

(2006) 09 MAD CK 0267

In the Madras High Court

Case No : Writ Petition No. 35562 of 2004 and W.P.M.P. No. 42838 of 2004

P.T. Prabhakar and Mrs. Nalini Prabhakar

APPELLANT

Vs

The Member Secretary Chennai Metropolitan Development
Authority and Others

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 236, 256(1), 256(2), 256(3)
Town and Country Planning Act, 1971 — Section 113A, 113B, 122, 19(2), 26

Citation : (2006) 5 CTC 449 : (2006) 4 LW 708

Hon'ble Judges : P.R. Shivakumar, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Krishnamoorthy for B.T. Seshadri, for the Appellant; J. Ravindran, for 1st Respondent, G.T. Subramanian, for 2nd respondent and AR. L. Sundaresan for A.L. Gandhimathi, for respondents 4 to 8, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioners, owners of the premises bearing Old Door No. 14, New No. 15 and presently bearing No. 5, Sivasamy Street, Mylapore, Chennai-4 comprised in R.S. No. 1146/2 have approached this Court seeking for a direction in the nature of a Writ of Mandamus, to take immediate action to demolish the unauthorised construction put up by one H. Salahudeen Babu, the 3rd respondent herein in New Door No. 4, Old Door No. 14, Sir Sivaswamy Ist Street, Mylapore, Madras-4 -R.S. No. 1146/2 Block No. 24, Division No. 95, Zone-4.

2. The following are few facts that give rise to the present Writ Petition:

The petitioners having purchased an extent of 4934 Sq. ft. of land in R.S. No. 1146/2 under a registered sale deed dated 8.6.1987, had put up construction of ground floor and first floor after obtaining the planning permission dated 14.7.1987. On the ground that the 3rd respondent had erected concrete columns to a height of 30 feet very close to the petitioners' premises, they made

enquiries and found that the 3rd respondent had obtained planning permission from the Commissioner, Corporation of Chennai for the construction of ground and first floors only and by such permission, the 3rd respondent should provide on front and rear a set back of 3 meters. Even though the 3rd respondent had shown in the plan seeking permission necessary set back as per the rules and regulations provided by the Development Control Rules and Corporation of Chennai, actually the construction was contrary to the planning permission. The petitioners had also found that during the process of actual construction, the 3rd respondent violated the sanctioned plan and did not provide set back not only on the rear and front side but also on all four sides as per the planning permission and left only about 3'6" instead of 3 meters as set back. They also found that the entire construction of the building was in contravention of the planning permission granted by the Commissioner and by reason of this illegal construction, the petitioners were put to great hardship. As the petitioners came to know about the said illegal construction, they approached the 3rd respondent and his builder pointing out that necessary set back had not been given, which is mandatory and requested to remove the unauthorised construction. Instead of removing, the 3rd respondent had not only put up ground and first floors but also constructed the basement and second floor. When they contacted the Commissioner, Corporation of Chennai, they were informed that the Corporation of Chennai had already issued proper notice twice and inspite of such notices, the 3rd respondent continued the construction. A written representation was also made to the Commissioner, Corporation of Chennai on 9.9.2004 pointing out the unauthorised construction being made by the 3rd respondent in contravention of the planning permission by not leaving three meters set back in front and rear side. As no action was taken, the petitioners filed a suit in O.S. No. 4636 of 2004 in City Civil Court, Chennai seeking permanent injunction restraining the 3rd respondent from putting up construction contrary to the planning permission. As the Civil Court had ordered status quo during the pendency of the injunction application, the 3rd respondent stopped the construction. In the injunction application, the Commissioner also filed a counter affidavit stating that the 3rd respondent had put up construction deviating from the sanctioned plan and notice u/s 236 of the City Municipal Corporation Act was served on the 3rd respondent on 12.7.2004 directing him to stop the illegal construction but he did not comply with the notice and flouted the same. Inspite of the above, no action was taken and hence, the petitioners had made a representation to the Member Secretary, CMDA requesting him to take further action pursuant to the stop construction notice dated 12.7.2004. The petitioners received the communication from the Member Secretary, CMDA that Notice under Sections 56 and 57 of the Town and Country Planning Act, 1971 had already been served to the 3rd respondent on 4.11.2004 and even after the said notice, no action was taken. Hence, they approached this Court for a direction to demolish the offending construction pursuant to the notice dated 4.11.2004.

