

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.04.2016

CORAM

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.P. No.10514 of 2016
and
W.M.P.No.9213 of 2016

S.Srinivasan

..Petitioner

Vs.

1.The Member Secretary,
Coimbatore Local Planning Authority,
Coimbatore.

2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

3.Sudharsan

..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing the respondents 1 and 2 to act in furtherance of the notice of demolition dated 16.12.2015 and 21.12.2015 and demolish the offending portion of construction in accordance with law.

For Petitioner

.. Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

For Respondents

.. Mr.P.S.Sivashanmugha Sundaram,
Spl. Govt. Pleader for R1
Mr.R.Sivakumar for R2
Mr.R.Sagadevan
for M/s.G.Vijay Anand Associates
for R3

ORDER

(Order of the Court was made by SATISH K.AGNIHOTRI, J.)

With the consent of the learned counsel appearing for the parties, the writ petition is taken up for final disposal.

2. Seeking a direction to respondents 1 and 2 to act in furtherance of the notice of demolition dated 16.12.2015 and 21.12.2015 and demolish the offending portion of construction in accordance with law, the petitioner has come up with the instant writ petition.

3. The petitioner, who is stated to be a resident of Parsn Sesh Nestle Campus, Nanjundapauram Road, Coimbatore, noticing the unauthorised construction, which was being used for commercial purposes, made a representation for removal of the unauthorised construction. Despite several representations made by various people, no action has been initiated by the authorities. When it was found that there was an unauthorised construction, the authorities ultimately issued a notice on 16 December 2015 under the provisions of Sections 56 and 57 r/w 85 of the Tamil Nadu Town and Country Planning Act, 1971, calling upon the third respondent to produce the approved plan. The third respondent miserably failed to produce any approved plan. One more notice was given on 21 December 2015 under the provisions of Sections 274 (1) and 284 of the Coimbatore City Municipal Corporation Act, granting some more time to stop the construction and take necessary steps to remove the unauthorised portion. It appears, again, no response came forward from the third respondent and the third respondent proceeded unabatingly with the use of the unauthorised portion of the building. Pursuant to our notice, the second respondent has filed a status report, stating as under:

"d. Earlier, on 02.12.2015, the officials of Town Planning Department, on noticing the above unauthorised constructions issued a notice dated 02.12.2015 under Sec.296(1) & (2) of the Coimbatore City Municipal Corporation Act directing the 3rd respondent to stop immediately any further construction, and also to demolish that portion of the unauthorised construction.

e. In reply to the said notice the 3rd respondent by his letter dated 05.12.2015, had stated that he is only renovating his existing building, which is factually incorrect.

f. Therefore, a further notice dated 21.12.2015 was also issued.

g. The 1st respondent had already issued a notice dated 16.12.2015 under Sec.56 & 57 of the Town and Country Planning Act, informing the 3rd respondent to stop any further construction, failing which the premises will be locked and sealed.

h. Since the ground floor was already rented for commercial purpose and the 1st floor was also constructed in such a way as it is meant for commercial purpose, there is possibilities that the 3rd respondent may indict tenant in the 1st floor also.

i. Therefore, in accordance with the interim order of this Hon'ble Court dated 21.03.2016, it was decided to lock and seal the said premises and police protection was sought. In the mean time the dry cleaner who was occupying the ground floor had vacated the premises, on his own.

j. Accordingly, on 28.03.2016, the main door at the ground floor and the 1st floor along with the main gate facing the road were locked and sealed."

4. On consideration of the aforestated factual matrix, it is evident that the third respondent has full opportunity to put forth his case as to whether the building in question was with proper approval.

5. Learned counsel for the third respondent submits that after construction of the building, the third respondent has initiated the process, seeking regularisation.

6. Be that as it may, it is already observed by this Bench in *Parameswari Vs. The Commissioner, Coimbatore Corporation, Coimbatore*¹ that the revised approval is permitted only in case of slight deviation or modification in the building wherein proper approval has been granted. In the case on hand, it appears that one floor has been constructed without any permission or approval and also some deviations have been made on the ground floor. Thus, we grant further two weeks' time to the third respondent to place his case before the authorities. The first and second respondents are directed to take consequential action by demolishing the unauthorised portions, within a period of one week thereafter.

1 W.P.No.8530 of 2016

7.With the aforestated observation and direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

mmi

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Member Secretary,
Coimbatore Local Planning Authority,
Coimbatore.
 - 2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.
- + 1 cc to M/s.G.Vijay Anand Associates, Advocate Sr 20879
+ 1 cc to Mr.R.Sivakumar, Advocate Sr 21035
+ 1 cc to M/s.Aiyar and Dolia, Advocate Sr 21056

KR/13/4/16

W.P.No.10514 of 2016

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