

In the High Court of Judicature at Madras

Dated: 03.03.2015

CORAM:

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

W.P.No.31266 of 2014
and W.P.No.2108 of 2015
and M.P.Nos.1 & 2 of 2015

- 1.Mariadassou Philomene Dominique
Marie Anthoinette
rep. by her power agent
Jesudoss Arokiasamy Petitioner in W.P.31266/2014
& R3 in W.P.2108/2015
- 2.Francis Arsene Jocelyn ... Petitioner in W.P.2108/2015
- 3.Francis Marie Philomen
Veronique Shangunia Petitioner in W.P.2108/2015
(By Power Agent Francis Arsene Jocelyn) & R3 in W.P.31266/2014
- Both Petitioners 2 & 3 are
rep. by power agent
John Clodia
- Vs.
1. The Member Secretary,
Town Country Planning Board,
Town and Country Planning Department,
Government of Puducherry,
Puducherry.
2. The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry. ... Respondents in both Petitions

Prayer in W.P.No.31266 of 2014: Writ Petition filed under Article 226 of the Constitution of India for a writ of Mandamus, directing the Second Respondent to demolish the deviated building constructed by the Third Respondent at Door No.91, Montorsier Street, Puducherry (at T.S.No.169, R.S.No.239 Pt. Old No.55, Ward-D, Block No.13) in pursuance to the notice of the Second Respondent dated 15.04.2011, 29.11.2013 and 06.01.2014.

Prayer in W.P.No.2108 of 2015: Writ Petition filed under Article

226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records relating to the lock and sealing order passed by the First Respondent in Ref.No.6100/TCP/Board/J(D)/2014/1754 dated 19.09.2014, consequential order No.2554/PPA/SB/4/2014/5325 dated 10.12.2014 issued by the Second Respondent to the Petitioners' premises and quash the same and consequently, to direct the Respondents to remove the lock and seal made to the Petitioners premises bearing old Door No.55, New Door No.91, Montorsier Street, Puducherry-1.

For Petitioner : Mr.S.P.Sudalaiyandi
in W.P.No.31266/2014

For Petitioner : Mr.A.Thiyagarajan, SC
in W.P.No.2108/2015 for M/s.D.Senthil Kumaar

For Respondent : Mr.T.Murugesan
Nos.1 & 2 Government Pleader (P)
Asst. by Mrs.N.Mala, AGP (P)

C O M M O N O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner through her power agent has preferred the Writ Petition No.31266 of 2014, praying for passing of an order by this Court in directing the Second Respondent to demolish the deviated building constructed by the Third Respondent at Door No.91, Montorsier Street, Puducherry (at T.S.No.169, R.S.No.239 Pt. Old No.55, Ward-D, Block No.13) in pursuant to the notice of the Second Respondent dated 15.04.2011, 29.11.2013 and 06.01.2014 respectively. In so far as the Writ Petition in W.P.No.2108 of 2015, the Petitioners have filed the Petition in the nature of Certiorarified Mandamus to call for the records pertaining to the lock and sealing order passed by the First Respondent in Ref.No.6100/TCP/Board/J(D)/2014/1754 dated 19.09.2014, consequential order No.2554/PPA/SB/4/2014/5325 dated 10.12.2014 issued by the Second Respondent in respect of the Petitioners' premises and to quash the same. Further, they have sought for passing of an order in directing the Respondents to remove the lock and seal made to the Petitioners' premises bearing old Door No.55, New Door No.91, Montorsier Street, Puducherry-1.

