue, Ashok Nagar scheme were constructed during the year 1969-70 and were allotted to prospective allottees thereafter and that the sale deed were also concluded in favour of the allottees long back etc. Besides the above, he had stated that the original approved layout for the Vaigai Colony

Scheme implemented four decades back could not be traced out at this distance of time and therefore, the copy of the same was not to be furnished as required by the Government. But the copy of the layout for the Vaigai Colony issued to the allottees during issuance of sale deed there on marking the LIG flat No. 41/4 and the additional construction taken up in the common area by the owner of the said flat was enclosed and as per the layout enclosed, the road in front of the LIG block No. L-41 is 30 feet wide road and with a view to establish the 30 feet road in front of LIG Block No. 41, the Executive Engineer and Ado/K.K. Nagar Division had collected the sale deeds in respect of LIG Flat Nos. 41/1, 41/2, 41/3, 41/4, 41/4, 42/2 and 42/4 and furnished the same. As a matter of fact, the first schedule of the property specified in all sale deeds reflect 30 feet wide road in front of Block No. 41 and 42 except the sale deed issued in favour of Tmt. R. Nagalakshmi, the predecessor interest of Flat No. 41/4.

30. The Learned Special Government Pleader for the 1st Respondent contends that the Member Secretary of the 2nd Respondent/CMDA had stated that the Chief Engineer/Tamil Nadu Housing Board in letter No. TPI/2002, dated 06.02.2013 had mentioned that as per the layout enclosed the road in front of the LIG Block No. L. 41 is 30 feet wide road and the same was also reflected in the sale deed in respect of LIG Flat Nos. 41/1, 41/2, 41/3, 41/4, 42/2 and 42/4 that the road is 30 feet wide in front of Block Nos. 41 and 42, except the sale deed issued in favour of the predecessor interest of the Flat No. 41/4 and a detailed letter in this regard was sent to the Government of 29.05.2012.

31. In short, it is represented on behalf of the 1st Respondent that the Member Secretary of the 2nd Respondent had stated that the Petitioner had not furnished evidence for having completed the building prior to cut off date i.e. 28.02.1999 and further, when she had not submitted exclusive ownership for the site under reference in her favour and that the 3rd Respondent/Housing Board also stated that the Petitioner had constructed the additional construction by encroaching the road and requested the Government to reject her Regularisation Application. Further, only after careful consideration of the subject matter in issue, the Government finally rejected the Appeal (filed by the Petitioner dated 29.03.2011) preferred against the order passed by the Member Secretary of the CMDA refusing the Planning Permission for regularisation of building constructed adjacent to the Flat Nos. 41/2 and 41/4 under Section 113A(6) of the Tamil Nadu Town and Country Planning Act.

32. The Learned Special Government Pleader for the 1st Respondent submits that this Court, by its Judgment dated 23.08.2006, declared that the amendments to Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 by amending Acts 31 of 2000, 17 of 2001 and 7 of 2002 and the consequential amendments to the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999 as far as applicable to the constructions made after 28.02.1999 were ultra vires and as such, all the Applications received for regularisation either for Plots, Ordinary Buildings/

Institutions/ Industries/Commercial/Residential Buildings under the extended Scheme 2000, 2001, 2002 shall be deemed to be rejected. As a matter of fact, this Court had quashed all the orders for regularisation of such buildings (constructed after 28.02.1999) passed pursuant to the amending provisions. However, the same shall be considered, if the construction/building/sub-division was completed before 28.02.1999.

33. Finally, it is the submission of the Learned Special Government Pleader for the 1st Respondent that as per G.O.(Ms.) No. 234, dated 30.10.2012, the Petitioner's construction is not eligible to claim exemption under Section 113(C) of the Tamil Nadu Town and Country Planning Act, 1971.

