

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
and
THE HON'BLE DR.JUSTICE P.DEVADASS

W.P.No.37873 of 2015 and M.P.No.1 of 2015

1.S.Sridhar
2.A.Jhonson
3.T.Velusamy
4.G.Joseph Punitha Raja
5.B.Priya Paul
6.S.Paul
7.A.Millar Paul ...Petitioners

Vs.

1.State of Tamil Nadu represented by
The Secretary to Government (Housing)
Fort St.George, Chennai - 600 009.
2.The Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
No.1, Gandhi Irwin Road, Chennai - 600 008.
3.The Municipal Commissioner,
Municipal Office,
West Tambaram, Chennai - 600 045.
4.S.Prakash Chand Jain ...Respondents
(4th respondent Impleaded
suo motu vide order dated 27.11.2015)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records of the 2nd respondent in Letter No.159/2014/F1 dated 09.10.2015, quash the same.

For Petitioners : Mr.V.Selvaraj for
Mr.S.F.Mohamed Yousuf
For Respondents : Mr.N.Sakthivel, G.A., for R1 and R3
Mr.K.Raja Srinivas for R2

O R D E R
(delivered by K.K. SASIDHARAN, J.)

This is a proxy litigation on behalf of the 4th respondent, who has given an undertaking before the Hon'ble Supreme Court in Civil Appeal Nos.5587 and 5588 of 2014 to demolish the Kalayana Mandapam on or before 1 January 2015, failing which, the Tambaram Municipality was directed by the Hon'ble Supreme Court to demolish the unauthorised structure at the cost of the builder. The fourth respondent, without demolishing the illegal structure and flouting the order passed by the Supreme Court, is resorting to these types of litigations through his tenants, to enjoy the benefit from the Kalyanamandapam constructed illegally.

2. The writ petition is at the instance of the tenants and the prayer is to quash the notice, dated 09.10.2015, calling upon them and the builder to discontinue the use of the respective portions for the purpose of restoring the land to its original condition.

By consent, the writ petition is taken up for final disposal during the time of admission.

3. Heard the learned counsel for the petitioners, learned Government Advocate on behalf of respondents 1 and 3 and the learned Standing Counsel for Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA"). In view of the undertaking given by the builder before the Supreme Court, we consider it not necessary to issue notice to the 4th respondent.

Brief facts:-

4. The 4th respondent filed a writ petition in W.P.No.11194 of 2010 challenging the demolition notice issued by the Commissioner, Tambaram Municipality. The said writ petition was taken up along with another Writ Petition filed by the 4th respondent in W.P.No.17639 of 2013, for a writ of mandamus, forbearing the Commissioner of the local body from preventing him from carrying out repair works. The writ petitions were dismissed by this Court by order dated 23 January 2014. This Court recorded a factual finding that the predecessor-in-interest of the 4th respondent, without obtaining planning permission constructed shop cum residence in ground floor and first floor and thereafter, put up additional construction and changed the usage from residential to commercial. While dismissing the writ petitions, the Division Bench directed the CMDA to take immediate follow up action pursuant to the demolition notice dated 10 June 2005. The common order dated 23.01.2014 in W.P.No.11194 of 2010 and W.P.No.17639 of 2013 was challenged before the Hon'ble Supreme Court in C.A.Nos.5587 and 5588 of 2014.

5. The Hon'ble Supreme Court taking into account the submission made on behalf of the 4th respondent that the Kalyana Mandapam was booked upto December 2014 and the undertaking that the entire illegal construction would be demolished by him on or before January 2015, modified the order passed by the High Court. The Supreme Court directed the 4th respondent to demolish the construction on or before 1st January 2015, failing which, Commissioner, Tambaram Municipality was directed to demolish the same and collect a sum of Rs.1,00,000/- (Rupees One lakh only) from the 4th respondent towards cost of demolition.

