

In the High Court of Judicature at Madras

Reserved on: 25.02.2015

Dated : 18.03.2015

CORAM:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.Nos.1716 & 1717 of 2014
and M.P.Nos.1 & 1 of 2014

1. M/s.G.V.Granites
Rep. by its Manager Partner
R.Ganesan. ... Appellant in both W.As
2. R.Ganesan ... 2nd Appellant in W.A.1717/2014
3. R.Viswanathan ... 3rd Appellant in W.A.1717/2014
4. S.Sivakami ... 4th Appellant in W.A.1717/2014

Vs.

- 1.V.A.Arunachalam ... 1st Respondent in both W.As
2. The District Collector,
Erode District,
As the Chairman
District Planning and
Development Authority,
Erode District. ... 2nd Respondent in both W.As
3. The Commissioner of Corporation,
Corporation office, Bruff Road,
Erode District. ... 3rd Respondent in W.A.1716/2014
4. The Member Secretary,
Cithode New Town Planning and
Development Authority,
The Tamil Nadu Housing Board,
Commercial Complex,
Surampatti Nal Road,
Erode 638 009. ... 3rd Respondent in W.P.1717/2014
5. The Member Secretary,
Cithode New Town Planning and
Development Authority,
The Tamil Nadu Housing Board,
Commercial Complex,

Surampatti Nal Road,
Erode 638 009.

... 4th Respondent in WA.1716/2014

6. The Assistant Engineer,
Distribution and Maintenance,
Cithode West, Tamil Nadu Electricity Board,
(TANGEDCO),
Cithode-638 102.

... 4th Respondent in W.A No.1717/2014
and 5th Respondent in WA.1716/2014.

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent Act, against the order dated 16.12.2014 and made in W.P.Nos.9374 & 5233 of 2014 respectively by the learned Judge of this Court.

Prayers in W.P.No.9374 & 5233 of 2014 :

(i) Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records pertaining to the impugned order, dated 22.04.2013, bearing Na.Ka.No.87 of 2013, Ci.Pu.Na.Va.Ku. Passed by the third respondent and quash the same, and consequently to restrain the respondents herein from acting in pursuant to the impugned order dated 22.04.2013, bearing Na.Ka.No.87 of 2013, Ci.Pu.Na.Va.Ku., passed by the third respondent and directing the respondents herein to stop the industrial activities in S.No.109/2, Kumilamparappu Village, Cithode, Erode District, carried on by the fifth respondent (W.P.No.9374/14)

(ii) Mandamus, directing the respondents to consider the representations dated 26.09.2013, 06.11.2013, 28.11.2013 and 03.02.2014 and consequently direct the third respondent herein not to give electricity connection for commercial purpose.

For Appellant : Mr.V.Raghavachari
for M.Guruprasad in W.A.1716/2014

For Appellants : Mr.Vijayanarayanan, SC
for M.Guruprasad in W.A.1717/2014

For Respondent-1 : Mr.R.Subramanian
in both W.As

For Respondent-2 : Mr.P.S.Sivashanmugasundaram
in both W.As Special Government Pleader

For Respondent-3 : Mr.P.Srinivas
in W.A.1716/2014

For Respondent-3 : Mr.RM.Muthukumar
in W.A.1717/2014

For R4
in W.A.1716/2014 : Mr.R.Ravichandran

For R5
in W.A.1716/2014 &
R4 in W.A.1717/2014 : Mr.S.K.Rameshuwar

COMMON JUDGMENT

M.VENUGOPAL, J.

The Appellants have preferred the instant Writ Appeals before this Court as against the common order dated 16.12.2014 passed by the Writ Court in W.P.Nos.9374 & 5233 of 2014.

2.The Writ Court while passing the impugned order dated 16.12.2014 in W.P.Nos.9374 & 5233 of 2014 in paras 15 to 17 observed the following:

"15.Thus as on date, if the land in question has been classified as a 'primary residential zone (PR-1)', the question of permitting an industrial/commercial activity is impermissible in law. The proposed conversion into commercial use zone, is yet to be approved by the competent authority and the same if approved, would not permit establishment of like industrial activity with more than 50HP power connection. The private respondents are said to have obtained 110KVA connection and curiously enough in the counter affidavit filed by the Assistant Engineer (O&M) West, Cithode, Mr.B.Robin Sargunaraj conspicuously the connected load has not been mentioned. It is rather surprising that the official of the Electricity Board while filing a counter affidavit has not mentioned about the connected load, which has been granted to the private respondents.