3. For completion of facts, some of the following few facts are also necessarily to

be stated.

Along with the Writ Petition, the petitioners applied for interim injunction restraining the 3rd respondent from proceeding with the illegal construction in the premises in question. By order dated 3.12.2004, the learned single Judge granted an order of interim injunction. Questioning the said order, the 3rd respondent preferred Writ Appeal. By the judgment reported in 2005(1)CTC 385, the Division Bench to which one of us was a party (DMJ), dismissed the Writ Appeal and directed the demolition of the offending construction made by the 3rd respondent. The order of the Division Bench was challenged by the 3rd respondent before the Supreme Court in SLP(civil)No. 2801 of 2005. By order dated 7.2.2005 the Supreme Court directed as follows:

Upon hearing the counsel, the Court made the following

@ORDER

Issue Notice.

Mr. A. Ayyam Perumal and Mr. V. Balachandran, learned Counsel accept notice on behalf of respondent No. 4 and 1 and 2.

Notice is confined to the question of the direction issued by the Division Bench of the High Court in regard to the demolition of so-called deviation made in the construction.

There will be an interim stay of operation of the order of the High Court to the extent it directs the demolition.

Learned senior counsel appearing for the petitioner submits that the petitioner has made an application/representation to the Corporation authorities to convince that there is no deviation. The interim order passed by this Court will not come in the way of the Corporation to consider the application/representation uninfluenced the observation made by the High Court.

4. By the above order, the Supreme Court after noting the submission of the learned senior counsel appearing for the 3rd respondent herein that the 3rd respondent had made an application/representation to the Corporation Authorities to convince that there was no deviation, directed that the interim order will not come in the way of the Corporation to consider the application/representation uninfluenced by the observation made by the High Court.

5. After the said order of Division Bench, the 3rd respondent appears to have made application to the Member Secretary, CMDA on 2.2.2005 for regularisation of the existing basement floor + ground floor + 2nd floor + 3 floor Part residential building with one dwelling unit. The said application was rejected by the Member Secretary, CMDA on 16.8.2005. The SLP itself came to be disposed of by the Supreme Court by order dated 30.9.2005 and the order reads as follows:

ORDER

Having heard the learned Counsel for the parties, we are of the opinion that in the fitness of things, the High Court ought not to have directed demolition of the purported unauthorised constructions/deviations as the Writ Petition filed by the respondent is pending. We would, therefore, set aside that part of the order of the High Court where demolition of purported unauthorised constructions/deviations have been directed to be made. We would, however, request the High Court to consider the desirability of disposing of the writ petition at an early date preferably within four weeks from the date of receipt of a copy of this order. Mr. R.F. Nariman, learned senior counsel assures us that his client shall not take any adjournments. Parties are at liberty to raise all contentions before the High Court. The SLP is disposed of accordingly.

As in the mean time, the 3rd respondent expired and his legal heirs were substituted in his place as respondents 4 to 8 by order dated 3.7.2006 in W.P.M.P. No. 4556/2006

6. Mr. R. Krishnamoorthy, learned senior counsel appearing for the petitioners would contend that inasmuch as the 3rd respondent had committed serious violations of the planning permission and such violations cannot be regularised and though sufficient notices were issued to the 3rd respondent, not only directing to stop the construction but also to demolish the unauthorised construction, he continued the construction, this Court would direct the CMDA and the Commissioner, Corporation of Chennai to carry out the demolition pursuant to the notice issued on 12.7.2004 by the Commissioner, Corporation of Chennai and notice dated 4.11.2004, issued by the Member Secretary, CMDA

7. Mr. AR. L. Sundaresan, learned senior counsel appearing for the substituted respondents 4 to 8 in the place of the 3rd respondent, submitted that though there are violations of planning permission, inasmuch as the respondents have approached the Member Secretary, CMDA u/s 49 of the Town and Country Planning Act (hereinafter referred to as "Town Planning Act", on 2.2.2005 for revised planning permission and the same was refused by the Member Secretary, CMDA and questioning the same, the respondents have preferred appeal to the Government on 23.9.2005, the issue of regularisation can be left to the Government for adjudication in the said appeal. As the appeal is still pending, the relief of direction to demolish the construction cannot be entertained.

