

(2018) 01 MAD CK 0353

In the Madras High Court

Case No : 25488, 23400, 24985 and 24986 of 2017

M/s.Cee Dee Yes Health Care Services Pvt. Ltd.

APPELLANT

Vs

The Executive Engineer & Ors.

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

[Tamil Nadu Town and Country Planning Act, 1971](#), [Section 57](#), [Section 56](#), [Section 113C](#)

Citation : (2018) 01 MAD CK 0353

Hon'ble Judges : M.Venugopal, S.Vaidyanathan

Bench : Division Bench

Advocate : R.Thiagarajan, N.Premkumar, C.V.Subramanian, A.Nagarajan, N.Sampath

Final Decision : Dismissed

Judgement

1. Writ Petition No.25488 of 2017 is filed praying for issuance of a Writ of Certiorari to call for the records relating to the proceedings dated

19.06.2017 in Z.O.XIII.C.No.2449/2017 on the file of the first respondent herein and quash the same.

2. Writ Petition No.23400 of 2017 is filed praying for issuance of a Writ of Mandamus to direct the first respondent to ensure that they implement

their own order dated 19.06.2017 in reference number Z.O.XIII.C.No.2449/2017, as regards the demolition of the wall constructed around the

commercial block located on Survey No.329 facing Velachery Tambaram Main Road in Regal Palm Garden Apartment Complex at 383,

Velachery-Tambaram Road, Velachery, Chennai-600 042, within a reasonable time as may be stipulated by the Court.

3. Writ Petition No.24985 of 2017 is filed praying for issuance of a Writ of Mandamus to direct the respondents 1 to 3 to consider and act on the representation of the petitioners, dated 08.08.2017 and 10.08.2017 on merits in accordance with law, by the issuance of an appropriate order for handing over back to the petitioner the OSR area of 29916 Sq.Ft. forming the subject matter of gift deed, dated 05.03.2002 bearing Document No.948 of 2002 on the file of SRO, Velachery, which is now vested with the first and second respondents as a condition precedent for granting planning permission for the MSB complex, known as Regal Palm Garden at No.383, Velachery-Tambaram Main Road, Velachery, Chennai-600 042, in the light of the orders issued by the Government in G.O.Ms.No.110, HUD Department, dated 22.06.2017 in exercise of the powers conferred under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, within such time as may be stipulated by this Court.

4. Writ Petition No.24986 of 2017 filed praying for issuance of a Writ of Mandamus to direct the respondents 1 to 3 to consider and act on the representation of the petitioner, dated 08.08.2017 and 10.08.2017 on merits in accordance with law, by the issuance of an appropriate order permitting the petitioner to maintain and use, as before, the said OSR area of 29916 Sq.Ft. forming the subject matter of the gift deed, dated 05.03.2002, bearing Document No.948 of 2002 on the file of SRO, Velachery, which is now vested with the first and second respondents as a condition precedent for granting planning permission for the MSB complex known as ""Regal Palm Garden"" at No.383, Velachery-Tambaram Road, Velachery, Chennai-600 042, at their own cost.

5. Since the parties are inter-se in these Writ Petitions, for convenience of disposal of these Writ Petitions, the parties are referred to as they are ranked in W.P.No.25488 of 2017.

6. The sum and substance of all the Writ Petitions is that in 6.8 acres of the land in question, which is under the mixed zone, a construction has been made partially residential and partially commercial. According to the petitioner- M/s.Cee Dee Yes Health Care Services Pvt. Ltd., they have put up construction in the area earmarked for them and that the fourth respondent-Regal Palm Apartment Owners Association, has no jurisdiction to question them and that they have given sufficient set-backs, apart from

handing over the Open Space Reserve (OSR) land to the authority

concerned. It is further submitted by the petitioner-Company that even assuming for the sake of argument that there are violations, in terms of

Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, which are extracted below, notice has got to be given to the petitioner-

Cee Dee Yes Health Care Services Private Limited and only after hearing the objections of the petitioner-Company, a decision can be taken by

the authorities. Admittedly, no such action has been done in this case.

7. For better appreciation of the facts, Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act are extracted hereunder:

Section 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, 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.

(2) In particular, any such notice may, for the purposes aforesaid, require--

(i) the demolition or alteration of any building or works;

(ii) the carrying out on land, of any building or other operations;

(iii) the discontinuance of any use of land or building: Provided that, in case the notice requires the discontinuance of any use of land

or building, the appropriate planning authority shall serve a notice on the occupier also.

(2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as

required in the notice served under sub-section (1), within the time specified therein, the appropriate planning authority if prima facie

satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be

prescribed irrespective of pendency of any application under section 49 or appeal under section 79 or any litigation before a court.

