

In the High Court of Judicature at Madras

Dated: 23.06.2015

Coram:

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

W.P.No.14212 of 2015

and

M.P.No.1 of 2015

S.Nirmala

... Petitioner

Vs.

1.The Director of Town and Country Planning,  
No.807, Anna Salai,  
Chennai-600 002.

2.The Deputy Director of Town and Country Planning,  
Thanjavur District, Thanjavur.

3.The Member Secretary cum the Commissioner,  
Mayiladuthurai Municipality.  
Mayiladuthurai 609 001,  
Nagapattinam District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the Third Respondent in Form-II in Na.Ka.NO.1714/2013/F1 dated 06.04.2015 and to quash the same and forbear the Respondents from proceedings any further based on the notice issued in Na.Ka.No.1714/2013/F1 dated 20.03.2015 pending consideration of application for plan approval and permission dated 10.04.2015 submitted by the Petitioner.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.R.Rajeswaran

Nos.1 & 2

Special Government Pleader

For Respondent-3 : Mr.V.Subbiah

Special Government Pleader

O R D E R

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

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the impugned order issued by the Third Respondent in Form-II in Na.Ka.No.1714/2013/F1 dated 06.04.2015 and to quash the same. Further, she has prayed for passing of an order by this Court in forbearing the Respondents from proceeding further based on the notice issued in Na.Ka.No.1714/2013/F1 dated 20.03.2015 pending consideration of application for plan approval and permission dated 10.04.2015 submitted by her.

2. According to the Petitioner, her husband Sethuraman suddenly died in the year 2000 when she was 32 years old, leaving herself and her daughter Sridevi aged 11 years. It is her case that she is residing in the house constructed in the land comprised in T.S.No.300 measuring an extent of 1992 sq. ft. with ground floor and first floor. In fact, the house property is a joint family property purchased by her father-in-law Ramakrishnan in the year 1978. Subsequent to the demise of her husband in the year 2000, as per Registered Partition Deed dated 14.08.2004 based on which house property in T.S.No.300 was allotted to her. As such, she is the owner of the property in possession and title over the same.

3. It is the plea of the Petitioner that since the building become old and dilapidated and with a view to repair and reconstruct the building, when she proceeded with the construction, the Third Respondent/Mayiladuthurai Municipality issued notice under Section 216 of the Tamil Nadu District Municipalities Act at the instance of one Nallusamy who is the owner of the neighbour. Further, he had filed the Civil Suit before the District Munsif Court, Mayiladuthurai where interim order was granted, however, in the appeal preferred by her, the Principal District Court, Mayiladuthurai reversed the order of the Trial Court.

4. In the aforesaid backdrop, she submitted an application for plan approval and building permission before the Third Respondent/Municipality. As a matter of fact, the said Nallusamy who filed the Civil Suit preferred a Writ Petition before this Court to take action and proceed against the construction carried out by her. The said Writ Petition No.33417 of 2014 came to be ordered on 25.03.2015 in directing the Third Respondent/Municipality to take action on merits and in accordance with law within the statutory period prescribed in the Tamil Nadu Town and Country Planning Act.

5.It transpires that the application for plan approval submitted by the Petitioner was returned and rejected by the Third Respondent/Municipality as per proceedings dated 18.02.2015. Consequently, the Third Respondent had issued proceedings in Form-I dated 20.03.2015 under Sections 56 & 57 of the Tamil Nadu Town and Country Planning Act, 1971, to stop construction and to discontinue the usage of building where she is residing with her daughter. Further, she made an application before the Second Respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur seeking permission and approval by submitting copy of the plan and other required particulars and for retention of the land and building and for continuance of the use of the land and building.

6.It is contended on behalf of the Petitioner that she made an application under Section 49 of the Act on 10.04.2015 soon after receipt of notice dated 20.03.2015 from the Third Respondent. The said application was filed in terms of Section 56(3) of the Tamil Nadu Town and Country Planning Act. Also that, the application was submitted to the Second Respondent through Third Respondent/Municipality.

7.When that be the fact situation, the Third Respondent/Municipality had issued notice in Form II under Sections 56 & 57 of the Act calling upon the Petitioner to submit plan approval for the building within a period of 30 days from the date of receipt of notice, failing which, the building would be locked and sealed and things inside the building would be confiscated. Accordingly, notice was issued by the Third Respondent/Municipality under Section 85 r/w. Sections 56 & 57 of the Tamil Nadu Town and Country Planning Act, 1971, to lock and seal the premises and for further action without reference to the fact that she had already submitted application seeking plan approval under Section 49 of the Act.

8.The Petitioner was issued with a notice dated 06.04.2015 by the Third Respondent/Municipality by pointing out certain defects calling upon her to rectify the same and resubmit the application. Indeed, she was served with the notice on 29.04.2015. In fact, it was well within the knowledge of the Third Respondent/Municipality that the application seeking permission was made under Section 49 of the Act was pending for consideration and the same is processed. While so, the notice dated 06.04.2015 was issued by the Third Respondent/Municipality in Form-II under Sections 56 & 57 of the Act would be against Section 56(4) of the Act by which Form-I notice dated 20.03.2015 is not to be given effect to pending final determination of the application submitted by her. Under these circumstances, she has filed the present Writ Petition.