8. Before we deal with the contentions relating to the right of the respondents to seek for revised planning permission to the CMDA, after the scheme framed by the Government in the year 1999 in terms of Section 113-A had come to an end, we would like to refer to the events relating to the planning permission obtained by the respondents, action taken by the Commissioner, Corporation of Chennai and Member Secretary, CMDA and the earlier orders of this Court as well as the Supreme Court.

9. The 3rd respondent was granted planning permission for putting up

construction consisting of only ground and first floors by the Corporation of Chennai on 3.12.2003. AS per the permission, the respondents should leave 3 meters on all sides of the building. On noticing the deviation, the Commissioner, Corporation of Chennai issued notice dated 12.7.2004 u/s 236 of the City Municipal Corporation Act to the 3rd respondent to stop construction work. In spite of the said notice, the 3rd respondent appears to have proceeded with the construction which necessitated the Commissioner, Corporation of Chennai to issue notice u/s 256(1) and (2) dated 20.8.2004 for demolition of the unauthorised construction and also requiring the 3rd respondent to refrain from proceeding further with the construction. As the 3rd respondent did not respond to the said notice to stop the construction and demolition notice, a notice u/s 256(3) dated 22.9.2004 was issued confirming the notice dated 20.8.2004. Only thereafter on 27.9.2004 the 3rd respondent appears to have submitted a revised plan. Infact, the 3rd respondent was given opportunity by the Commissioner, Corporation of Chennai in his letter dated 8.10.2004 requiring him to leave necessary set back for consideration of the revised plan but the 3rd respondent did not respond. Hence, the revised plan was not considered and the same was returned and was communicated to the 3rd respondent on 3.11.2004. Thereafter the 3rd respondent did not pursue the matter further with the Corporation. In the mean time, on receipt of the complaint from the petitioners on 1.11.2004, the enforcing Officers of CMDA inspected the spot on 4.11.2004 and found that the construction of basement floor + ground floor + first floor part at North and ground floor + first floor + second floor part at south was going on. AS there was no approval for the said construction, stop work notice was issued on the same day. The following deviations were noted.

	S.No.	Description As per As on site Deviations approved plan
	1.	Set backspaces 3.00 meter 2.37 meter less by 0.63 m front set back 3.00 " 2.51 " less by 0.49m Front set back 2. Rear set back 3.00 " 1.00 " less by 2.00 m Rear set back 3.00 " 0.91 " less by 2.09 m
	3.	Side setback(E) 1.50 " Nil less by 1.50 m side set back(E) 1.50 " 1.18 " less by 0.32 m
	4.	Side set back(W) 3.00 " 0.91 " less by 2.09 m 3.00 " 0.60 " less by 2.40 m
	5.	Length of the building 21.14 " 23.24 " Excess by 2.10m
	6.	Breadth of the building 16.54 " 18.59 " Excess by 2.05m Breadth of the Building 16.54 " 20.12 " Excess by 3.58m

As the 3rd respondent did not respond to the said notice, a further demolition notice dated 30.11.2004 was also issued by CMDA.

10. The facts which we have narrated above, would show that the 3rd respondent had put up the construction in violation of the planning permission on

the basement and first floor part north and south and the construction of second floor at the south was going on when the site was inspected on 4.11.2004. Thereafter he had also put up a further construction in the third floor. The 3rd respondent had not only violated the planning permission but also did not have any regard for the Development Control Rules as well as the various notices issued by both the Commissioner, Corporation of Chennai and the Member Secretary, CMDA, not only calling upon him to stop the work but also for demolition. On this background the issue in the Writ Petition is to be considered.