16.Be that as it may in the counter affidavit filed in W.P.No.5233 of 2014, the Board has agreed to abide by any orders passed by this Court.

17.In the light of the above, as long as the classification of the area does not provide for running of an industry, the functioning of the

granite factory, power loom or that matter any industrial activity is impermissible in survey No.109/2."

and resultantly, allowed the W.P.No.9374 of 2014 quashing the impugned proceedings dated 22.04.2013 issued by the Third Respondent and further disposed of W.P.No.5233 of 2014 by directing the Respondents 1 to 4 to take appropriate action against the private Respondents and not to permit any industrial activity in the 'primary residential use zone'.

3. According to the Learned counsel for the Appellants, the Writ Court had failed to consider that the First Respondent/Writ Petitioner had moved the National Green Tribunal targeting the Appellants. His contention was rejected, but without filing any appeal, had moved this Court suppressing all the material facts in W.P.31635 of 2013 without impleading them. Finally, the First Respondent withdrew the Writ Petition when every thing was brought to light by way of impleading petition at the instance of the Appellants 1 to 3.

4. The Learned counsel for the Appellants urges before this Court that the First Respondent/Writ Petitioner filed W.P.No.5233 of 2014 seeking not to give any fresh electricity connection in Survey No.109/2 and in the said Writ Petition, the Appellant was not impleaded and the appellant got impleaded by filing necessary objections. As a matter of fact, the First Respondent/Petitioner in W.P.5233 of 2014 sought for amendment of prayer to remove the electricity poles, but that was not ordered. But later, he filed another Writ Petition in W.P.9374 of 2014 seeking to quash the communication dated 22.04.2013.

5. The Learned counsel for the Appellants vehemently contends that only commercial and industrial activity is carried out in S.F.No.109/2 and the same was accepted by the Government and First Respondent and except the First Respondent/Petitioner and his tenant, there is no inhabitant in Survey No.109/2. However, these vital aspects were not taken into consideration by the Writ Court.

6. The Learned counsel for the Appellants brings it to the notice of this Court that the Government had admitted that the said zone is now categorised as commercial and it is pending approval and even the Town and Country Planning officials, Chennai through communication dated 15.05.2013 had stated that it has been categorised as commercial in the revised plan.

7. The Learned counsel for the Appellants submits that the Granite cutting and polishing units was given consent by the Pollution Control Board on 07.06.2013 and that the Appellants had paid the requisite fees for the subsequent year on 24.03.2014 and till date, the consent order is not challenged. That apart, at

the instance of the First Respondent/Petitioner, the Pollution Officials inspected the entire site on 24.09.2013 and examined the noise level and found the decibels from the Petitioners' power loom is on the higher side.

8.The Learned counsel for the Appellants proceeds to state that Air Pollution Test was undertaken by the Pollution Officials initially on 23.12.2014 and on that date, it was found that in two places it exceeded permissive level and on subsequent test, it was found that there is no violation by the Granite unit. Also that, the granite cutting and polishing unit is in existence for 9 years and power loom is in operation for 12 years and there is no complaint by any of the public as on date and only during the year 2013, the Petitioner started giving trouble to the Appellants out of business rivalry.

9.The Learned counsel for the Appellants submitted that all other establishments in the said area of the survey field 109/2 were not arrayed as Respondents and the Sugar market warehouse which is situated in S.F.No.109/2 is functioning for about 35 years and there were about 300 members and apart from that there are petrol pump stations, hardware shop and tasmac shop in the said locality.

10.Lastly, it is the plea of the Appellants that the Writ Court had traversed beyond the scope of the Petition and ordered to take appropriate action against the Appellants without any plausible and accepted reasons.