Submissions of the 2nd Respondent:

34. The Learned Counsel for the 2nd Respondent contends that the application for regularisation submitted by the Petitioner, in Reg. No. 16683/2000 relating to the regularisation of building constructed adjacent to the Flat No. 41/2 and 41/4, LIG Block, Vaigai Colony, 11th Avenue, Ashok Nagar, Chennai, was forwarded by the 4th Respondent/Corporation of Chennai in its letter dated 09.08.2001 to the 2nd Respondent/CMDA and that the 2nd Respondent, after examination of the same, refused the request for regularisation based on the reason that there is no provision to regularize individual flat in the Regularisation Scheme 2000 etc. and further that, the MOU on 23.08.1999 entered into between the 5th Respondent and the Petitioner was later objected to by the 5th Respondent in respect of regularisation. Further, when the Petitioner again applied for regularisation Reg. Scheme 2001 dated 22.11.2001, the same was refused on 02.04.2002 since the construction put up by her is not on her land but by encroaching into the land allotted by the 3rd Respondent/Housing Board to the allottees. In short, she has put up the construction unauthorisedly in Flat No. 41/4 and also that the application for regularisation of illegal construction cannot be considered or processed in terms of Rule 3 of the Regularisation Rules and that too when she has no right over the land in which the building had been put up. Viewed in that aspect, the regularisation application was rejected on 14.09.2004.

35. The Learned Counsel for the 2nd Respondent adverts to the fact that this Court, in R.A. No. 126 of 2010 (filed by the Petitioner), on 13.09.2010 had observed that "The review applicant has now made a claim that her property extends upto 11th Avenue in view of the northern boundary shown in her document. This is a matter to be considered by the Chennai Metropolitan Development Authority in consultation with the Tamil Nadu Housing Board and more particularly, in the light of the terms and conditions of the sale deed executed by the Housing Board in favour of Mrs. Nagalakshmi Ammal, the predecessor-in-interest of the Review Applicant. Therefore, we clarify that it is for the statutory authorities to decide this issue with notice to the review applicant, the first respondent and the Tamil Nadu Housing Board and in the light of the terms, conditions and restrictive covenants as contained in the sale deed executed by the Tamil Nadu Housing Board in favour of Mrs. Nagalakshmi Ammal

and the first respondent."

36. The Learned Counsel for the 2nd Respondent contends that consequent to the rejection of Appeal filed by the Petitioner, the Respondents 1 and 2 have initiated enforcement action and at that point of time, the Petitioner has projected the present Writ Petition challenging the G.O.(3D) No. 47, dated 10.07.2013. Also that, she is not eligible for exemption under Section 113(C) of the Tamil Nadu Town and Country Planning Act, 1971.

Contentions of the 3rd Respondent/Tamil Nadu Housing Board:

37. The Learned Counsel for the 3rd Respondent submits that if the sale deeds of Flats 41/1, 2, 3 and 42/1, 2, 3, 4 are taken as yardstick, the width of the passage is 30 feet and as per the layout, the width of the abutting road on eastern side of 41 block is 30'0" and in reality, the copy of the sale deeds of other allottees of flat 41/1 and 41/3 shows the width of road as 30'0" and therefore, the width of the road mentioned in the sale deed executed in favour of R. Nagalakshmi Ammal as 20'0" might be a typographical error.

38. The Learned Counsel for the 3rd Respondent contends that the passage in question is internal circle road which is exclusively meant for the owners of Block Nos. 41 and 42 and the same is not a public road which vests with the 4th Respondent/Corporation of Chennai and in fact, it is meant only for the owners of Block Nos. 41 and 42. Moreover, the 30 feet road was not gifted to any local body and the same comes under common saleable area. As a matter of fact, the 3rd Respondent is not maintaining the said passage nor has any control over the same and in fact, in the Full Bench Judgment of this Court in W.A. Nos. 783 of 2001, etc. batch dated 26.04.2013 (between The Tamil Nadu Housing Board Vs. Mrs. Mary Rani Immanuel and Others, , it is, inter alia, observed that "... At the risk of repetition, it has to be pointed out that Section 13 of the Act provides for framing of bye-laws of the Society or Association by the flat owners not only for maintenance and repairs of existing flats but also for "replacement of common areas". The Society or Association so formed shall take action relating to "common areas and facilities". Right of the Society or Association to maintain, repair and replacement of common areas is provided under Section 18 of the Act. Thus the Act takes care of the common areas and facilities. Therefore, the Tamil Nadu Housing Board may not have any right over the common areas."