6. The 4th respondent, thereafter without demolishing the illegal structure, started filing writ petitions through the petitioners. The petitioners filed W.P.SR.No.132225 of 2015 for issuance of a writ of mandamus, directing the local body to permit them to alter the ground floor in accordance with the sanctioned plan. The writ petition was not entertained. The petitioners challenged the order dated 12 December 2014 in W.P.SR.No.132225/2015 before the Supreme Court in S.L.P.35672 of 2014. The Special Leave Petition was disposed of by the Hon'ble Supreme Court by order dated 13 March 2015, with a direction to the CMDA to consider the applications submitted by the petitioners for regularisation of ground floor shops in accordance with law.

7. The application for regularization was returned by the CMDA by proceedings dated 19.06.2015. Thereafter, the Commissioner, Tambaram Municipality issued the impugned notice dated 09.10.2015 under Section 56 and 57 read with Section 85 of the Town and Country Planning Act, 1971, directing the petitioners to discontinue the occupation for the purpose of taking enforcement action.

Submissions:-

8. The learned counsel for the petitioners submitted that the 4th respondent has already demolished the illegal construction and the present request is only to regularise the shops on the ground floor. According to the learned counsel, in view of the direction given by the Hon'ble Supreme Court by order dated 13 March 2015, the CMDA is bound to consider the application for regularisation.

9. The learned Standing Counsel for CMDA on instructions submitted that the petitioners through their counsel made a false statement before this Court that the 4th respondent has demolished the illegal construction, pursuant to the undertaking given before the Supreme Court. According to the learned Standing Counsel, the 4th respondent is now litigating through the petitioners, as if shops on the ground floor alone are the unauthorised structure. According to the learned Standing

Counsel, the 4th respondent flouted even the orders passed by the Hon'ble Supreme Court and he is now operating the kalyana mandapam without demolishing the superstructure.

Analysis:-

10. The Commissioner, Tambaram Municipality, by proceedings dated 14.05.2010 called upon the 4th respondent to demolish the illegal structure. The order was upheld by this Court in W.P.No.11194 of 2010 and W.P.No.17639 of 2013. When the related Civil Appeal was taken up by the Hon'ble Supreme Court, the 4th respondent submitted a written undertaking, agreeing to demolish the superstructure on or before 1st January 2015. In the event of his non-compliance of the undertaking, the Commissioner, Tambaram Municipality was directed by the Hon'ble Supreme Court to demolish the structure and recover the cost from the 4th respondent.

11. The order passed by the Hon'ble Supreme Court dated 8 May 2014 read thus:

"Leave granted.

It has been fairly submitted by the learned counsel for the appellant that Kalyan Mandapam, which has been constructed by him in the premises in question has been booked by several persons and the booking has been made upto the month of December, 2014.

In these circumstances, so as not to put other persons in difficulty, he has prayed for some time and has submitted that further time upto 31st December 2014 may be granted to the appellant. He has also assured this Court that on or before 1st January, 2015, the entire illegal construction would be demolished by the appellant.

In these circumstances, looking at the peculiar facts of the case, it is directed that the appellant shall pay a sum of Rs.5,00,000/- (Rupees Five lacs only) to the respondent - Municipality within one month from today by way of fine and on that condition, the construction shall not be demolished till 31st December, 2014. If on or before 1st January, 2014, the illegal construction is not demolished by the appellant, the respondent - Municipality shall demolish the same and in that event, a sum of Rs.1,00,000/- (Rupees One Lac only) shall also be paid by the appellant to the respondent-Municipality towards charges for demolishing the construction.

The officials of the Municipality shall also supervise the process of demolition and the appellant shall give intimation about the time when the demolition is to take place to the officials of the respondent-Municipality.

In view of the above directions, the impugned order passed by the High Court stands modified and the Civil Appeals are disposed of with no order as to costs."

12. The fourth respondent, in total disregard of the order passed by the Hon'ble Supreme Court, is still running the Kalyanamandapam. The fourth respondent appears to be very clever and that is the reason for his resorting to proxy litigation, instead of coming with Writ Petition though similar notice was issued to him also.

