

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:05-06-2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P.Nos.15890 to 15896 of 2015
and

M.P.Nos.1 of 2015(7)

M. Umapathy	Petitioner in WP No.15890/15
S. Rajkannan	Petitioner in WP No.15891/15
M. Girinath	Petitioner in WP No.15892/15
T. Dinesh	Petitioner in WP No.15893/15
S. Pachaiyappan	Petitioner in WP No.15894/15
S. Kasiviswa	Petitioner in WP No.15895/15
T.S.Sairam	Petitioner in WP No.15896/15

Vs

1. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai
2. The Assistant Engineer
Division 35, Zone IV
Corporation of Chennai
No.10/45 Krishnamurthy Salai
Erukencherry, Chennai 600 018
3. The Assistant Executive Engineer
Unit - 09, Corporation of Chennai
No.10/45, Krishnamurthy Salai
Erukencherry, Chennai 600 018 ...Respondents in all WPs
- 4 The Executive Engineer
Zone - IV, Corporation of Chennai
No.10/45, Krishnamurthy Salai
Erukencherry, Chennai 600 018 ...Respondents in all WPs

Prayer in W.P. No.15890 of 2015:

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondents 2 to 4 in Notice No.D1/012/2015,D1/013/2015,D1/010/2015, D1/011/2015,D1/014/2015,D1/015/2015 & D1/016/2015 respectively dated 24.04.2015 issued by the respondents 2 to 4 under Section 57 of the Town and Country Planning Act, 1971, as amended by Act 61 of 2008, in respect of the property bearing Block/Plot No.C,No.D,No.A,No.B,No.E, No.F & No.G respectively Door No.33, Singaramudali Street, Erukancherry, Chennai 600 118 and quash the same as illegal.

For petitioner in : Mr. P.S. Raman, Sr. Counsel
WP No.15890 of 2015 for Mr. J. Suresh

For respondents in : Ms. Karthikaa Ashok
WP. No.15890 of 2015 Standing Counsel

COMMON ORDER

(Order of the Court is made by SATISH K. AGNIHOTRI,J.)

Heard Mr.P.S. Raman, learned Senior Counsel appearing on behalf of Mr.J.Suresh, learned counsel for the petitioner and Ms. Karthikaa Ashok, learned Standing Counsel appearing for the respondents. With the consent of the parties, the petitions are taken up for final disposal.

2. Challenge in these writ petitions is to the notices dated 24-04-2015 issued under Section 57 read with Section 85 of the Town and Country Planning Act, 1971, (for short "the Act"), whereunder, the petitioners have been called upon to restore the lands to their original condition within 30 days from the date of receipt of the notices, failing which it is proposed to take action under Sub-section 4 of Section 57 of the Act, lock and seal the premises and to demolish the same for restoration.

3. The aforesaid challenge is predicated basically on the ground that the impugned orders have been passed without affording an opportunity of hearing to the petitioners to show documents and other materials, to establish that the entire construction is as per the approved plan granted by the respondents. The petitioners were not served with the so-called stop work notices, which are referred to in the impugned notices dated 24-04-2015. Thus, the petitioners have been prejudiced for want of opportunity of hearing.

4. Mr. P.S. Raman, learned Senior Counsel appearing for the petitioners submits that there is no deviation or unauthorised construction as alleged in the impugned notices. Each and every construction is as per the plan approved by the competent authorities. Thus, the petitioners be afforded an opportunity of hearing to put-forward their case before consequential action of removal of any alleged unauthorised construction is taken.

5. Mrs. Karthikaa Ashok, learned Standing Counsel appearing for the respondents, in response, would contend that the petitioners were given proper opportunity to explain their case, after stop work notices, though there is no indication of the same in the impugned notices. However, the petitioners were always at liberty before the impugned notice was passed after stop work notices was served on them to come forward and explain the defects pointed out by the authorities.

6. We have considered the rival contentions advanced by the learned counsel on either side and also perused the pleadings and documents appended thereto.

7. On a perusal of the materials placed before us, it is luculent that though the petitioners were informed by the stop work notices dated 06-03-2014 that the alleged construction was being carried out without approval, however, no notice in the form of show cause was ever served on them. The prescription of show cause cannot be inferred from stop work notices or the present impugned notices.