11. In *Consumer Action Group Vs. The State of Tamil Nadu and The Chennai Metropolitan Development Authority*, a Division Bench of this Court, traced the periphery, scope and object of the Tamil Nadu Town and Country Planning Act and the Rules made thereunder, more particularly, the Tamil Nadu Multi-storied Buildings Act, 1973 and the Tamil Nadu Multi-storied Building Rules, 1973 including the Chennai City Municipal Corporation Act, 1919 and the Rules framed thereunder and held that the Town and Country Planning Act was enacted to provide for planning, the development and use of rural and urban land in the State of Tamil Nadu and for the purposes connected therewith. The Bench also considered the provisions of Section 113-A of the Act which was introduced by the Tamil Nadu Town and Country Planning (Amendment) Act, 1998 (Tamil Nadu Act 58 of 1998). Ultimately the Division Bench held that the said Act should be made applicable only in respect of the buildings constructed prior to 28.2.1999 and the applications made for regularisation before the extended period 30.6.2002. The Division Bench also held that the buildings put up and the applications made after the cut-off dates, cannot have the benefit of regularisation scheme and those constructions should be demolished. Whatever orders made by the authorities for regularisation were also held to be bad. Of course, the Division Bench also directed the constitution of a Monitoring Committee for the purpose of making suggestions as to the constructions made after the 1999 Scheme had come to an end, for less stringent measures before such demolitions are made.

12. Before the Town and Country Planning Act was enacted, the proposal for development of sites and permits were made to and granted by the Corporation of Chennai in the City and the various Municipalities and Panchayats in other areas subject to Rules and Regulations. As there was no systematic attempt to plan the development of urban and rural areas, dividing them into various zones, reserving them for particular purposes such as residential, mixed residential, institutional use, open space, recreational use and commercial use, proposals for the development of urban and rural areas were scrutinised by the planning authorities. The uncontrolled thrust of population in Urban City like Chennai has made the life of inhabitant miserable. As a measure of planned development, the Town and Country Planning Act was enacted. The object of the said Act is to regulate the development of towns so as to secure the present and future inhabitants, sanitary conditions, amenity and convenience. The whole scheme under the Act is intended to secure amenity and convenience to the present and

future residence in connection with the use of layout and use of lands.

13. As the Division Bench in the judgment referred to above, had elaborately discussed various provisions, we are not inclined to once again refer those provisions except indicated hereinafter. The Scheme of the Act appears to be only to identify the various planning areas into residential, mixed residential, commercial, institutional use, open space, recreational use etc., Such classifications are to ensure that no commercial buildings should be constructed in primary residential zone as it would amount to hindrance to the normal life of a citizen who has put up his construction in the zone exclusively earmarked as a residential zone. Likewise, the use of commercial zone for the purpose of residential use are also to be avoided. While the planning authority considering the application for planning permission, residential, commercial, industrial building etc., should keep in mind, the zonal classifications before such applications are considered and permission is granted. The act intended basically as to the classification of Zones for the respective use.

14. Section 122 of the Act provided that the Government is empowered to make rules and regulations. Section 122(j) reads as follows:

the form and contents of the regional plan, master plan, detailed development plan and new town development plan and the procedure to be followed in connection with the preparation, submission and approval of such plans and the form and the manner of publication of the notices relating to such plants

Section 122(k) reads as follows:

the form in which any application for permission for development shall be made, the particulars to be furnished in such application and documents and plans which shall accompany such application

15. In exercise of such power, Development Control Rules were made. Insofar as the unauthorised construction in question, the Development Control Rules contemplates a minimum three meters of set back on all sides, which admittedly, the 3rd respondent had violated and no construction shall be carried on without prior planning permission.

16. As much was argued on the provision of Sections 49 and 56 of the Planning Act, the same are reproduced as under:

Section 49. Application for permission : - (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under Sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette u/s 26, shall 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.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters namely;-

(a) the purpose for which the permission is required;

(b) the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area.

(3) when the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same

17. Section 56 of the Act reads as under:

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 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.