9. Conversely, the Learned Special Government Pleader for the Third Respondent submits that the building in dispute is comprised within Mayiladuthurai Municipality area in Ward No.3, Block No.9, T.S.300/1 at Door No.49/24 Mudaliar Street and that the Petitioner demolished her own old house at D.No.49/24, Block No.9, T.S.300/1 and constructed a new commercial building without getting proper approval as per Tamil Nadu District Municipalities Act, 1920.

10. On behalf of the Third Respondent/Municipality, it is brought to the notice of this Court that one Nallusamy, the neighbour of the Petitioner filed a Writ Petition praying to take action against the unauthorised construction put up by the Petitioner and in the meantime, the Municipality issued a notice under Section 56 of the Tamil Nadu Town and Country Planning Act for lock and seal of the unauthorised constructed building (which was duly issued on 20.03.2015) to the Petitioner. As a matter of fact, this Court in W.P.No.33417 of 2014 dated 25.03.2015 had passed an order, directing the Municipality to take consequential action on merits and in accordance with law, within the statutory period prescribed under the provisions of the Tamil Nadu Town and Country Planning Act.

11. Proceeding further, the Learned Special Government Pleader for the Third Respondent contends that the Petitioner applied for building permission vide application No.18/2015 dated 10.02.2015 and the above plan for building approval was refused on 18.02.2015 for the violation of Municipal building rules and in terms of the direction issued by this Court, the second notice dated 06.04.2015 issued under Sections 56 & 57 of the Tamil Nadu Town and Country Planning Act and served to the Petitioner on 07.04.2015. Furthermore, a notice was issued on 07.05.2015 under the aforesaid Section to the occupier/tenant Sri Ram Chits and Investments Private Limited of the First and Second floor buildings.

12. That apart, after refusal order passed by the Municipality, the Petitioner had filed an appeal before the Second Respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur for obtaining building permission and the said appeal was returned by the Third Respondent/Municipality for want of additional records and in the meanwhile, the Petitioner filed the present Writ Petition and obtained an interim order on 06.05.2015 and further resubmitted the appeal petition together with relevant records on 27.05.2015. As such, the appeal of the Petitioner was forwarded to the Second Respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur on 04.06.2015 to take necessary action.

13.Yet another argument advanced on behalf of the Third Respondent is that in terms of ingredients of Section 56(2-A) of the Tamil Nadu Town and Country Planning Act, 1971, the appropriate planning authority may take action to discontinue the use of such land or building by locking or sealing the premises in such manner as may be prescribed irrespective of pendency of any application under Section 49 or appeal under section 79 or any litigation before a Court.

14.In this connection, it is to be relevantly pointed out that this Court on 06.05.2015 had passed an interim order in this Writ Petition, directing the Petitioner not to put up any construction till 08.06.2015 and further, the Respondents were directed to maintain status quo as on today till 08.06.2015.

15.At this juncture, it is to be pertinently pointed out that Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, applies to cases where permission for construction is required. It cannot be gainsaid that construction should be strictly complied with the Rules and Regulations. It is to be remembered that notice envisaged in Town and Country Planning Act is not an empty formality and a decision has to be taken if the condition under Section 56(1) is fulfilled. The notice is preceded by the ingredients of Sections 49, 50, 54 and 56 are satisfied of the violation as per decision of CMDA V. Abdur Reman reported in 2002 (2) MLJ 431.

16.It is to be noted that Section 49 of the Town and Country Planning Act 1973 confine to minor violations only. Moreover, for any construction without permission or in contravention of the permission granted or in violation of any such permission, notice should be issued under Section 56 of the Act, 1971, to take steps to restore the land to its condition before such development. Apart from that, the violator is entitled to file an application under Section 49 of the Act, seeking for retention of land or building within the notice period as per decision of P.T.Prabhakar Vs. The Member Secretary, CMDA Chennai, reported in 2006 CTC 449 (Mad).

17.As far as the present case is concerned, it is not in dispute that after passing of refusal order by the Municipality, the Petitioner had preferred an appeal before the Second Respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur for obtaining building permission and now, the appeal petition together with records were resubmitted and forwarded to the Second Respondent on 04.06.2015 to take necessary action. As such, the Second Respondent is to number the appeal preferred by the Petitioner [of course, if the papers are in order] and to pass necessary orders and to dispose of the appeal within the statutory prescribed period. If the Petitioner filed any application/petition seeking an interim relief of stay, then, the Second

Respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur is to pass orders on the said application/petition within a period of two weeks. Till such time, the status quo as obtained today shall be maintained.

18.With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-  
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

DP

To

- 1.The Director of Town and Country Planning,  
No.807, Anna Salai,  
Chennai-600 002.
- 2.The Deputy Director of Town and Country Planning,  
Thanjavur District, Tanjavur.
- 3.The Member Secretary cum the Commissioner,  
Mayiladuthurai Municipality.  
Mayiladuthurai 609 001,  
Nagapattinam District.

1 cc to Mr.G.Sankaran, Advocate, sr. 31039

W.P.No.14212 of 2015  
and M.P.No.1 of 2015

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