

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.09.2015
DELIVERED ON: 22.09.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.4055 of 2015

K. Loganathan

... Petitioner

Vs.

1. The District Collector, Erode
2. The Commissioner
Erode Corporation, Brough Road, Erode
3. The Member Secretary
Erode Town and Country Planning Authority
Erode Region
Tamil Nadu Housing Board Complex
Surampatty Nal Road, Erode
4. The Deputy Director of Town and Country Planning
Salem Region
No.6, Sannathi Street
Subramanian Nagar
Sooramangalam, Salem
5. C. Senthilkumar
6. C. Kuppusamy
7. The Managing Director
Annamalai's Toyota Car Show Room
Perundurai Road
Thindal Post, Erode 12

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 and 4 to forthwith take action to seal and demolish the building which had

been put up in Door No.137, Perundurai Main Road, Erode, situated in R.S. No.18/3B, 21/2A, 2B 2C1, 21/2B, B1, B2, 21/2A1, A2, 21/2C, 21/2, 21/2, 21/2, C2,D, E in No.33, Thindal Village, Division 3, Erode Corporation Limits, Perundurai Main Road, Thindal Post, Erode.

For petitioner : Mr. AR. L. Sundaresan, Sr. Counsel
for Ms. AL. Gandhimathi

For RR 1 and 4 : Mr. P.S. Sivashanmugasundaram
Special Government Pleader

For R2 : Mrs. Poornima
for Mr. M. Rajamathivanan

For R3 : Mr. M.Digvijay Pandian

For R5 : Mr. V. Ragavachari

For R6 : Mr. V. Bharathidasan

For R7 : Ms. J. Starli

ORDER

SATISH K. AGNIHOTRI, J.

The petitioner, claiming to be the owner and possessor of the property to an extent of 2 acres and 86¼ cents in Old Survey No.55, 56, R.S. No.18-3B and 21/1 and 2 in Thindal Village, has filed the instant writ petition seeking a direction to respondents 1 and 4 to forthwith take action to seal and demolish the building which had been put up in Door No.137, Perundurai Main Road, Erode, situated in R.S. No.18/3B, 21/2A, 2B 2C1, 21/2B, B1, B2, 21/2A1, A2, 21/2C, 21/2, 21/2, 21/2, C2,D, E in No.33, Thindal Village, Division 3, Erode Corporation Limits, Perundurai Main Road, Thindal Post, Erode.

2. According to the petitioner, the entire area is an agricultural land and he has come into possession to a part of the entire area on account of inheritance from his ancestors. It is further alleged that respondents 5 and 6 are converting the agricultural land for the purpose of commercial use by putting up constructions unauthorisedly sans approval. A dispute for declaration, permanent possession, mandatory injunction and demarcation of boundary line, at his instance, which arose from O.S. No.169 of 2013 on the file of the District Munsif Court, Erode, is

pending at present on the file of the Subordinate Court, Erode in A.S. No.95 of 2014. He has made several representations to the Deputy Director of Town and Country Planning, Salem Zone, Salem and the Erode Local Planning Authority in 2013.

3. From a perusal of the papers, it appears that some action was initiated by the official respondents on the representations made by the petitioner. The petitioner has also made a representation to the first respondent on 08 September 2014 and 12 January 2015 to this effect, which according to him, have yielded no effective and substantive result.

4. In response to our notice, the first respondent has stated in its affidavit that office proceedings was initiated on 10 July 2015, calling upon respondents 5 to 7 to attend enquiry on 15 July 2015 along with all relevant documents and particulars. The second respondent has also issued notices on 06 May 2013, 22 January 2014, 06 October 2014, 28 November 2014 and 02 February 2015 to the fifth respondent, who has allegedly constructed unauthorisedly, an additional building for kalyana mandapam to the extent of 5416.50 sq. ft. Further, an unauthorised construction of another commercial building to the extent of 7,232 sq. ft. was made by the fifth respondent. After proper notice, a charge sheet was issued in STC No.2277/2014 and filed in the Court of Judicial Magistrate, Erode. The first respondent, in its affidavit, has further averred that as informed by the fourth respondent, Kumaran Promoters and Sri Kumaran Grand Palace have raised the constructions without prior building permission. Further, one Toyota showroom and handle and hinges are also constructed without prior approval and permission. The fifth respondent was also served with a notice dated 19 June 2015 by the fourth respondent. The application made by the fifth respondent before the fourth respondent for building permission after construction of the building was returned back for want of relevant documents. The respondents 6 and 7 have not made any application as on date. It is further averred that under the provisions of the Tamil Nadu Town and Country Planning Act, 1971, in the case on hand, the Local Planning Authorities and also the Regional Deputy Directors of the Town and Country Planning Department are the competent officers to initiate action against unauthorised construction.