13. The construction of the upstairs portion is altogether different from the construction of ground floor shops. The order passed by the Hon'ble Supreme Court on 8 May 2014 directing demolition of the illegal structure is now given a go-by by the 4th respondent by projecting a new case that the authorities have rejected the applications for regularisation, inspite of the order passed by the Supreme Court on 13 March 2015.

14. The petitioners and the 4th respondent are virtually flouting the orders passed by the Hon'ble Supreme Court in C.A.Nos.5587 and 5588 of 2014 by not demolishing the illegal structure. The builder has constructed 19 shops instead of 5 shops, for which sanction was given. Regularisation of shops has nothing to do with the demolishing of kalyanamandapam, as indicated in the order passed by the Supreme Court. The 4th respondent is bound to demolish the illegal structure, pursuant to the direction given by the Supreme Court by order dated 8 May 2014 in C.A.Nos.5587 and 5588 of 2014.

15. The CMDA rejected the applications on the ground that Scheme for regularisation is not in operation. The Supreme Court, by its order dated 13 March 2015 directed the CMDA to take a decision with respect to regularisation. The statutory authority is bound to pass an order pursuant to the direction given by the Supreme Court. The fact that a Committee was constituted pursuant to the orders of the High Court to submit a Scheme would not prevent the CMDA from considering the application filed by the petitioners for regularisation of the shops in question, in view of the direction given by the Supreme Court.

16. The learned Standing Counsel for CMDA submitted that the shops constructed by the builder cannot be regularised in

accordance with the scheme then in existence. In case, the builder has no right to seek regularisation of the structure as on the date on which it was constructed, necessarily, a speaking order should be passed by CMDA.

17. The 4th respondent failed to demolish the illegal structure within the time granted by the Hon'ble Supreme Court by order dated 8 May 2014 in C.A.Nos.5587 and 5588 of 2014. The Supreme Court directed the Commissioner of the Municipality to demolish the superstructure and recover the cost from the 4th respondent. However, the fact remains that the 4th respondent failed to demolish the illegal structure. The Municipality also kept the matter pending under one pretext or the other.

18. We direct the Member Secretary, CMDA, Chennai and the Commissioner, Tambaram Municipality to demolish the unauthorised structure as indicated in the order dated 23 January 2014 in W.P.Nos.11194/2010 and 17639/2013, pursuant to the direction of the Supreme Court dated 8 May 2014 in C.A.Nos.5587 and 5588 of 2014. The process of demolition shall be commenced within a period of three days from the days of receipt of a copy of this order and shall be concluded on or before 31 December 2015. The demolition process shall be supervised and monitored by the Member Secretary, CMDA, in view of the violation of the order passed by the Supreme Court by the fourth respondent, with impunity. The Member Secretary, CMDA and the Commissioner, Tambaram Municipality are directed to file a compliance report with regard to demolition on 5 January 2016.

19. The petitioners are permitted to re-submit the applications for regularisation of shops within a period of seven days from the date of receipt of a copy of this order. The CMDA is directed to consider the application, pursuant to the direction issued by the Hon'ble Supreme Court by order dated 13 March 2015. Such exercise shall be completed within a period of 60 days from the date of receipt of application. However, we make it clear that the consideration of the application for regularization of shops has nothing to do with the demolition of Kalyanamandapam, which should be completed by 31 December 2015.

20. The writ petition is disposed of with the above direction. No costs.

21. Registry is directed to post the writ petition for reporting compliance on 5 January 2016, before the Division Bench dealing with unauthorized construction and CMDA matters, as per roster.

svki/tar

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government (Housing)
Fort St.George, Chennai - 600 009.
 2. The Member Secretry,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Chennai - 600 008.
 3. The Municipal Commissioner,
Municipal Office,
West Tambaram, Chennai - 600 045.
- + 1 cc to Mr.S.F.Mohamed Yusuf, Advocate SR 64473
- + 1 cc to Mr.K.Raja Srinivas, Advocate SR 64797
- + 1 cc to Govt.Pleader High Court, Madras SR 64902

bvr(co)
prk16/12

W.P.No.37873 of 2015

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