

(2010) 06 MAD CK 0115

In the Madras High Court

Case No : W.A. No. 714 of 2009 and M.P. No's. 1 and 2 of 2010

The Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) and The Chennai Metropolitan Development Authority (CMDA) APPELLANT

Vs

Anil Kumar Daga RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Citation : (2010) 06 MAD CK 0115

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : J. Raja Kalifulla, s 1 and 2 and J. Ravindran, for 3rd Appellant, for the Appellant; S. Parthasarathy, for the Respondent

Judgement

R. Banumathi, J.—This Writ Appeal arises out of the order of learned single Judge dated 21.08.2008 in W.P. No. 20333 of 2008, allowing

the Writ Petition and directing Appellants 1 and 2-Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) to provide water and

drainage connection to the building put up by the first respondent without insisting upon "No Objection Certificate" from the third appellant-

Chennai Metropolitan Development Authority (CMDA). Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) is the appellant.

2. The writ petitioner/respondent put up special residential building in Plot No. 156, M.T.H. Road, Villivakkam, Chennai-49 comprised in Survey

No. 249/3A1B1 Part of Villivakkam village, measuring an extent of 13069 sq. ft. with 12 dwellings units consisting of Ground plus three floors.

Alleging that Appellant-CMWSSB is insisting for completion certificate/no objection certificate from the third appellant for giving water connection,

the writ petitioner/respondent has filed W.P. No. 20333 of 2008 seeking Writ of Mandamus to direct appellants 1 and 2 to provide water and

sewerage connection to the above residential building without insisting for "no objection certificate" from the third appellant/CMDA.

3. Learned single Judge referred to the order in W.A. No. 1102 of 2007 dated 04.09.2007 where electricity connection has been denied for non-

production of "completion certificate" and when that was questioned in the Writ Petition, learned single Judge granted the relief by reserving liberty

to the C.M.D.A. to take appropriate action for violation. Following the order in W.A. No. 1102 of 2007, the learned single Judge allowed the

Writ Petition in W.P. No. 20333 of 2008, which is challenged in this Writ Appeal.

4. The order in W.A. No. 1102 of 2007 in terms of which the Writ Petition was disposed of reads as under:

It is seen from the report that by and large, the construction put up by the respondents is in accordance with the approved plan, though there are

some minor deviations, for which the CMDA is free to take action in accordance with law. Writ Appeal is dismissed.

5. By consent of Mr. S. Parthasarathy, learned Counsel for vacate stay petitioner/writ petitioner/respondent in the Writ Appeal and Mr. Raja

Kalifulla, learned Counsel for appellants 1 and 2 - CMWSSB and Mr. J. Ravindran, learned Counsel for the third appellant - C.M.D.A., we have

taken up the main Writ Appeal itself for disposal.

6. Mr. J. Raja Kalifulla, learned Counsel for appellants 1 and 2 submitted that the learned single Judge ought to have kept in view the order of the

Division Bench in Consumer Action Group Vs. The State of Tamil Nadu and The Chennai Metropolitan Development Authority, that electricity

and water connection should be contingent on furnishing the completion certificate/no objection certificate from C.M.D.A. It was further submitted

that only in obedience to the direction of this Court in Consumer Action Group Vs. The State of Tamil Nadu and The Chennai Metropolitan

Development Authority, , the first appellant has issued the Circular on 15.12.2009 to the effect that water and sewerage connection should be

given only after the receipt of completion certificate from the C.M.D.A. for special and multi storied buildings and there is nothing irrelevant in

insisting for completion certificate.

7. In 2006 (4) CTC 483 [cited supra], the First Bench of this Court considered the scope and object of the Act and Rules of Tamil Nadu Town &

Country Planning Act, 1971. Coming down heavily upon deliberate deviations and observing that deliberate deviations cannot be condoned, in

Para 16 the First Bench has held as under:

16. The Court held that though the Municipal Laws permit deviations from sanctioned constructions being regularised by compounding but that is

by way of exception. Only such deviations deserve to be condoned as are bonafide or are 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.

8. Expressing concern over violation in construction of buildings, the First Bench inter alia has issued the following guidelines:

(ix) To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws.

The Certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be

contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings,

constructions by such builders should be certified for compliance only by the Chief Planner, who shall bear personal responsibility.

9. Having regard to the guidelines laid down by the First Bench in W.P. No. 18898 of 2000 etc., batch, in our considered view, the learned single

Judge was not right in saying that C.M.D.A. could take action, if at all if there is any deviation. In para 32 of the order, the First Bench has made it

clear that electricity and water connection should be contingent on the completion certificate/"no objection certificate" by C.M.D.A. Having regard

to the guidelines laid down by the First Bench, the order of the learned single Judge in W.P. No. 20333 of 2008 dated 21.08.2008 cannot be

sustained and liable to be dismissed.

10. Mr. S. Parthasarathy, learned Counsel for the respondent submitted that even though the building has been completed in accordance with the

planning permission, the third appellant/C.M.D.A. has not inspected the building

and has not issued the completion certificate. In similar facts and circumstances, in W.A. No. 889 of 2009 by order dated 21.07.2009, the Division Bench directed the C.M.D.A. to inspect the building and to

pass appropriate orders within a period of four weeks. We are in agreement with the view taken by the Division Bench in W.A. No. 889 of 2009.

11. Having regard to the submissions of the learned Counsel for the respondent, the third appellant-C.M.D.A. is directed to inspect the special

building constructed by the respondent situate at Plot No. 156, M.T.H. Road, Villivakkam, Chennai-49 comprised in Survey No. 249/3A1B1

Part of Villivakkam village and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. It is for the

C.M.D.A. to consider whether there is any deviation or violation, keeping in view the guidelines laid down in 2006(4) CTC 483 (cited supra). If

there is any violation, it is open to the C.M.D.A. to take appropriate action as contemplated in law. We make it clear that we have not expressed

any opinion on the merits of the matter. Thereafter, depending upon the order passed by the C.M.D.A., the appellant-CMWSSB shall consider

and pass appropriate orders.

12. With the above observation, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.