11.Per contra, it is the submission of the Learned counsel for the First Respondent that during the pendency of Writ Petitions in W.P.Nos.9374 & 5233 of 2014, the Official Respondents had maintained the area in question remains classified as a 'primary residential zone' and further, the First Respondent was informed that the proposal to include the entire Kumilamparappu Village in the Erode Master Plan area is pending before the Government by the Fourth Respondent through communication dated 21.11.2014. Even the Respondents in the affidavit had admitted that the area in question namely, Survey No.109 has classified as residential zone and not a commercial zone. Further, even assuming that the area is classified as a commercial zone, the activity of the Appellant in W.A.1716/2014 which is basically an industrial activity could not be carried on and the fact that there are warehouses, petrol pump stations, tasmac shops and hardware shop in the area could not be a reason to allow the Appellants to continue the prohibited activities.

12.It is the submission of the Learned Special Government Pleader for the Second Respondent/District Collector, Erode District and Learned counsel for the Fourth Respondent/Member

Secretary, Cithode Township Development Committee, Erode that the First Respondent/Petitioner in the Writ Petition made a query under Right to Information Act and the same was duly replied by the Fourth Respondent and also that the fourth Appellant raised a query under the Act which relating to the same Survey Number namely, 109 whether it is a commercial area or not and a reply was made by the Information Officer of the Fourth Respondent to the Appellant on 22.04.2013 stating that entire R.S.No.109 is a commercial area and another reply was furnished on 25.02.2013 stating that the area/land in question was classified as 'Primary Residential Zone' and for furnishing a varied reply by the then Supervisor/Information Officer C.Kathirvelu of the Fourth Respondent, who is now working as Supervisor, Chengelpet, Regional Office, Chengelpet and a memo was issued to him through office proceedings in ROC.No.428/2014 dated 21.01.2015 for his negligence of duty and for providing wrong information etc.

13.It is further represented on behalf of the Respondents 2 and 4 that the First Respondent filed an application No.80/2014(SZ) before National Green Tribunal, Southern Zone, Chennai and a notice was issued to the Pollution Control Board and also to the Revenue Officials, as if the authorities appeared before the Tribunal and confirmed the fact that entire R.S.No.109 is yet to be categorised as a commercial area and as on date, the said area is a residential zone and also, an affidavit was filed before the Tribunal for the wrong committed by the Officer of the Fourth Respondent that the said act is not an intentional one. Added further, the Tribunal while disposing of the application gave liberty to the First Respondent to approach the Appellate Authority within 30 days to file an appeal under the Pollution Act. The First Respondent had not filed the appeal in time and since the Appellate Authority rejected the appeal on the ground of delay, he filed the Writ Petition assailing the order dated 22.04.2013 and resultantly, sought for issuance of direction and the Writ Petition was allowed on the ground that as on date, the land in question in R.S.109 is classified as primary residential zone (PR-1), the question of permitting an industrial/commercial activity is impermissible in law and also quashed the order passed by the Fourth Respondent dated 22.04.2013.

14.The Learned counsel for the Respondents 2 and 4 contends that the consent for granting of running a Granite Polishing Unit was issued in reference No.DEE/ERD/CTD/A/26 dated 07.06.2013 by the District Environment Engineer, Tamil Nadu Pollution Control Board, Erode and the site access from Sathyamangalam to Erode Road through 30 feet road wide Mud Road and the Granite Polishing Factory is situated in a site of 60 ft x 150 ft = 9000 sq.ft., approximately and the building constructed was not approved by the competent authorities and the site is electrically operated industry of 75 HP. Moreover, as per the rules in Master Plan in Primary

Residential Area, the location of granite polish industries is in violation of the Master Plan permissible usage and as such, the Cithode New Development Plan is in accordance with law, followed by the procedure established in the Tamil Nadu Town and Country Planning Act, 1971, Rules and Regulations in force.

15.The Learned Special Government Pleader for the Second Respondent and Learned counsel for the Fourth Respondent submits that there are 15 numbers of unapproved buildings in the Cithode New Town Development Authority Jurisdiction and the Fourth Respondent issued notice under Section 56 and 57 of Town and country Planning Act to all the buildings in R.S.No.109 of Kumilamparappu Village, Cithode.

16.The Learned Counsel appearing for the Assistant Engineer, TANGEDCO, Cithode submits that in S.F.No.109/2, Kumilamparappu Village, there are service connections existing in the name of concerned individuals and that TANGEDCO would obey the orders has to be passed by this Court.