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

18. Section 49 contemplates that any person intending to carry out any

development on any land or building on or after the date of the publication of the resolution under Sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette u/s 26, shall make an application in writing to the appropriate planning authority for permission. There is no difficulty if the construction is made as per the planning permission accorded on the basis of the application made u/s 49. In case, any development on any land or building has been carried on without permission required under the Act or in case of any contravention of any permission granted or of any condition subject to which permission is granted, the appropriate planning authority by notice require such person within such period not less than one month as may be specified therein after the service of notice to take steps as may be specified in the notice to restore the land as to its condition before the said development took place. As in this case admittedly, no application was made u/s 49 prior to the construction, notice could be issued u/s 56(1)(a) of the Act and in such event, the land owner or the builder as the case may be, could restore the land to its condition before the said development took place. Under Sub-section (3) of Section 56, any person aggrieved by such notice, may within the period specified in the notice apply for permission u/s 49 for the retention of the land or any buildings or works or for continuance of any use of the land or building to which the notice is issued. If such application is filed, the planning authority may consider the continuance of the use of the land or building. A combined reading of both the provisions would show that in case if there is no planning permission applied and construction was made, violater is entitled to make an application u/s 49. In case he is called upon by issuance of notice u/s 56, such right in our considered view for filing application can be construed to mean for retention of the land or building so far as the violation can be brought within the permissible limit of Development Control Rules. In case, admittedly, the violations are beyond permissible limit, the provision of Section 49 cannot be invoked. To meet the contingency as to entertain an application to condone, even the violation beyond what is prescribed in the Regulation as a one time measure, the Government brought the Amendment Act. The Amendment Act (Tamil Nadu Amendment Act 58/98) was enacted by inserting Section 113-A and 113-B of Town Planning Act. u/s 113-A the Government or any officer or authority authorised by the Government, by notification, may on application by order, exempt any land or building or class of lands or buildings developed on or before 28.5.2002, regularise after collecting regularisation fee at such rate not exceeding Rs. 20,000/- per square meter. By that provision only, the planning authority or the Government as the case may be, could derive a power for regularisation. The validity of of the said provision was ultimately upheld by the Supreme Court in The Consumer Action Group and Another Vs. State of Tamil Nadu and Others, as a one time measure. Thereafter, the Town and Country Planning (Amendment) Act (Tamil Nadu Act 17 of 2001) was enacted putting off the date for regularisation of the unauthorised constructions to 31st July, 2001 and thereafter the cut off date for regularisation was again extended to 31st March, 2002 by the Tamil Nadu Town and Country Planning (Amendment) Act, 2002 (Tamil Nadu Act

7 of 2002). The validity of the provisions were questioned in the judgment reported in Consumer Action Group Vs. The State of Tamil Nadu and The Chennai Metropolitan Development Authority, . The Division Bench ultimately declared the above Amendment Acts were ultra vires and further ordered that all applications for revised plan and orders passed on such applications are considered to be bad.

19. On the above backdrop the facts in issue are to be considered. The construction of basement of 2nd floor and 3rd floors made by the 3rd respondent were unauthorised. The 3rd respondent did not even file an application to CMDA for planning permission prior to such constructions. Such constructions cannot be considered to be one of any deviation, as such the constructions are totally illegal and in contravention of the Development Control Rules. The illegal constructions cannot be regularised compared to construction with minor deviation.

20. Mr. AR. L. Sundaresan, learned senior counsel appearing for the respondents 4 to 8 would contend that inasmuch as the 3rd respondent had already invoked the provisions of Section 49 of the Act for regularisation of unauthorised construction and the Member Secretary had rejected the same by order dated 16.8.2005 and the 3rd respondent had preferred an appeal u/s 79 which he has already availed, the entire matter as to regularisation shall be left to the Government for adjudication and decision. We are not inclined to accept the said submission for which we give our own reasons. Firstly, there is no provision under the Town Planning Act empowering the planning authority to entertain an application for regularisation except the Tamil Nadu Amendment Act, 2000 and such benefit would be availed only by such of those individuals who had put up the constructions prior to 28.2.1999 and applied for regularisation prior to 30.6.2002. The construction put up by the 3rd respondent was after 3.12.2003 the date after he was issued with the permission by the Corporation of Chennai and no application for regularisation could be entertained either by the Member Secretary, CMDA or by the Government. Section 49 enables the planning authorities to consider the planning permission and in case of deviation of planning permission granted by the authority, it can entertain an application for revised planning permission and not other wise. Secondly, the 3rd respondent did not make any application for planning permission from the planning authority to enable him to file revised application u/s 49. Thirdly, the planning permission was granted by Commissioner, Corporation of Chennai only and that too to put up ground and first floor and the revised plan was also refused by the Commissioner and the same has become final and lastly, even assuming that the 3rd respondent could file application for permission to a revised plan, his application was belated and could not have been entertained by the planning authority. The notice u/s 56 of the Planning Act, was issued on 4.11.2004 calling the 3rd respondent to restore the position of the building in 30 days failing which the building will be demolished. The 3rd respondent could have invoked the provision of Section 49, by making an application in writing within the notice period. Factually, an application u/s 49 was made only on 2.2.2005 much after the notice period. Such application cannot be entertained. Hence, for the disposal

