

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.16934 of 2008

and

M.P.No.2 of 2008

M/s.Sovreign Engineers Private Limited
represented by its Executive M.Gurunathan
No.82, Pudu Mund, Adasolai,
Marli Mund Road, Ooty.

... Petitioner

Versus

The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam.

... Respondent

Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the respondent in U.AC.No.26/2004 dated 09.05.2008 in confirming the order issued under Section 217-J(2) of the Tamil Nadu District Municipalities Act with regard to the demolition action for the building put up at No.82, Pudu Mund, Adasolai, Marli Mund Road comprised in R.S.No.4623 of Udhagamandalam Town, Ooty and quash the same and consequently forbear the respondent or anybody claiming through or under them from initiating demolition action with regard to the property described above.

For Petitioner : Mr.R.Mohan

For Respondent : Mrs.Bhavani Subbrayan

O R D E R

(Judgment of Court was made by The Honourable The Chief Justice)

The petitioner has filed the present writ petition aggrieved by the order passed on 09.05.2008 by the Commissioner, Udhagamandalam Municipality, in respect of buildings situated in R.S.No.4623 to an extent of F.F.2828 sq.ft at Marli Mund Road, Udhagamandalam, Nilgiris, within Udhagamandalam Municipality.

2.It appears that the petitioner never presented himself on a show cause notice being issued which resulted in the aforesaid order.

3. The petitioner made representation only thereafter, more than two months later on 14.07.2008.

4. On a perusal of pleadings including the counter affidavit of the respondent, it emerges that the land in question was agricultural in character, wherein old dilapidated residential buildings used to exist. The petitioner demolished the buildings without prior sanction and then constructed ground and first floor again without prior sanction or approval. This place is stated to be used as a guest house for the staff of the company.

5.It is the case of the petitioner that he had applied for re-classification of land from agricultural zone to residential zone on which, post inspection, the recommendations were given by the Agricultural Engineering Department and Forests Department to the Municipal Commissioner in 2002-03, which in turn were forwarded to the Deputy Director of Town and Country Planning Department. That department required the petitioner to comply with certain conditions and sent a letter dated 02.05.2003 to which, the petitioner responded vide reply dated 28.05.2003 stating that he had submitted a plan of the proposed first floor above the existing ground floor building. The fact however remains that there was no existing ground floor of the old building, as the whole building has been demolished and re-constructed and the constructed area is to the extent of 2828 square feet.

6. It is admitted before us that the impugned order is revisable under Section 217-J of the District Municipalities (Amended) Act, 1920. The petitioner has not availed of the remedy. The contours of the facts show that there are factual aspects to be examined and the statutory revision petition would be an appropriate remedy. The endeavour is also to see whether any actions of the petitioner are

capable of being regularised or not and naturally, to the extent no regularisation is permissible, the petitioner on his own or the authorities would have to take corrective action.

7. We thus permit the petitioner 15 days' time from today, to file the revision petition before the competent authority, which would consider the same on merits, preferably within a period of four months of the revision petition being filed.

8. The interim orders or directions would continue to enure for the benefit of the petitioner till such time as the revision petition is disposed of, subject to the condition that the petitioner shall not transfer, alienate, encumber or part with possession of the property nor carry out any further construction.

9. The writ petition accordingly stands disposed of. No costs.
Copy of the order be communicated to the Secretary, Municipal Administration Department, Chennai.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ksr

To

1.The Secretary,
Municipal Administration Department,
Chennai.

2.The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam.

+1cc to Mr.V.Bhavani Subbaroyan, Advocate, S.R.No.47925

+1cc to the Government Pleader, S.R.No.48200

W.P. No.16934 of 2008

BVR(CO)
CA(14/09/2015)