8. The principle of natural justice is a sine qua non of fair and substantial justice. It also involves a fair play in action. In The Chairman, Board of Mining Examination and Chief Inspector of Mines and another vs. Ramjee¹, the Supreme Court, while dealing with the principle of natural justice, observed as under:

"15. These general observations must be tested on the concrete facts of each case and every minuscule violation does not spell illegality. It the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

¹ (1977) 2 SCC 256

9. In National Textile Workers' Union and Others vs. P.R. Ramakrishnan and others ², a Constitution Bench of the Supreme Court, while considering the entitlement of the workers to appear at the hearing of the winding up of the company, laid down the principle of natural justice as under:

"7. x x x x x x x Now it is an elementary principle of law, well-settled as a result of several decisions of this Court and particularly the decisions in State of Orissa v. Dr (Miss) Binapani Del, A.K. Kraipak v. Union of India and Maneka Gandhi v. Union of India that no order involving adverse civil consequences can be passed against any person without giving him an opportunity to be heard against the passing of such order and this rule applies irrespective of whether the proceeding in which it is passed is a quasi-judicial or an administrative proceeding. The audi alteram partem rule which mandates that no one shall be condemned unheard is one of the basic principles of natural justice and if this rule has been held to be applicable in a quasi-judicial or even in an administrative proceeding involving adverse civil consequences, it would a fortiori apply in a judicial proceeding such as a petition for winding up of a company. x x x x x x x"

16 x x x x x x x x x x x x x x x It will surely be a travesty of justice to deny natural justice on the ground that courts know better. There is a peculiar and surprising misconception of natural justice, in some quarters, that it is, exclusively, a principle of administrative law. It is not. It is first a universal principle and, therefore, a rule of administrative law. It is that part of the judicial procedure which is imported into the administrative process because of its universality. "It is of the essence of most systems of justice – certainly of the Anglo-Saxon System – that in litigation both sides of a dispute must be heard before decision. 'Audi Alteram Partem' was the aphorism of St. Augustine which was adopted by the courts at a time when Latin Maxims were fashionable". "Audi Alteram Partem" is as much a principle of African, as it is of English legal procedure: a popular Yoruba saying is: "wicked and iniquitous is he who decides a case upon the testimony of only one party to it" (T.O. Elias: The Nature of African Customary Law). Courts even more than administrators must observe natural justice."

² (1983) 1 SCC 228

10. In P.D. Dinakaran (1) vs. Judges Inquiry Committee and Others ³, the scope of principle of natural justice was dealt with at length, as under:

"31. The consideration of the aforesaid question needs to be prefaced by a brief reference to the nature and scope of the rule against bias and how the same has been applied by the courts of common law jurisdiction in India for invalidating judicial and administrative actions/orders. Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are "basic values" which a man has cherished throughout the ages. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness. The underlying object of the rules of natural justice is to ensure fundamental liberties and rights of subjects. They thus serve public interest. The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

32. The traditional English Law recognised the following two principles of natural justice:

"(a) *Nemo debet esse iudex in propria causa*: No man shall be a judge in his own cause, or no man can act as both at the one and the same time—a party or a suitor and also as a Judge, or the deciding authority must be impartial and without bias; and

(b) *Audi alteram partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority."

However, over the years, the courts throughout the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi-judicial and even administrative actions/decisions. At the same time,

³ (2011) 8 SCC 380

the courts have repeatedly emphasised that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions applicable, if any, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice."

11. Further, the aforesaid observations of the Supreme Court in National Textile Workers' Union (supra) were referred to with approval subsequently in several judicial pronouncements of the Supreme Court and one such recent judgment is Manohar Lal Sharma vs. Principal Secretary and Others⁴, wherein, the Supreme Court observed that the principles of natural justice, though universal, must be realistically and pragmatically applied.

12. It is not proper to burden this judgment with all the judicial pronouncements on the principles of natural justice. However, the common thread running into all the judicial pronouncements is that natural justice is another facet of substantial justice. Albeit the same cannot be put in a strait-jacket formula, the principle of affording an opportunity of hearing to the person concerned who is likely to be condemned in the process has to be followed in different fashion depending on the facts of the case.

13. In the case on hand, the stop work notices were given to the petitioners. Albeit they were not in the form of show cause notices, the petitioners ought to have responded to the authorities by putting forth their case to establish that the entire construction was in accordance with the approved plan, after stopping the said construction. The petitioners, it appears to us, have not taken the said recourse till the impugned notices were issued. Even after the impugned notices, as the petitioners had not placed their case before the authorities, they are fully at liberty and are entitled to present their case before the authorities to establish their bona fides and also the fact that the construction/structure is strictly in accordance with the approved plan.

14. Accordingly, as pleaded, we grant two weeks' time to the petitioners to represent their case by way of representation/explanation along with necessary relevant documents and also make themselves present before the authorities, if necessary, to establish that there is no deviation from the approved plan and the entire structure is strictly in accordance with law and the approved plan. The authorities are thereafter granted two weeks'

⁴ (2014) 9 SCC 614

time to examine the entire aspects of the matter and take consequential decision and action, if necessary as per law and on its own merit. It is needless to state that the authorities are required to advert to each and every objection/issue raised by the petitioners, while passing the well informed and reasoned speaking order, before taking consequential action.

15. The writ petitions stand disposed of accordingly. No costs. Connected Miscellaneous Petitions are dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

glp/cad

To

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+6cc's to Mr.J.Suresh, Advocate, S.R.No.26921 to 26926

+1cc to M/s.A.Karthika Ashok, Advocate, S.R.No.27009

W.P. Nos.15890 to 15896 of 2015

RV(CO)
CA(24/06/2015)