of the Writ Petition, neither the order of Member Secretary CMDA dated 16.8.2005 nor the pendency of appeal before the Government can have no bearing.

21. Of course, when the order of the Division Bench reported in *Salahudeen Babu Vs. P.T. Prabhakar, Mrs. Nalini Prabhakar*, Member Secretary, CMDA and Commissioner, Corporation of Chennai, was taken on appeal by the 3rd respondent, while the Supreme Court ordered interim stay of the operation of the judgment of the Division Bench, had merely referred to the submission of the Senior Counsel appearing for the 3rd respondent herein, that he has made an application/representation to the Corporation Authorities to convince that there is no deviation. In our opinion, the said submission made before the Supreme Court does not reflect the factual position. The events which we have narrated above show that as early as on 12.7.2004, the Corporation had issued stop construction notice u/s 236 of the Act and thereafter notice u/s 256(1)(2) of the Act on 20.8.2004 and as there was no response from the 3rd respondent, notice u/s 256(3) confirming the earlier notice was again issued on 22.29.2004. The 3rd respondent had infact submitted a revised plan on 27.9.2004 to the Corporation and the said revised plan was returned on 3.11.2004 for non compliance of requirements of leaving necessary set back. After the above, the 3rd respondent had not sent any representation. Hence, the submission made before the Supreme Court on 7.2.2005 to the effect that there was an application/representation made by the 3rd respondent to the Corporation authorities contending that there was no deviation was pending appears to be factually incorrect. Further, the Supreme Court had only directed that "the interim order passed by this Court will not come in the way of the Corporation to consider the application/ representation uninfluenced the observation made by the High Court". Secondly, when the SLP was taken up by the Supreme Court for hearing on 30.9.2005, the same was disposed with the direction for the disposal of the Writ Petition on the ground that the Division Bench of the High Court ought not to have directed demolition of the purported unauthorised construction/ deviations while the Writ Petition was pending. Even at that time, the 3rd respondent did not brought to the notice of the Supreme Court as to the refusal by the Commissioner, Corporation of Chennai to accept the revised plan filed by the 3rd respondent. That apart, after the revised plan filed by the 3rd respondent was returned by the Commissioner, Corporation of Chennai on 3.11.2004 the Member Secretary, CMDA had issued demolition notice on 4.11.2004 and only when the Division Bench has directed demolition by its order reported in 2005(1)CTC 385 on 31.1.2005, it appears that the 3rd respondent had filed an application for regularisation under the Scheme on 2.2.2005 to the Member Secretary, CMDA. The said application was also rejected by order dated 16.8.2005. The same was also not brought to the notice of the Supreme Court while the matter was heard and disposed of on 30.9.2005. In view of the above, we are of the considered view that the unauthorised construction put up by the 3rd respondent cannot be regularised as there is no power to for Member

Secretary, CMDA to entertain and regularise such unauthorised construction after the expiry of the Scheme under the Act 17/2001.