39. According to the Learned Counsel for the 3rd Respondent submits that the Writ Petitioner has not obtained any planning permission from the appropriate authorities concerned before commencing the construction and the same has not been ratified by the Housing Board in any manner.

40. The Learned Counsel for the 3rd Respondent cites the decision of the Hon'ble Supreme Court in Esha Ekta Apartments Co-operative Housing Society Ltd. and Others Vs. Municipal Corporation of Mumbai and Others, whereby and whereunder, it is observed that "There is no provision for regularisation of illegally constructed flats" and held that "if courts exercise Equity jurisdiction to

regularise illegally constructed flats this will further encourage violators and others to commit further such illegalities".

Submissions of the 5th Respondent:

41. The Learned Counsel for the 5th Respondent submits that in the letters dated 30.05.2002 and 16.07.2003 issued by the 3rd Respondent and in which, it was clearly mentioned that the additional building put up by the Petitioner is an unauthorised and also the NOC issued by the 3rd Respondent was withdrawn on 16.07.2003 and as such, the Petitioner cannot take umbrage on the letter issued by the 2nd Respondent to the 5th Respondent's counsel on 24.05.2002.

42. Also, it is the plea of the 5th Respondent that nowhere in the Judgment in O.S. No. 3577 of 2001 it was mentioned that the construction of the Petitioner is regularisable and in fact, the vacant land around the building terrace in which the flat mentioned in the first schedule is situate shall be held in common by the owners of all the flats in the said building and the purchaser shall not be entitled to convert the said common land for his personal or exclusive use. That apart, after the allotment of all the flats, the 3rd Respondent had directed the allottees to form a Society to look after the maintenance of the flat and the land and therefore, the 3rd Respondent has no legal right to frame a guideline in respect of putting up additional construction in the common vacant land without the consent of all the allottees. Inasmuch as the Petitioner had not obtained planning permission from the 2nd Respondent/CMDA before the commencement of the construction, the Petitioner's construction in question is illegal and unauthorised.

43. The Learned Counsel for the 5th Respondent submits that the Respondents 1 and 2 have verified the area layout sketch and the sale deeds of other flat owner of Block No. 41 and 42 wherein the width of the road was mentioned as only 30 feet as against 20 feet and in fact, the Respondents had conclusively held that the Petitioner had encroached the 30 feet road portion.

44. The Learned Counsel for the 5th Respondent primarily contends that the Petitioner is only entitled to Flat measuring about 565 square feet but had put up construction without obtaining any planning permission from the Respondents 2 and 4 and the 565 sq. ft. in first floor flat purchased by the Petitioner is above the flat of the 5th Respondent and in fact, she had put up construction measuring 2865 sq. ft. in total violation of MOU and without obtaining permission from the Respondents 2 and 4 and in fact, she had not obtained any consent from the Respondents 6 and 7, who are the other owners of other two flats and besides that, she had not obtained any written consent from the Welfare Association.

45. The Learned Counsel for the 5th Respondent brings it to the notice of this Court that the Petitioner has not obtained consent for putting up construction in the common area and only consent obtained by her from the 5th Respondent by suppressing the material facts and at the time of allotment made by the Tamil Nadu Housing Board, the total construction of all four flats put together was

2260 sq. ft. and now the Petitioner alone had put up construction and is in enjoyment and possession of 2865 sq. ft. In this connection, it is represented on behalf of the 5th Respondent that the plan of the Petitioner would clearly disclose that she had left out the extent of about 1115 sq. ft. marked for parking of vehicles in the ground floor and deliberately suppressed the fact and made it appear as though she had constructed an extent of about 1750 sq. ft. in first and second floors. Furthermore, the extent of 1115 sq. ft. on the ground floor which was constructed unauthorisedly was sought to be leased out to the Hotel Saravana Bhavan.