5. Subsequently, the first respondent has filed one more affidavit on 19 August 2015, giving the details of buildings which were constructed without approval, as under:

S.No.	Owner of the building name and address	Measurement of building	Use of purpose
1	D. Surender, S/o Duraisamy 126, Perundurai Road Sengodampallam	55' x 23' 1,265 sq. ft.	Commercial purpose
2	N. Duraisamy S/o Nallathambi Gounder 126, Perundurai Road Sengodampallam	82' x 60' 4,920 sq. ft.	Commercial purpose (GI sheet godown)
3	N. Duraisamy S/o Nallathambi Gounder 126, Perundurai Road Sengodampallam	120' x 59' 7,080 sq. ft.	Commercial purpose (GI sheet godown)
4	M. Kaladevi D/o K. Muthusamy 123, Perundurai Road Sengodampallam	60' x 10' 600 sq. ft Ground Floor 60' x 10' 600 sq. ft First Floor	Residential and commercial purpose

6. It is also informed that the second respondent had already issued notice to the petitioner as well, under Section 296 (1), (2) and (3) of the Erode Corporation Act, 2008, as he has also erected unauthorised construction. Lastly, it is submitted that all the consequential actions will be taken by the officials concerned under the provisions of law, at the earliest.

7. The second respondent herein, viz., the Commissioner, Erode Corporation, would submit that despite service of notice under Section 296 (1), (2) and (3) of the Erode Corporation Act, 2008, no response has come forward and as such, charge sheet has been filed against the fifth respondent in the Court of Judicial Magistrate, Erode in S.T.C. No.2277 of 2014, which resulted in imposition of fine to the tune of Rs.1,000/- on 06 December 2014. The second respondent has no jurisdiction over the construction of building which are more than 200 sq. m., as the same falls within the jurisdiction of the fourth respondent.

8. The third respondent reiterates that the area in question falls within the jurisdiction of the Town and Country Planning Department, Salem Region and as such, the third respondent has no authority to take any action against the alleged illegal construction.

9. The fourth respondent, viz., the Deputy Director of Town and Country Planning, who appears to be the competent authority, would submit that he has addressed a letter on 27 March 2013 and 23 April 2013 to the fifth respondent to produce copies of approval, if any, which was not made available. Thereafter, personal inspection of the land in question was done on 24 February 2015. On inspection, it was found that the sizing mill was modified as marriage hall to an extent of 10,800 sq. ft. Further, a Toyota showroom was constructed to an extent of 5,240 sq. ft. adjacent to the road and a residential house was constructed to an extent of 3,000 sq. ft. The fifth respondent, after having made construction, had submitted a representation for grant of approval on 25 February 2015.

10. The fifth respondent also has responded to the notice and in oppugnation, he would submit that the property in question is located in an urban area. The land is being used for running a petrol bunk. The petitioner's claim that the land in question is an agricultural land and the construction has been made without permission of the competent authority is sans any basis. There are several commercial complexes in that area and the property in question at Door No.137, Perundurai Main Road, Erode, had ceased to be an agricultural land, long back. The assignment of door number itself would indicate and establish the falsity of the petitioner's claim that the land in question is an agricultural land. The fifth respondent had a textile mill unit at R.S. No.21/2, 21/2A2, 2B2, 2C2, 2D and 2E for a long period. The house and factory were constructed long back when Thindal Village was a major Panchayat. Recently, it has been upgraded and brought within the limits of Erode Corporation. Thus, on account of certain difficulties in running the textile mill, the same has been converted into a marriage hall. The Erode City Municipal Corporation has collected over Rs.2,60,000/- towards construction fee with penalty. In addition, service charge, rain water harvesting scheme charge and development charges were also collected by the Corporation and the application is pending for approval before the Planning Authority since 18 May 2013. There is no illegality in construction and conversion from one commercial purpose to another. In fact, the petitioner himself had given his portion of land on lease to Bharat Petroleum Corporation Ltd. for running a petrol bunk which is just 100 metres away on the east of the fifth respondent's property and as such, a person who has not come with clean hands may not be permitted

to invoke the extra-ordinary jurisdiction of this Court. The suit filed by the petitioner for declaration, permanent possession, mandatory injunction and demarcation of boundary line, is pending consideration in appeal, as aforesaid. The petitioner be not permitted to have a collateral and parallel proceedings when the appeal is pending on the Court of Subordinate Judge, Erode. All the people in and around the petitioner's property had developed their properties for commercial purpose. Thus, the fifth respondent cannot be singled out for the purpose of action against his building.

11. The sixth respondent also has responded to the notice and filed an affidavit dated 04 June 2015. The sixth respondent would submit that he and his wife are living separately in Thendral Apartments in Door No.163, Chinna Muthu Gounder Main Street, Erode. The alleged business is being carried on by his sons who are living separately and he has no concern with the land in question. The land in question was purchased by him from one K.Nagamanickam and his sons by two registered sale deeds for a bona fide consideration. He has been informed by his sons that the application for building approval is pending consideration before the second respondent and as such, the construction cannot be held as an unauthorised one.

12. One K. Gopal, stated to be the son of the sixth respondent, has filed a counter affidavit dated 10 September 2015 stating therein that his father, i.e., the sixth respondent had nothing to do with the property as he is doing business in the property at Door No.137, obtained by means of a Settlement deed executed by his father. According to him, his application for building plan was rejected and the appeal preferred thereagainst on 09 September 2015 is pending consideration before the Appellate Authority, viz., the Director of Town and Country Planning.