The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises;

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for

permission under section 49 for the retention of the land, or any buildings or works or for the continuance of any use of the land or

building to which the notice relates.

(4) (a) The notice except the cases covered by clause (iii) of sub-section (2) shall not be of any effect pending the final determination

or withdrawal of the application.

(b) (i) The foregoing provisions of this Chapter shall so far as may be, apply to an application made under sub-section (3).

(ii) If such permission applied for is granted on that application, the notice shall not take effect, or if such permission applied for is not

granted, the notice shall have full effect, or if such permission is granted for the retention only of some buildings or works, or for the

continuance of use of only a part of the land or building, the notice shall not take effect regarding such buildings or works or such part

of the land or building, but shall have full effect regarding other buildings or works or other parts of the land or building, as the case

may be.

(5) If within the period specified in the notice or within such period after the disposal or withdrawal of the application for permission,

the notice or so much of it as continues to have effect, is not complied with, the appropriate planning authority may--

(a) prosecute the owner for not complying with the notice; and in case where the notice requires the discontinuance of any use of land

or building, any other person, who uses the land or building or causes or permits the land or buildings to be used in contravention of

the notice; and

(b) (i) in the case where the notice requires the demolition or alteration of any building or works or carrying out of any building or

other operations itself cause the restoration of the land to its condition before the development took place and secure the compliance

with the conditions of the permission or with the permission as modified by taking such steps as the appropriate planning authority

may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations;

and

(ii) the appropriate planning authority concerned may recover the cost of any expenses incurred by it in this behalf from the owner as

arrears of land revenue.

Section 57: Power to stop unauthorised development.-

(1) Where any development as described in clauses (a) to (d) of sub-section (1) of section 56 is being carried out , but has not bee

completed, the appropriate planning authority may serve on the owner and the person carrying out the development, a notice

requiring the development to be discontinued from the time of service of such notice.

(2) Where the notice under sub-section (1) has been served, the owner or the person carrying out any development shall discontinue

the development from the date of service of such notice and inform the fact of discontinuance to the appropriate planning authority:

Provided that the provisions of clause (a) of sub-section (4) of section 56 shall not apply to the notice served under subsection (1)

and the notice shall continue to have effect and the development shall not be continued during the period in which the final

determination or disposal of application for permission under section 49 is pending.

(3) If the owner or the person carrying out the development has not discontinued the development as required in the notice served

under sub-section (1).-

(a) the appropriate planning authority may serve a notice on the owner requiring him within such period, being not less than seven

days to remove that part of the building built subsequent to the notice served under sub-section (1). If, the direction is not complied

with, within the period specified therein, the appropriate planning authority may demolish that part of the building built subsequent to

the notice served under subsection (1) and reserve the right to recover the cost of any expenses incurred by it in this behalf from the

owner, as an arrear of land revenue.

(b) the appropriate planning authority may also proceed to seize any construction material, tool, machinery, equipment, scaffolding,

vehicle or any other thing used for such development and kept within the site for development,

(c) the material, tool, equipment, scaffolding, vehicle or any other thing so seized may be confiscated by such planning authority and

sold by auction in such manner as may be prescribed and the sale proceeds shall be credited to the Fund Account. No claim shall be

made by the owner or any other person, on the material, tool, equipment, scaffolding, vehicle or any other thing confiscated and on

the sale proceeds.

(4) Where the development as described in clauses (a) to (d) of sub-section (1) of section 56 is being carried out, the planning

authority may also take action to discontinue the development by locking and sealing the premises, in such manner as may be

prescribed, till the production of the planning permission from the appropriate planning authority as required under this Act.

(5) If the owner or the person carrying out the development has not complied with the requirement in the notices served under sub-

section (1) or (3), within the period specified therein, the appropriate planning authority may prosecute the owner for not complying

with the notice.

(6) (a) If the development as described in clauses (a) to (d) of sub-section (1) of section 56 is discontinued, the provisions under sub-

sections (3) and (4) of section 56 shall apply.

(b) No person shall continue the development after obtaining any Order of stay

or interim injunction from any Court against the notice

served by the appropriate planning authority under section 56 or under this section.

(c) Any development continued after obtaining the order of stay or interim injunction referred to in clause (b), shall be deemed to be

unauthorised development and the appropriate planning authority may demolish such unauthorised development without any notice.

8. It is further submitted by the learned Senior Counsel appearing for the petitioner-Company that without going into the merits of the matters, if a

notice is issued, the petitioner-Company is willing to place their objections before the authority concerned, who can consider the request of the

petitioner-Company and pass appropriate orders after taking a decision.

