

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 23.9.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.21263 OF 2003

A.Madian

... Petitioner

versus

1.State of Tamil Nadu, rep.by
Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai 9

2.The District Collector,
The Nilgiris, Udhagamandalam

3.The Commissioner,
Udhagamandalam Municipality.

....Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari Mandamus calling for the entire records leading to the issue of demolition notice in L.R.No.UAC.7/2001(S) dated 22.5.2001 on the file of the 2nd respondent as confirmed in review proceedings in G.O.(D) No.476,Municipal Administration and Water Supply (MAT) Department, dated 24.12.2002 on the file of 1st respondent and the consequential demolition notice made in Rc.D.7 No.4411/2001 dated 21.5.2003 on the file of 2nd respondent and quash the same and direct the respondents to regularize the construction put up by the petitioner G.I.Roofing on the II Floor Terrace in R.S.No.1686/2, Eittines Road, Udhagamandalam, The Nilgiris.

For petitioner : Mr.A.Bobblie

For Respondents : Mr.P.S.Sivashanmugasundaram, Spl.G.P.,
for respondents 1 and
Mr.P.Srinivas, for R-3

O R D E R

(made by K.K.SASIDHARAN, J.)

This Writ Petition is directed against the notice dated 21 May 2013 whereby and whereunder, the District Collector, Nilgiris, after confirming the provisional order directing demolition, called upon the petitioner to demolish the illegally constructed portion of the building situated at R.S.No.1686/2, Eittines Road, Udhagamandalam, The Nilgiris, within seven days.

2. Heard the learned counsel for the petitioner, learned Special Government Pleader on behalf of respondents 1 and 2 and the learned Standing counsel for the third respondent.

3. The petitioner constructed a non-residential building in R.S.No.1686/2, Eittines Road, Udhagamandalam, The Nilgiris and he has been conducting a hotel in the name and style of "Hotel New Natraj".

4. The petitioner constructed second floor to the existing building without obtaining approval as required under Rule 3 of Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993. Since the act of construction was in violation of Rule 11(3) of the Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993, the District Collector, The Nilgiris, called upon the petitioner to demolish the illegal structure. The order was passed on 22 May 2001. The petitioner filed a review petition before the Government to review the order passed by the District Collector. The Government considered the review petition and having found that second floor with an area of 4320 sq.ft. was constructed without obtaining prior approval, dismissed the petition. The District Collector thereafter passed the impugned order dated 21 May 2013, directing the petitioner to remove the unauthorized portion within a period of seven days.

5. The petitioner filed the Writ Petition challenging the enforcement action and obtained an interim order on 31 July 2003. The matter has not been posted thereafter for hearing.

6. The third respondent filed a counter affidavit indicating the factual position. According to the third respondent, in view of the interim order granted by this Court, further action was not taken by the local body to demolish the illegal structure.

7. The learned counsel for the petitioner submitted that the First Bench has already constituted a committee to look into the question of unauthorized construction, as per order dated 30 August 2015, in W.P.No.32747 of 2007 and as such, the Committee should be directed to look into the matter before demolition.

8. There is absolutely no merit in the contention taken by the learned counsel for the petitioner. The issue raised by the petitioner has become final on account of the dismissal of review petition by the Government as early as on 24 December 2002. The materials available on record very clearly shows that the entire second floor with a total area of 4320 sq.ft. was constructed without planning permission. In view of the Writ Petition filed by the petitioner and the interim order granted by this Court, the statutory authority was prevented from taking enforcement action. Now time has come to direct the District Collector, The Nilgiris and the Commissioner, Uthagamandalam Municipality, to demolish the illegal structure forthwith.

9. The order passed by the Government dated 24 December 2002 contain the extent of violation. There is no question of permitting such violation to continue. The building in question is a hotel. Even though the local body has not given permission to construct second floor, the fact remains that the petitioner made an illegal construction flouting the building regulations and he has been using the building as hotel all these years. We are therefore of the view that immediate steps should be taken to implement the impugned order.

10. The District Collector, taking into account the earlier proceedings, rightly passed the order of demolition. We do not find any error or illegality in the said order, warranting interference by this Court, by exercising the power of judicial review. We, therefore, dismiss the Writ Petition. Consequently, the interim stay granted in W.P.M.No.26417 of 2003 is recalled. No costs.

11. We direct the District Collector, Nilgiris and the Commissioner, Uthagamandalam Municipality, to implement the order dated 22 May 2011, which is impugned in this Writ Petition, within a period of seven days from the date of receipt or production of a copy of this order.

sd/-
ASSISTANT REGISTRAR (CS-II)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

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To

1.The Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai 9

2.The District Collector,
The Nilgiris, Udhagamandalam

3.The Commissioner,
Udhagamandalam Municipality

+1 CC to Mr.P.Srinivas Advocate. SR.NO. 51932
+1 CC to Govt.Pleader. SR.NO.52048

W.P. No.21263 OF 2003

CO-GGK
JD 15/10/2015



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