13. The prime submission made by Mr. V. Raghavachari, learned counsel for the fifth respondent, in his usual vehemence, flamboyance and arduousness, is that the land in question had ceased to be an agricultural land long back on account of construction of several premises for commercial purposes. It is next contended that the petitioner himself has indulged in commercial activity and as such, he is estopped from raising the grievance of unauthorised construction in this writ petition. It is next urged that the fifth respondent had already moved the appropriate authorities for planning approval and is awaiting decision. During pendency of the appropriate applications, no direction be issued to the authorities to take any action whatsoever, for removal of the unauthorised and illegal construction, if any, Lastly, it is contended that the

dispute involved herein is already the subject matter in the pending appeal being A.S. No.95 of 2014 before the Court of Subordinate Judge, Erode and as such, this Court may not exercise its discretionary jurisdiction in this matter.

14. The learned counsel for the sixth respondent and so also the learned counsel for the seventh respondent advanced their submissions on the same lines.

15. We have heard the learned counsel for the parties, perused the pleadings and documents appended thereto and examined the case carefully from all angles.

16. From the aforestated summation of facts, the facts what emerge are that the land in question was initially used for agricultural purposes. It is not clear as to whether there is a change of usage of land by any official notification or order or the persons living therein have changed the usage of land on their own without taking recourse to provisions of law. It is also not in dispute that several commercial activities are being carried out without any authority of law or approval by the authorities, having jurisdiction in the field. The petitioner is not immune from any action against him, if he has also indulged in erecting illegal construction and also converting usage of land for commercial purposes. Thus, the contention of the learned counsel for the fifth respondent to the effect that no indulgence be granted in this matter needs to be gainsaid. Regard being had to the large scale illegal construction in the area in question, the conversion of agricultural land for commercial purposes needs a strict monitoring and stern measures to remove all the unauthorised and illegal constructions made sans planning approval.

17. It is worth pointing out at this juncture that mere making of an application for approval before the competent authorities after putting up illegal construction and converting usage of land for commercial purposes will not preclude the authorities from taking legal action against the said illegal activities. The officers are obligated to examine the entire facts and take consequential action, at the earliest.

18. Insofar as the question qua pending dispute in A.S. No.95 of 2014 before the Judge of Subordinate Court, Erode, it is to be noted that the Original Suit being O.S. No.169 of 2013 was preferred by the present petitioner along with his mother, viz., K. Sundarammal, impleading the private respondents also along with other defendants,

for declaration of title and ownership, permanent and mandatory injunction and also demarcation of boundary line. The said suit was in respect of property dispute amongst the private parties, which was dismissed on 05 November 2014. It is stated that the appeal being A.S. No.95 of 2014 preferred thereagainst, is pending consideration before the appellate Court, viz., Sub-Court, Erode.

19. In the case on hand, the dispute is not qua title and ownership or permanent or mandatory injunction. The main concern of this Court is to ensure that the agricultural land is not converted for commercial purposes and the people living in and around the land in question be not allowed to change the usage of land and put up constructions unauthorisedly and illegally for the purpose of carrying out commercial activities. We are not specifying details of illegal and unauthorised buildings and also the activities carried on by them. It is for the authorities to have proper inspection and take necessary consequential steps for bringing the land in question in conformity with its nature. Needless to state that unauthorised constructions sans approval or prior planning permission deserve demolition, at the earliest, in accordance with law.

20. Thus, we direct the first respondent, viz., the District Collector and such other officers having jurisdiction on the property in question to initiate measures forthwith and ensure that the land in question is brought back to its original nature for the purpose it is meant. We further direct the first respondent to monitor the entire exercise in coordination with all the officers concerned and submit a comprehensive action taken report to this Court, within a period of eight weeks from the date of receipt of a copy of this order.

21. The writ petition stands disposed of with the aforestated directions. Costs made easy.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad

To

1. The District Collector,
Erode
2. The Commissioner
Erode Corporation, Brough Road, Erode
3. The Member Secretary
Erode Town and Country Planning Authority
Erode Region
Tamil Nadu Housing Board Complex
Surampatty Nal Road, Erode
4. The Deputy Director of Town and Country Planning
Salem Region
No.6, Sannathi Street
Subramanian Nagar
Sooramangalam, Salem
5. The Section Officer,
Writ Section,
High Court, Madras.
(For taking further action).

+1cc to Mrs.A.L.Ganthimathi, Advocate, S.R.No.52025
+1cc to Mr.M. Rajamathivanan, Advocate, S.R.No.51419
+1cc to Mr.M.Digvijay Pandian, Advocate, S.R.No.51436
+1cc to Mr.V. Ragavachari, Advocate, S.R.No.51456
+1cc to Mr.V. Bharathidasan, Advocate, S.R.No.51946
+1cc to the Government Pleader, S.R.No.51906

W.P. No.4055 of 2015

GR(CO)
CA(05/10/2015)

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