2.The Long Germane Facts in Writ Petition No.31266 of 2014:

a.According to the Petitioner (rep. by her Power Agent), she purchased the property of an extent of 2000 sq.ft at Door No.91, Montorsier Street, Puducherry by means of a registered sale deed dated 18.06.1990 executed by her mother-in-law Jayamary Mariadoss. She and other members of the family have been in absolute

possession and enjoyment of the property for more than 100 years. After purchasing the property, she demolished the existing tiled house and constructed a single storied building after obtaining necessary permission from the competent authority and the chitta was also transferred in her name. Further, till date the house tax is paid and electricity and water connection do stand in her name.

b.The Third Respondent subsequently purchased the house and land that situated at eastern side of her property namely, at Door No.91, Montorsier Street, Puducherry (at T.S.No.169, R.S.No.239 Pt. Old No.55, Ward-D, Block No.13). As a matter of fact, the Third Respondent also demolished the existing house and she had also applied for planning permission for construction of a new building. Indeed, the Third Respondent is a builder and constructing flats for sale. Moreover, at the time of obtaining planning permission, the Third Respondent included a portion of Petitioner's property in her plan and she obtained planning permission on 12.05.2010 by proceedings No.PA/901/3074/Z(SB/4)/2009 with conditions under Bye-law 13(4) of the Puducherry Building Bye-laws Zoning Regulations, 1972.

c.Thereafter, the Power of Attorney along with the Petitioner approached the Second Respondent to stop the illegal construction of the Third Respondent and also made request to furnish the details of the planning permission. The Second Respondent on 24.05.2011 informed that under proceedings dated 12.05.2010, approval was granted to the Third Respondent by him for construction of four storied residential flats building and it consists of seven dwelling flats. In reality, the said planning permission had imposed as many as 13 conditions and one of the conditions mentioned that the parking area as shown in the approved plan should not be deviated for any other purpose.

d.On 15.04.2011 itself, the Second respondent inspected the premises and found that there was deviation in the said construction and therefore, the Second Respondent directed to demolish the unauthorised deviated constructions strictly within one month from the date of issue of the notice and restore the building as per the approved plan. However, the Third Respondent continued the construction without complying with the notice. That apart, the Second Respondent also had not taken any further action as per the notice dated 15.04.2011.

e.It comes to be known that the Petitioner projected another application on 20.12.2012 under right to Information Act for furnishing the copy of the said plan and on 25.01.2012, the Public Information Officer of the Second respondent furnished the building plan, sketch and proceedings of the approval copy. In fact, the plan shows as Plot area 261 sq.m., ground floor are 84.67 sq.m., first floor area 73.74 sq.m., second floor area 73 sq.m., and third

floor are also 73 sq.m. Also that the plan indicates side set back and other place vacant for common usages.

f.The Third Respondent without following the approved planning permission granted by the Second Respondent constructed the flats in total plot area without leaving any space for common usage and side set back as per the plan. Besides this, the walls of the construction are constructed in her building wall as well as the eastern side building wall. Immediately, she made a written complaint to the Second Respondent for violation of the above construction but the Second Respondent has not taken any action even when her power of attorney and herself regularly approached to take necessary action and stop the deviated construction by the Third Respondent but it proved all in vain. Therefore, once again on 30.09.2013, the power of attorney of petitioner made complaint to the Second Respondent for taking necessary action and stop the deviated construction by the Third Respondent but the Second Respondent had not taken any action against the Third Respondent.

g.The Third Respondent had constructed the residential flats by deviating more than two times of the approved plan. The violation is contrary to the provisions of Puducherry Town and Country Planning Act, 1969 Rules and Regulations. Furthermore, the Petitioner is deprived of getting air and light for her property and also affected the stability and privacy.

h.On the earlier occasion, the Petitioner filed W.P.No.30201 of 2013 before this Court seeking to demolish the deviated building constructed by the Third Respondent and this Court by an order dated 08.11.2013, directed the Second Respondent/Member Secretary, Puducherry Planning Authority, Puducherry to pass appropriate orders on the Representation of the Petitioner dated 30.09.2013 on merits and in accordance with law after hearing her as well as the Third Respondent within a period of eight weeks from the date of receipt of copy of the order.

i.The Second Respondent/Member Secretary, Puducherry Planning Authority, Puducherry had conducted an enquiry and inspected the building. In the meanwhile, the Third Respondent admitted the deviated construction and applied for revised planning permission before the Second Respondent and by order dated 29.11.2013, the Second Respondent passed a detailed order in rejecting the revised planning permission submitted by the Third Respondent. In fact, the Second Respondent pointed out that there were six deficiencies in the constructed building etc. From the same order, the Second Respondent had specifically directed the Third Respondent to comply with the earlier notice and to demolish the deviated construction strictly within one month from the said notice, failing which further action will be taken against the Third Respondent as per the provision of the Act. Also that on 06.01.2014, the Second

respondent again directed the Third Respondent to demolish the deviated construction immediately.