46. The Learned Counsel for the 5th Respondent refers to the Division Bench Judgment of this Court in *M.V.P.B. Nammalwar Vs. The Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department, Madras*, at special page 294 wherein it is observed that "The later Judgment of the High Court has to be upheld and not the earlier Judgment".

47. He also refers to the decision of the Hon'ble Supreme Court in *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, wherein it is held as follows:

"An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The scheme is for the benefit of the residents of the locality. The rights of the residents in the area are invaded by an illegal construction of a cinema building. If the scheme is nullified by arbitrary acts in excess and in derogation of the powers of the Municipality the courts will quash such orders." 48. The Learned Counsel for the 5th Respondent invites the attention of this Court to the decision of the Hon'ble Supreme Court in *Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others*, , wherein it is held as follows:

"Illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors. Therefore, there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient."

49. It is the stand of the 7th Respondent that the 3rd Respondent/Housing Board, while executing the sale deed, had issued the area layout sketch wherein it was clearly specified the width of the road in between Block Nos. 41 and 42 is

only 30 feet and at no point of time they had given his consent for the additional construction put up in the common land by the Petitioner. Further, the 6th Respondent is his son-in-law who is the owner of the Flat No. 41/1, Ground floor, Vaigai Colony, 11th Avenue, Ashok Nagar, Chennai and he had not put up any additional construction in and around the flat more particularly in the common land. Also that, he had purchased the flat from O.V. Krishnamurthy, original allottee of Flat No. 41/1, Vaigai Colony, 11th Avenue, Ashok Nagar, Chennai. In fact, the 7th Respondent had put up additional construction measuring 18.30 meters approximately 197 sq. ft. in the first floor in the year 1988 and the same was regularised by the 2nd Respondent. In reality, he had put up construction on the southern side of the Writ Petitioner's flat.

Discussions:

50. There is no dispute in regard to the fact that the Petitioner is the owner of the premises of first floor at No. 41/4, 11th Avenue, Ashok Nagar, Chennai - 83. Likewise, the 5th Respondent is the owner of the premises of ground floor at No. 41/2, 11th Avenue, Ashok Nagar, Chennai - 83. Although the Petitioner and the 5th Respondent had entered into a Memorandum of Understanding to put up additional construction of ground and first floors in the vacant land belonging to the 5th Respondent available in front and rear side of his house, the Petitioner completed the building after obtaining NOC from her neighbour as well as from the Tamil Nadu Housing Board. However, subsequently there arose an enmity between the Petitioner and the 5th Respondent.

51. It transpires that the 5th Respondent filed W.P. No. 13755 of 2001 against the Respondents 1 to 5 viz., (1) The Chennai Metropolitan Development Authority, Chennai; (2) Corporation of Chennai; (3) The Divisional Engineer of Chennai Metropolitan Water Supply and Sewerage Board, Chennai; (4) The Assistant Divisional Engineer, Tamil Nadu Electricity Board, Chennai; and (5) The Chairman, T.N.E.B., Chennai and against Mrs. Gnanam (Petitioner herein) praying for passing of an order by this Court in directing the said Respondents 1 to 5 to consider his representations dated 16.07.2001 and 18.07.2001 forthwith. However, this Court on 07.02.2003 dismissed the Writ Petition by observing, in paragraph 4, as follows:

"4. It is clear that though initially the application to regularize the construction under 113-A was rejected, now the applicant has produced NOC from the Flat owner 41/2 dated 31.12.99 (writ petitioner) and NOC issued by the Tamil Nadu Housing Board dated 27.12.2001. It is further seen that in view of the above documents, the additional construction put up by the 6th respondent for the premises at Flat No. 41/4 is regularizable under Section 113A of Town and Country Planning Act. It is also brought to my notice that in view of the interim order dated 2.8.2001 and extended thereafter, the Chennai Metropolitan Development Authority is not in a position to pass orders for regularizing the construction. Taking note of all the above aspects, particularly in the light of the information referred to in the letter dated 24.5.2002, I am of the view that no

further adjudication is required in the above writ petition, accordingly the same is dismissed." 52. Admittedly, the 5th Respondent filed W.P. No. 32686 of 2007 on the file of this Court seeking a prayer to demolish that the illegal construction put up by the Petitioner and this Court, on 12.10.2007, dismissed the Writ Petition by inter alia observing that "... The suit was dismissed and the first appeal preferred thereagainst was also dismissed. Under these circumstances, it is not permissible for the petitioner to invoke writ jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed. The petitioner is free to work out his remedy before the civil court. No costs."