17.On behalf of the Appellants, it is represented before this Court that in G.O.Ms.177, Housing and Urban Development (UD4-2) Department) dated 14.07.2006 in para 4 it is inter alia mentioned is under:

"4.The draft modified New Town Development Plan for the Chittodu New Town Development Area as consented to by the Government under Sub-Section (2) of Section 24 of the said Act, is returned to the Director of Town and Country Planning and he is requested to ensure that the various requirements specified in the said Act and in the New Town Development Plan (preparation, publication and sanction) Rules are strictly adhered to by the Chithodu New Town Development Authority before the modified New Town Development Plan is resubmitted to the Government for their approval under Section 28 of the said Act."

18.Apart from the above, it is also brought to the notice of this Court on behalf of the Appellants that the Assistant Engineer, TANGEDCO, Cithode had addressed communication to the owner of electricity connection No.15-004-1319 with Tarif III A2 dated 29.12.2014 stating that the electricity connection was ordered to be disconnected and within 15 days, the owner was directed to shift to some other place failing which, electricity connection would be disconnected.

19.It is to be relevantly pointed out by the Learned counsel for the Fourth Respondent (appearing on behalf of the Member

Secretary, Cithode New Town Development Committee, Erode) that the Member Secretary had addressed a communication in Na.Ka.No.35/2013/si.pu.na.va.ku dated 25.02.2013 (for the representation dated 06.02.2013 of the First Respondent/Petitioner) by informing that as approved by the Government, Cithode New Development Cell, the entire land in Resurvey No.109 in Kumilamparappu Village in Sooriyapalayam Town Panchayat (Erode Municipality, Veerappanchatram Zone-1) is situated in residential area (PR-1) and classified in land use etc.

20.In view of the fact that the Appellants had not applied for any permission for running the factory for polishing the granite in the 'Primary Residential Zone' and no application was received by the Member Secretary, Cithode New Town Development Committee, Erode and further, no permission was granted to them for running the unit by the Member Secretary, Cithode New Township Development Committee, Erode and also, this Court taking note of the fact that the Information Officer of the Cithode New Development Committee, Erode had given a wrong reply stating that Resurvey No.109 in Kumilamparappu Village is classified as commercial area under the review plan approval scheme of the Government and when the reality is that the aforesaid resurvey number in the said village is in Primary Residential Zone and also as per rules of the Master Plan in Primary Residential Area, the location of Granite polishing industries is not in violation of the said plan permissible usage, then the order passed by the Writ Court in quashing the impugned proceedings dated 22.04.2013 in W.P.9374 of 2014 does not suffer from any material irregularity or patent illegalities in the eye of law. Likewise, the order passed by the Writ Court in disposing of the Writ Petition in W.P.5233 of 2014 by directing the Respondents 1 to 4 to take appropriate action against the private Respondents and not to permit any private activities in the 'Primary Residential Zone' is flawless. Looking at any angle, the Writ Appeals are devoid of merits.

21.In the result, the Writ Appeals are dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also closed. On the request of the Learned counsel for the Appellant, one month time is granted after closing the industry forthwith, to remove the machinery and other articles.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Erode District,
As the Chairman
District Planning and
Development Authority,
Erode District.
2. The Commissioner of Corporation,
Corporation office, Bruff Road,
Erode District.
3. The Member Secretary,
Cithode New Town Planning and
Development Authority, / Cithode New Town
Planning and Development Authority,
The Tamil Nadu Housing Board,
Commercial Complex, / Revenue Complex,
Surampatti Nal Road,
Erode 638 009. (2 Copies)
4. The Assistant Engineer,
Distribution and Maintenance,
Cithode West, Tamil Nadu Electricity Board,
(TANGEDCO),
Cithode-638 102.

+2cc's to Mr.M.Guruprasad, Advocate, S.R.No.15403
+3cc's to Mr.R.Subramanian, Advocate, S.R.No.15228
+1cc to Mr.P.Srinivas, Advocate, S.R.No.15085
+1cc to Mr.R.Ravichandran, Advocate, S.R.No.15334
+1cc to Mr.S.K.Rameshuwar, Advocate, S.R.No.15581
+1cc to the Government Pleader, S.R.No.15430

W.A.Nos.1716 & 1717 of 2014
and M.P.Nos.1 & 1 of 2014

KSJ(CO)
CA(30/03/2015)

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