9. Mr.C.V.Subramanian, learned counsel for the fourth respondent-Regal Palm Apartment Owners Association, submitted that it is true that the

zone in question is a mixed zone, but there cannot be any compound wall segregating commercial building from the residential building and that no

construction can be made over and above what has been sanctioned and in case permission is granted, the set back and other problem may creep

in and this will avoid construction of further floors without any sanctioned plan. It is further stated by the learned counsel for the fourth respondent-

Association that the petitioner- Company cannot have a compound wall and that the members of the fourth respondent-Association, namely the

residents, will have to have fresh access to the commercial area. It is further stated by the learned counsel for the fourth respondent-Association

that it is not as if there are two separate plans that had been sanctioned by the authorities and the petitioner-Company, having deviated the

sanctioned plan and constructed the compound wall, the same has got to be demolished.

10. Mr.N.Sampath, learned counsel for the third respondent-CMDA submitted that apart from the compound wall, a security guard building has

also been constructed and that the plan has been sanctioned only for commercial as well as residential plots and that the area being mixed zone,

there cannot be any compound wall. He however stated that there is no notice issued under Section 56 of the said Act. By the bird's eye view of

the place, it would appear that there is clear violation and hence, the authorities

have decided to proceed against the petitioner-Company, based on the complaint received by the fourth respondent- Association.

11. Though the facts mentioned supra are not in dispute, the issue that is now narrowed down is as to whether in the mixed zone, there can be any compound wall or not, apart from the security guard building.

12. In terms of Section 56 of the said Act, which is extracted supra, minimum, a month's notice, has got to be given to the person who is said to

have violated the construction and after hearing them, a decision has got to be taken. Whether the complaint given by the fourth respondent-

Association is correct or not and whether a compound wall is constructed in accordance with the planning permission or not and whether it is going

to cause any hindrance to the residents who are the members of the fourth respondent-Association, are all matters that have got to be decided

based on the notice that may be issued by the CMDA under Sections 56 and 57 of the said Act. It is needless to mention that when once a notice

is given to the writ petitioner-Company, the fourth respondent-Association, being the complainant, the beneficiary will also have also to heard and

a decision needs to be taken thereafter. Such exercise will have to be carried out within a period of two months from the date of receipt of a copy

of this order and after hearing both the parties and any other interested person, a decision has to be taken.

13. Coming to the handing over of the OSR land to the fourth respondent-Association, whether the said OSR land has been handed over behind

the back of the fourth respondent-Association, and that they have lost considerably, cannot be gone into by this Court. If the fourth respondent-

Association had been duped by the writ petitioner-Company, it is for the fourth respondent-Association to agitate their remedy before appropriate

forum by either claiming compensation or damages against the writ petitioner-Company.

14. De-hors the above observations, this Court makes it clear that in the light of the decision rendered by this Court in W.P.No.4995 of 2012,

order dated 25.07.2017, wherein one of us (S.Vaidyanathan,J) has dealt with the matter sitting singly, the question of handing over the OSR land

to the fourth respondent-Association, does not arise. When once the land has been gifted to the Corporation of Chennai, it cannot be taken back

by any one, much less the fourth respondent-Association. Hence, the relief sought for by the Association in W.P.No.23400 and 24985 of 2017

cannot be granted, which are accordingly dismissed. Consequently, W.P.No.24986 of 2017 is disposed of based on the above

observations/directions, and it is open for the Corporation to lay down certain conditions to enable the fourth respondent-Association to maintain

the OSR land on any condition that may be laid down by the Corporation of Chennai by paying necessary rental/lease charges periodically revised

from time to time.

15. In view of the above observations made by this Court in the other three Writ Petitions, the impugned order dated 19.06.2017 passed by the

first respondent-Corporation is interfered with and accordingly the same is set aside. Consequently, W.P.No.25488 of 2017 is allowed.

16. The above observations made by this Court in these writ petitions touching on the merits of the matters, are only for disposal of these Writ

Petitions and it is open for the authority concerned to canvass the points on receipt of reply to the notice that will have to be issued by the

CMDA/Corporation of Chennai, as the case may be, under Section 56 of the said Act.

17. In view of the above observations for allowing W.P.No.25488 of 2017, the other Writ Petition in W.P.No.23400 of 2017 for implementation

of the order dated 19.06.2017 passed by the first respondent-Corporation of Chennai, is dismissed. Consequently, W.P.No.24985 of 2017 is

also dismissed. Resultantly, W.P.No.24986 of 2017 is disposed of with the above observations/directions.

18. No costs. Consequently, W.M.Ps. are closed.