j.The Third Respondent preferred an appeal Rt.No.6100 on 12.12.2013 before the First Respondent (as against the demolition order issued by the Second Respondent pursuant to the direction issued by this Court). On 23.12.2013, the First Respondent/Member Secretary, Town and Country Planning Board, Puducherry passed an order that during inspection, it was observed that four storied residential flats building was constructed deviating from the approved plan and further, directed the Third Respondent to stop the work and maintain the status quo of the building and also stated that no further construction should be carried out.

k.The Petitioner had filed W.P.No.15079 of 2014 praying for issuance of a direction by this Court in directing the First Respondent to dispose of the appeal filed by the Third Respondent within stipulated time and on 12.06.2014, this Court was directed the First respondent to dispose of the appeal filed by the Third Respondent in accordance with law. Added further, on 02.09.2014 the First Respondent also pointed out the violation of the building and on 11.09.2014 directed the Second Respondent to inspect the site immediately and to submit a detailed report.

l.The First Respondent on 19.09.2014 disposed of the appeal preferred by the Third respondent which reads as under:

"Since the coverage and FAR provided are in excess of the permissible limit of 75% and 180, the Board decided to dispose the appeal with a direction to Puducherry Planning Authority to initiate action to seal the topmost two floors (second and third floor) and sealing of staircase and lift which provide access to the third and fourth floor.

Therefore, it is requested to comply with the direction of the TCP Board. Case files are returned herewith."

For the aforesaid background, the petitioner has preferred the present Writ Petition.

The Petitioner's Contentions:

3.The primordial submission of the Learned counsel for the Petitioner in W.P.No.31266 of 2014 is that even though under Section 44 of the Puducherry Town and Country Planning Act, 1969 visualizes for taking of enforcement action pertaining to demolition of illegal construction, the Second Respondent/Member Secretary, Puducherry Planning Authority, Puducherry had not acted accordingly.

4.Yet another contention of the Learned counsel for the Petitioner in W.P.No.31266 of 2014 is that Third Respondent had totally violated and constructed multi storied building and in the year 2011 itself, the Second Respondent issued demolition notice and subsequently, on 29.11.2013 and 06.01.2014 also issued demolition notice as a matter of fact, the First Respondent (Appellate Authority) had also rejected the planning permission and confirmed demolition and directed the Second Respondent to act accordingly. Since the Second respondent had not taken any effective steps to demolish the illegal construction of the Third Respondent, the Petitioner has filed the present Writ Petition in W.P.No.31266 of 2014.

5.The Summary of Writ Facts and Pleas in Writ Petition No.2108 of 2015:

i)According to the Petitioners, they are the absolute owners of the property viz., land and building bearing old Door No.55, New Door No.91, Montorsier Street, Puducherry-1, comprised in R.S.No.239 Pt, T.S.No.169, Ward No.D, Block No.13, measuring an extent of 2820 sq feet. In fact, the Petitioners had purchased the property from one K.R.Ramesh by means of a registered sale deed dated 12.01.2005 on the file of the Sub Registrar office, Puducherry and in fact, they have obtained patta bearing No.302 issued by the Deputy Tahsildar, Puducherry.

ii)On 25.11.2009, the Petitioners had applied for planning and building permission in order to put up residential flat at old Door No.55, New Door No.91, Montorsier Street, Puducherry-1 and after considering the application, the Second Respondent had sanctioned the planning and building permit in Ref.No.PPA/901/3074/Z(SB/4)/2009 dated 12.05.2010 for stilt and three floors. After obtaining necessary sanction from the Second Respondent, the Petitioners raised construction in the property in question and at this stage, the Third Respondent made a false claim as if the Petitioners had encroached her property (Third Respondent being the Petitioners' neighbour who had already constructed two storied building to her entire four site boundaries and she had not left space) and further, the Third Respondent had given maximum trouble in order to stall construction in issue. Also that Third Respondent filed a suit in O.S.39 of 2011 on the file of the Principal Sub Judge, Puducherry and the said suit is pending for consideration.