22. Mr. AR.L. Sundaresan, learned senior counsel however, submitted that as the respondent had issued notice requiring the 3rd respondent to remove the unauthorised development u/s 56 of the Act, in terms of Sub-section (3) of Section 56, he is entitled to make an application u/s 49 for 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, by invoking the said Rule, the respondent had made an application u/s 49 of the Act and the order rejecting the said application is amenable for appeal u/s 79 of the Act which the 3rd respondent had invoked. Hence, the Government should be directed to dispose of the said appeal. Admittedly, from the above as to the deviation, it is seen that as against the minimum, of 3 meter set back, the petitioner had left in front side only 2.51 meter, on rear side set back one meter and rear side set back 0.91 meter, side set back eastern side the 3rd respondent had left no space as against 1.50 meter, as against 1.50 meter the 3rd respondent had left only 1.18 meter. On the side of side set back west, as against 3 meters the 3rd respondent had left only 0.91 meters and again on the side set back west, the petitioner had left only 0.60 meters as against 3 meters. That apart, the length of the building as per the approved plan is 21.14 meters but the construction made was 23.24 meters. Likewise, the breadth of the building as per the approved plan was 16.54 meters but the building was constructed to the extent of 18.59 meters on one side and on another side, the breadth of the building was 20.12 meters as against 16.54 meters. These deviations cannot be regularised. Equally, there is no question of revision of plan u/s 49 as such the revision would amount to contravention of the very regulation itself. Hence, we are of the view that the application made by the 3rd respondent before the CMDA u/s 49 has no bearing as it would only be an empty formality. Nevertheless, the said application was rejected and the appeal said to have been preferred by the 3rd respondent to the Government, also cannot be considered as it would only be an empty formality and futile exercise.

23. The next question to be considered is as to what further process to be taken in this regard. The issue relating to the demolition of unauthorised construction had come up on more than one occasion. Series of judgments of the Supreme Court on the issue was considered by the Division Bench of this Court reported in 2006(4) CTC 483. We are not inclined to once again refer to those judgments, considering the serious lapses committed by the 3rd respondent. The Development Control Rules are intended to ensure proper administration and to provide proper civic amenities. The paramount considerations of regulating provisions for construction activities are public interest and convenience. No one has vested right to seek for regularisation. Regularisation relating to development of the land and the construction of buildings should be strictly implemented. Going by judicial notice, we find that most of the times, these regulations/rules are kept only as "paper regulation" and "paper Rules" and ornaments to the statute without giving effect to, resulting infringement of the

basic right to amenities by citizens to which they are otherwise entitled in law. In *Friends Colony Development Committee Vs. State of Orissa and Others*, the Supreme Court has observed in para 25 as follows:

Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or any attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations, do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum

24. In *Syed Muzaffar Ali v. Municipal Corporation of Delhi* 1995 Supp. 4 SCC 426 the Supreme Court has observed as follows:

Mere departure from authorised plan or putting up a construction without sanction does not ipse facto and without more necessarily and inevitably justify the demolition of the structure. There are cases and cases of such unauthorised construction, some are amenable to compounding and some may not be. There may be cases by grave and serious breaches of the licencing provisions or building regulations that may call for extreme steps of demolition.

25. In *M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd.*, the Supreme Court has observed as follows:

In ordinary course the builder could not have carried out construction activities in anticipation that such violations/deviations might be regularised.

If admittedly the constructions are not in terms of the rules, the question of getting them sanctioned by statutory authority would not arise.

No builder acquires any legal right in respect of even the plan until it is sanctioned in his favour.

26. In *Pratibha Cooperative Housing Society Limited and Anr. v. State of Maharashtra and Ors.* AIR 1991 SCC 1453 while considering the unauthorised construction, the Supreme Court had observed in para 6 as follows:

We are of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety occupiers and residents.... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and by-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the

bounden duty of the citizens to obey and follow such rules which are made for their own benefits

27. The above judgments would show that only such deviation deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the advantage suffered. That apart, if the deviations are grave and serious breach of the licencing provisions or building regulations, such deviations cannot be condoned and the buildings should be demolished.

28. For the completion of the law laid down by the Supreme Court on this issue we may refer also the following judgments.

1) Cantonment Board Jabalpur v. S.N. Avasthi 1995 Supp(4) SCC 595;

2) Dr. G.N. Khajavia v. Delhi Development Authority 1995(5) SCC 762

3) The Chairman, Madras Metropolitan Development Authority Vs. S. Radhakrishnan and Others,

29. For all the above reasons, we are of the considered view that the petitioners are entitled to succeed in the Writ Petition and the Writ Petition is allowed and the respondents 1 and 2 are directed to carry on demolition pursuant to the notice issued on 4.11.2004. No costs. Consequently, W.P.M.P. No. 42838 of 2004 is closed.