53. However, in the interregnum, the Petitioner approached the 2nd Respondent for regularisation of construction, but it was rejected assigning reasons to the effect that the Petitioner had no right over the property and that the MOU entered into between the parties on 23.08.1999 was after the cut-off date viz., 28.02.1999 and further that, she had constructed the building by encroaching the road. Even R.A. No. 126 of 2010 (filed by the Petitioner against the order dated 07.07.2010 in W.P. No. 6837 of 2010) was disposed of by this Court on 13.09.2010. After disposal of R.A. No. 126 of 2010 by this Court, the application for regularisation filed by the Petitioner was taken up by the 2nd Respondent/CMDA and ultimately, on 19.08.2011, an order was passed in rejecting the Application. The Petitioner filed an Appeal before the 1st Respondent/State Government challenging the order of the 2nd Respondent dated 19.08.2011. However, the 1st Respondent rejected the Appeal filed by the Petitioner on 10.07.2013.

54. It is to be noted that in the letters of the 3rd Respondent dated 30.05.2001 and 16.07.2003, it was clearly mentioned that the additional building put up by the Petitioner is an unauthorised one and also the NOC issued by the 3rd Respondent was withdrawn on 16.07.2003. As such, it is not open to the Petitioner to take advantage of the letter of the 2nd Respondent to the 5th Respondent's counsel on 24.05.2002. In view of the fact that the 5th Respondent had revoked the NOC and MOU on 06.09.2001, the Petitioner cannot fall back upon the said documents to her advantage. Moreover, in every sale deed executed by the 3rd Respondent in favour of the respective allottees, it is categorically mentioned that the "Vacant land around the building terrace in which the flat mentioned hereunder in the 1st schedule is situated shall be held in common by the owners of all the flats in the said building and the purchaser herein shall not be entitled to convert the said common land for his personal or exclusive use". That apart, after the allotment of all the flats the 3rd Respondent had directed the allottees to form the society to look after the maintenance of the flat and the land. Further, in W.P. No. 783 of 2011 and etc. batch, filed by the 3rd Respondent/Housing Board, an order was passed in regard to using the common land in and around the block also issue of NOC to the flat owner by the 3rd Respondent, it was categorically mentioned that for putting up additional construction in the common land Society or Association which were formed by the allottees, consent was to be obtained and further the construction should be

within the Rules and Regulations of the 2nd Respondent. As a matter of fact, the Petitioner neither obtained NOC from all the flat owners in the block nor obtained NOC from the Association/Society. Moreover, she had not obtained planning permission from the 2nd Respondent before the commencement of the construction.

55. In the instant case, it is not out of place for this Court to make a significant mention that in the sale deed dated 28.02.1981 of one Nagalakshmi, predecessor-in-title of the Petitioner, the width of the passage shown in the first schedule as 20 feet road. In fact, the Petitioner had purchased the flat No. 41/4 from the earlier predecessor Nagalakshmi from the Housing Board. In respect of other sale deeds of the allottees of Flat No. 41/1, 41/2, 41/3, 42/1, 2, 3 and 4 which came to be executed, subsequently, the width of the road was mentioned as 30 feet. In this connection, this Court aptly points out that whether the passage is shown as 20 feet road or 30 feet road is not an issue to be considered in the present Writ Petition and therefore, this Court refrains from proceeding any further in this regard.