iii)The Third Respondent had written a false complaint based on jealous motive before the Respondents 1 and 2 on 15.04.2011 and the Second Respondent issued a deviation cum demolition notice to them stating that the construction is deviated from the approved plan of construction and in fact, the Third Respondent filed W.P.No.30201 of 2013 wherein, the First Respondent has arrayed as Second Respondent and this Court without hearing the Petitioners on 08.11.2013 was pleased to direct the Second Respondent to consider

the Third Respondent's representation dated 30.09.2013 within a period of eight weeks.

iv) The Petitioners on 27.11.2013 submitted an application before the Respondents 1 and 2 for approval. The said Respondents refused to grant approval as per the letter of the Second Respondent in Ref. No.2554/PPA/Z(SB/4)/2013/5206 dated 29.11.2013. The Petitioners against the order of refusal passed by the Second Respondent filed an appeal before the First Respondent on 12.12.2013 and the First Respondent issued a notice dated 23.12.2013 to them directing them to maintain status-quo of the building and also that no further construction could be carried out till the decision is taken by the First Respondent. A representation was given by the Petitioners to the Respondents that they had already stopped all construction work in the building.

v) On 11.04.2014, the Tahsildar, Puducherry issued a certificate stating that neither the Petitioners encroached the property nor the Third Respondent encroached the Petitioners' property. However, the Third Respondent had not accepted the certificate issued by the Tahsildar. The Third Respondent again filed W.P.15079 of 2014 before this Court, seeking a direction to the First Respondent to dispose of the appeal in RT.No.1600 dated 12.12.2013 filed by the Petitioners and on 12.06.2014, this Court directed the First Respondent to consider and pass orders on the appeal dated 12.12.2013 filed by the Petitioners in accordance with law within twelve weeks.

vi) It appears that on 17.12.2014, the Second Respondent officials suddenly locked and sealed the entire premises with the aid of police. In reality, the Petitioners' power of attorney was informed that the appeal filed by the Petitioners before the First Respondent was rejected and the Second Respondent's officials furnished the copy of the said order dated 19.09.2014. The Petitioners to the shock and surprise, they came to know that the appeal filed by them was rejected by the First Respondent on 19.09.2014 and a direction was issued to the Second Respondent to initiate action to seal the topmost two floors (second and third floors) and sealing of staircase and lift which provide access to the third and fourth floor. Hence, the Petitioners have preferred the instant Writ Petition (W.P.No.2108 of 2015) before this Court.

6. The contents of the First and Second Respondents' counter (in both the Writ Petitions):

a. During site inspection on 01.04.2011, it was found that Third Respondent/Second Petitioner in W.P.2108 of 2015 commences the work which was at ground floor, roof laid level by deviating from the approved plan. Resultantly, the deviation cum demolition notice was issued to the power of attorney of the Third Respondent/Second Petitioner in W.P.2108 of 2015 on 15.04.2011 and

the Third Respondent/Second Petitioner in W.P.2108 of 2015 was directed to demolish the unauthorised/deviated construction within one month and restore the building as per the approved plan.

b.Also that the Puducherry Planning Authority received representations from the Petitioner (in W.P.31266/2014) on 01.10.2013 and 08.10.2013 stating that Third Respondent/Second Petitioner in W.P.2108 of 2015 was constructing a building by encroaching her property. Hence, the Puducherry Planning Authority issued a letter on 21.11.2013 to the Superintending Engineer-III, Electricity Department and Executive Engineer, Public Works Department, Puducherry with a request to disconnect power and water supply connections respectively, since the Third Respondent/Second Petitioner in W.P.2108 of 2015 deviated the building construction against the approved plan.

