IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.No.33721 of 2014

Non-Such Estates Pvt. Ltd.,
Rep. by its Manager, H.S.Mehta,
Non-Such Estate, Non-Such Post-643 238,
Nilgiris District. .. Petitioner

-vs-

1.The District Collector,
Nilgiris District, Nilgiris.

2.The Assistant Commissioner,
Udhamandalam Municipality,
Udhamandalam.

3.The Executive Officer,
Hulickal Panchayat,
Hulickal, Coonoor. .. Respondents

Petition under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the 3rd respondent in his notice/order bearing Na.Ka.No.1066/2014 dated 08.12.2014 and quash the same.

For Petitioner : Mr.M.S.Krishnan, S.C.
For M/s.P.T.Asha for
For M/s.Sarvabhauman Asso.

For Respondents : Mr.V.R.Kamalanathan,
Addl. Govt. Pleader.

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

Admit.

2.Learned Additional Government Pleader accepts notice for respondents.

3.At request of learned counsel for parties, the petition is taken up for final disposal.

4.The petitioner seeks to impugn the notice dated 08.12.2014 issued under Section 217-J of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as 'the said Act'), directing the locking and sealing of the building in S.No.286/2, Hulickal Panchayat, Nilgiris District, on the ground that it was being used for commercial purposes without prior permission.

5.The history of the property has been set out in paragraphs 3 and 4 of the affidavit filed in support of the writ petition, which read as under:

> '''3.In the 1800's the Petitioner estate consisted of five small estates namely Nonsuch Estate, Upper Droog Estate, Avoca Estate, Ibex Lodge Estate and Ripplevale Estate. In the late 1800's, history has it that Ripplevale Estate merged with Ibex Lodge Estate. The title deed reveals that the lands were purchaed in and about the year 1863 and further in the 2nd half of 1924 the four estates were brought under one umbrella called the Nonsuch Tea Estate Ltd. Most of the buildings in the estate are all heritage buildings.
> 4.The entire estate is spread over an extent of 427 hectares and out of this 356 hectares are planted with tea. The Estate also packs within itself two factories namely the Nonsuch Tea Factory and Ibex Lodge Tea Factory. Besides this, the labour line, workers quarters, Schools, Temples, dispensary, the bungalows particularly the NoneSuch Retreat and Ibex lodge bungalow form a part of the estate and are situated within its boundaries. The NoneSuch Retreat was originally used for the residence of the Owner / Manager of the Nonsuch Estate and was known as the Nonsuch Bungalow. One Colonel L.L.Porter was also one of its occupants. The Ibex Lodge bungalow is presently the residence of the Manager. After the Manager's residence was moved to the Ibex Lodge Bungalow, Nonsuch Bungalow that is now known as NoneSuch Retreat fell into disrepair. Four years ago the said bungalow was repaired and restored to its old shape. Since the view from this bungalow is breath taking overlooking the Nilgiri hills, Coonoor, Wellington, the Mettupalayam-Coonoor Ghat road, the Nilgiri Heritage railways, Bhawani Sagar and plains, the petitioner company had decided to use this bungalow as a guest house. It is worth mentioning that NoneSuch Retreat was constructed in the year 1874 and is one of the oldest bungalow in the Nilgiris. Next to the bungalow there is a tomb of a horse and the tombstone has

inscribed on it ''AKBAR'' which was the horse of Colonel.L.Porterthat died at the age of 33 years on 07.05.1922. This is yete another pointer to show the age of the house. While restoring the bungalow, no additions were made to the bungalow nor was any portion pulled down to put any modern constructions. The bungalow has been restored to its old grandeur and the three bedrooms originally existing in the bungalow is being let out and food for the visitors is cooked in the kitchen in the bungalow.

6.It is the case of the petitioner that a bungalow, referred to aforesaid, was decided to be used as a guest house, for which necessary permissions were obtained. The details of which have been set out in paragraph 5 as under:

> 5.The petitioner submits that when they decided to use the bungalow as a guest house, necessary applications for running the guest house, kitchen, change in category of electricity connection etc. was applied for by the Petitioner company and necessary charges paid to the 3rd respondent herein and to the other concerned departments. Further the bungalow is assessed to commercial tax, Tamil Nadu Value Added Tax etc. and the entire bungalow also obtained necessary permission from Tamil Nadu Pollution Control Board. The NoneSuch Retreat is situate in one corner on S.No.286/2. In S.No.286/2 besides the NoneSuch Retreat is situate the staff quarters, labour line, labour club and tea plantations. The NoneSuch Retreat after its repair started its commercial activity in 2010 and today it has earned a name in the market as being a heritage bungalow.''

7.It is, thus, the case of the petitioner that in terms of Section 217 of the said Act, the user being only a guest house, no permission is required and thus, the notice is really without jurisdiction and that is the reason the petitioner has directly approached this Court under Article 226 of the Constitution of India.

8.The petition is supported inter alia by an additional typed set of papers setting out the photographs of the bungalow and the pictures of surroundings showing that no construction has been carried out other than the basic repairs.

9.The counter-affidavit filed by the respondents also does not allege any details of illegal construction, but is predicated only on the reason that a residential building is being used for commercial purposes and the rooms had been rented out for Rs.4,000/- to Rs.5,000/- per day. It is also alleged that the petitioner has not produced any plan approvals/permissions, so as to show entitlement to run the lodging house. It is also alleged that the petitioner is paying a paltry sum towards the property tax from the earnings of the property.

10.We are surprised at the stand in the counter-affidavit as it is not the function of the respondents to share from the earnings of the petitioner by running the guest house. How can the respondents be aggrieved by the fact that the petitioner is making money out of running of the guest house ! The petitioner has obtained requisite permissions, as stated aforesaid and the respondents had been recovering the commercial charges as they are entitled to, other than for the current year, where it is stated that they are now refusing to receive the charges. So, in fact, what the respondents were called upon to do was to issue the proper licence, if required, for running of the guest house, but, rather than issuing the same, have asked the guest house to be locked up.

11.We find the action of the respondents completely unsustainable in law and without any factual basis for taking action against the petitioner in terms of the impugned notice.

12.We, thus, quash the impugned notice and allow the writ petition, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra
To
1.The District Collector,
Nilgiris District, Nilgiris.

2.The Assistant Commissioner,
Udhamandalam Municipality,
Udhamandalam.

3.The Executive Officer,
Hulickal Panchayat,
Hulickal, Coonoor.

1 cc to M/s.Sarvabhauman Asso.,Advocate, SR.No.10942
1 cc to Government Pleader,Sr.No11042

W.P.No.33721 of 2014

rj(co)
pmk.11.3.2015