56. Indeed, the 3rd Respondent/Housing Board in its Letter No. TP1/042937/92 dated 04.01.1993 addressed to the Vice Chairman, Madras Metropolitan Development Authority, Egmore, Madras on the subject of "Issue of Planning Permission for expansion of accommodation built by Tamil Nadu Housing Board" had stated as under:

"Besides, the following conditions may also be imposed in all these cases:-

1. Problems connected with adhering to construction on the central wall might arise. Therefore, no development shall be permitted in continuation of the central wall of the existing structure. The development shall be designed in such a way that a clear open space should be left between the central lines between the apartments. Otherwise, the adjoining owner's permission should be obtained.
2. The drainage and water lines to other blocks should not be disturbed.
3. No Objection Certificate from Welfare Association should be obtained, if there is one."

and further requested that these guidelines may be followed for regulating developments in the open space in and around the Houses/Group Houses built by the Tamil Nadu Housing Board.

57. It is to be noted that the term "Development" is defined under Section 2(13) of the Tamil Nadu Town and Country Planning Act, 1971 which runs as under:

"development" means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land." 58. Further,

Section 49 of the Act deals with "Application for permission". In fact, any person intending to carry out any development in a land or building shall have to make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed. Section 76 speaks of filing of an "Appeal to the Director", any person objecting to any decision or order taken or passed by the passed by the planning authority under the provisions of Chapter VII of the Act. Section 77 provides for filing of a further appeal before the Tribunal and a revision to the District Court under Section 78 of the Act. Section 79 enjoins that any person aggrieved by any decision or order under Section 49 or Section 54 may apply to the prescribed authority. The Director is empowered to call for and examine the records of any officer subordinate to him on application, and the Government is also empowered to call for and examine the records of the Director under Section 80 of the Act. Section 80-A of the Act speaks of "Special Powers of Government". Section 80(2) of the Act contemplates that no order shall be passed provided an opportunity to the concerned person. In reality, Section 81 provides for a review. Section 82 pertains to the execution of the orders passed under appeal, revision or review.

59. Be that as it may, in the light of the qualitative and quantitative discussions mentioned supra and in view of the fact that the 1st Respondent had passed orders in G.O.(3D). No. 47, Housing and Urban Development (UD-VI) Department, dated 10.07.2013 rejecting the Appeal filed by the Petitioner under Section 113A(6) of the Tamil Nadu Town and Country Planning Act, 1971, by, inter alia, stating that the Applicant had not produced proof of exclusive ownership for the site in the subject matter in issue, in her favour and further, the Appellant had constructed additional construction by encroaching the road and also, when it was observed that she had not submitted proof of completion of the building on or before 28.02.1999 and since that order has become final and no further appeal would lie before the Government, this Court is of the considered view that the said order does not suffer from any material infirmity or irregularity or patent illegality, in the eye of law. Consequently, the Writ Petition fails.

60. In the result, the Writ Petition is dismissed, leaving the parties to bear their own costs.

61. Before parting with the case, this Court is very much conscious and alive to the fact that this Court had upheld the constitutional validity of Section 113(C) of the Tamil Nadu Town and Country Planning Act, 1971 and also quashed the rules by means of an order dated 10.02.2014 in W.P. No. 1664 of 2014 and W.P. Nos. 16785 to 16787 of 2013. Also that, the State Government has been directed to frame rules to give effect to Section 113(C) of the Act. Moreover, the State Government has been directed to constitute a fresh committee or utilise the services of the very same committee for framing appropriate rules and guidelines for processing the application for regularisation under Section 113(C) of the Act.

At this juncture, it is not out of place for this Court to make a significant mention that the stand of the Petitioner is that as per Section 113(C) of the Act all buildings constructed prior to 01.06.2007 can be regularised. It cannot be gainsaid that when once the rules are framed, the Government is to consider the regularisation application of the Petitioner one way or other, by passing appropriate orders thereto.

62. Under these circumstances, it is made clear that the dismissal of the present Writ Petition will not preclude the Petitioner to approach the Government/Competent Authority in claiming exemption in respect of development of any building or class of buildings developed on or before 01.07.2007 from all or any of the provisions of this Act or any Rule or Regulation made thereunder etc., in terms of Section 113 of the Act and to seek appropriate remedy in the manner known to law and in accordance with law, if she so desires/advised. Connected Miscellaneous Petitions are closed.