c.The Puducherry Planning Authority received a letter from the Petitioner's (in W.P.No.31266 of 2014) Advocate on 18.11.2013 enclosing the order of the High Court dated 08.11.2013 in W.P.No.30201 of 2013 and M.P.No.1 of 2013 wherein, this Court had directed the Second Respondent/Member Secretary, Puducherry Planning Authority, Puducherry to pass appropriate orders on the representation dated 13.09.2013 on merits etc. The Third Respondent/Second Petitioner in W.P.2108 of 2015 through her power of attorney submitted a revised building plan application on 27.11.2013 and since the revised proposal had not been conformed to the Puducherry Building Bye-laws and Zoning Regulations, 2012, the application was refused by the Puducherry Planning Authority on 29.11.2013.

d.As per the direction of this Court, on 12.12.2013, the Second Respondent conducted hearing, in which the Petitioner (in W.P.31266/2014 and Third Respondent/Second Petitioner in W.P.2108 of 2015 took part and the Member Secretary has explained the action taken against the Third Respondent/Second Petitioner in W.P.2108 of 2015 for having constructed the building deviated from the approved plan issued on 12.05.2010 and reply was furnished to the Petitioner (in W.P.31266/2014) from the Puducherry Planning Authority on 06.01.2014, within a period of eight weeks from the date of receipt of copy of the order of this High Court.

e.Based on the refusal order of the Puducherry Planning Authority dated 29.11.2013, the Third Respondent/Second Petitioner in W.P.2108 of 2015 filed an appeal before the First Respondent and the First Respondent/Town and Country Planning Board issued a letter in Ref.No.6100/TCP/Board/J(D)/2012/2342, dated 23.12.2013 to the Third Respondent/Second Petitioner in W.P.2108 of 2015 to stop construction work immediately and to maintain status quo of the building till the decision is taken by the Board. Also, the Second Respondent had instructed the Third Respondent/Second Petitioner in

W.P.2108 of 2015 to strictly comply with the direction of the Board (vide letter dated 18.03.2014).

f. For the representation of the Petitioner (in W.P.31266/2014) dated 18.03.2014 addressed to the Collector praying for remedy in the matter in issue. The Taluk office, Revenue Department, Puducherry, through its letter dated 11.04.2014 had addressed to the Deputy Collector (Revenue) North, Puducherry stating that there was no encroachment of land by either parties and further, advised to settle their differences through appropriate Court/other agencies like the Second Respondent/Puducherry Planning Authority.

g. The Appeal filed by the Third Respondent/Second Petitioner in W.P.2108 of 2015 was examined by the First Respondent and a direction was issued to the Second Respondent to seal the topmost two floors (second and third floors) and sealing of staircase and lift rooms which provide access to the third and fourth floors. The Board's decision was communicated to Puducherry Planning Authority, through letter dated 19.09.2014. Also that the Second respondent is unable to seal the topmost two floors (second and third floors) and sealing of staircase and lift rooms which provide access to the third and fourth floors since the entire building is kept locked for the past few months and the communication sent by the Town and Country Planning Department to the Third Respondent got returned with a postal endorsement that "addressee left India". The Puducherry Planning Authority has proposed to seal the entrance gates of the premises on 17.12.2014 at 10.00 a.m. and in this regard, the Second respondent served a notice to the Third Respondent on 10.12.2014 through registered post with acknowledgment due for sealing the building, with a direction to unlock the building before 17.12.2014 so as to seal the premises as per the directions of the Town and Country Planning Board. The receipt of the notice was acknowledged by the Third Respondent/Second Petitioner in W.P.2108 of 2015 on 12.12.2014. Also that the notice was affixed on the said building for drawing the attention of the Third Respondent/Second Petitioner in W.P.2108 of 2015 on 10.12.2014. The Third Respondent/Second Petitioner in W.P.2108 of 2015 failed to approach/comply with the directions of the Puducherry Planning Authority and therefore, Puducherry Planning Authority sent letters to the Superintendent of Police (North) and the District Collector on 15.12.2014 with a request to depute officers to proceed with the sealing of the said premises.

h. The Third Respondent/Second Petitioner in W.P.2108 of 2015 had completed the entire four storied building and not yet occupied and also two entrance gates of the premises were locked. Hence, the two entrance gates of the premises were sealed by the Puducherry Planning Authority on 17.12.2014. The building owner as and when comes forward to have access to seal the topmost floors and the same would be sealed, as per the direction of the

Puducherry Town and Country Planning Board.

7.The Gist of Third Respondent's Counter in W.P.31266 of 2014:

i)The Petitioner/Mariadassou Philomene Dominique Marie Anthoinette has no locus standi to file the present Writ Petition. The petitioner had given maximum trouble to the Third Respondent and her husband in order to stall construction and further, in order to revenge and harass the Third Respondent she filed a civil suit before the Principal Sub Court, Puducherry in O.S.No.39 of 2011 and the said suit is pending for consideration. Also, the Petitioner had taken numerous steps and measured her property and Third Respondent's property by competent authority who confirmed Third Respondent had not encroached the petitioner's property.

ii)The instant writ petition (W.P.31266/2014) had become an infructuous one because of the reason that on 17.12.2014, the Second Respondent had sealed the entire premises of the Third Respondent. The Petitioner had suppressed the fact that she presented a petition before the Puducherry Legal Authority against the Third Respondent and after enquiry, the said petition was closed and the suit in O.S.No.39 of 2011 filed by her on the file of the Principal Sub Court, Puducherry against the Third Respondent alleging encroachment is pending for consideration. The Writ Petition is devoid of merits.

iii)The Third respondent through her power agent had filed the W.P.No.2108 of 2015 seeking a relief of Writ of Certiorarified Mandamus to call for the records pertaining to the lock and sealing order of the First Respondent in Ref. No.6100/TCP/Board/J(D)/2014/1754 dated 19.09.2014 and consequential order dated 17.12.2014 and further, proceedings of the Respondents 1 and 2 etc.

8.Disposition:

In view of the categorical stand taken by the Respondents 1 and 2 in their counter to the Writ Petitions in para 11 to the effect that "Puducherry Planning Authority had proposed to seal the entrance gates of the premises in issue on 17.12.2014 at 10 a.m. and in this regard, Puducherry Planning Authority served notice to the Third Respondent/Second Petitioner in W.P.No.2108/2015 on 10.12.2014 through registered post with acknowledgement due for sealing the building, with a direction to unlock the building before 17.12.2014 so as to seal the premises, as per the direction of the Town and Country Planning Board etc., and further, inasmuch as the Third Respondent/Second Petitioner in W.P.2108/2015 had failed to comply with the direction of the Puducherry Planning Authority and as such, the said authority sent letters to the Superintendent of Police (North) and the District Collector on 15.12.2014 to depute officers to proceed with the sealing of the said premises and also, this Court taking note of the averments made by the Respondents 1 and 2 in para 12 of their counter that

'entire four storied building has been completed by the Third Respondent/Second Petitioner in W.P.2108/2015 and not yet occupied and also two entrance gates of the premises were locked. Therefore, entrance gates of the premises were sealed by the Puducherry Planning Authority on 17.12.2014 and further, the building owner as and when comes forward to enable the Planning Authority to have access to seal the topmost floors and the same would be sealed, as per the direction of the First Respondent. This Court records the said stand of the Respondents 1 and 2 and directs them to take a pragmatic, purposeful, meaningful and result oriented consequent follow up action in an effective, efficacious and expeditious fashion within a period of two weeks from the date of receipt of copy of this order.

9. With the above observations and directions, the Writ Petitions are disposed of. Consequently, connected Miscellaneous Petitions are also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1. The Member Secretary,
Town Country Planning Board,
Town and Country Planning Department,
Government of Puducherry,
Puducherry.
2. The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.

+4cc's to Mr.D.Senthil Kumar, Advocate, S.R.No.11932 & 11933
+2cc's to Mr.S.P.Sudalaiyandi, Advocate, S.R.No.12311 & 11785
+2cc's to the Government Pleader cum Public Prosecutor, Puducherry,
S.R.No.11767 & 11768

W.P.No.31266 of 2014
and W.P.No.2108 of 2015
and M.P.Nos.1 & 2 of 2015

KSJ(CO)
CA(17/03/2015)