

In the High Court of Judicature at Madras

Reserved on : 23.02.2016

Pronounced on : 26.02.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.Nos.35911 and 35912 of 2015
and
M.P.Nos. 1 and 1 of 2015

1. K.M.Balasubramaniam
2. Pushpaleelavathi ... Petitioners in both the Petitions
Vs.
1. Director of Town and Country Planning,
No.807, Anna Salai, Chennai -2
2. Deputy Director of Town and Country Planning,
Salem Zone, No.6, Sanathi Street,
Subramaniam Nagar, Salem.
3. Member Secretary / Commissioner (Inc)
Local Planning Authority,
Gobichettipalayam Municipality,
Gobichettipalayam,
Erode District. ..Respondents in both the Petitions

Prayer: Writ Petitions filed under Article 226 Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order of the 3rd Respondent dated 27.10.2015 in Proceedings Na.Ka.No.2353/2007/F1 and quash the same.

For Petitioners :Mr.S.Vadivelu for
Mr.R.G.Narendhiran

For Respondent :Mr.P.S.Sivashanmugasundaram
Nos.1 and 2 Special Government Pleader

For Respondent No.3 :Ms.R.Revathy

C O M M O N O R D E R

The Petitioners have preferred the present Writ Petitions
praying for passing of an Order by this Court in calling for

the records pertaining to the Order of the 3rd Respondent/ Member Secretary / Commissioner(Inc), Local Planning Authority, Gobichettipalayam Municipality, Gobichettipalayam dated 27.10.2015 in Proceedings No. Na.Ka.2353/2007/F1 and to quash the same.

2. According to the Petitioners, the 2nd Petitioner purchased an extent of 3344 Sq.Ft., of lands in Perumal Koil Street, Gobichettipalayam as per Sale Deed Dated 19.08.1989 from one Rajakotti and Harikrishnan by means of a registered Document No.774/1989 Book-I, Vol. 116, on the file of the District Registrar, Gobichettipalayam. The stand of the Petitioners is that in the aforesaid land, after obtaining Planning Permission and Building Planning Approval from the 3rd Respondent/ Member secretary/ Commissioner (Inc) Local Planning Authority, Gobichettipalayam Municipality, Gobichettipalayam in Approval No. 162/90, the Petitioners had put up construction for Community Hall and running a small size Kalyana Mandapam in the name of 'Lakshmi Mahal', which could accommodate up to Five Hundred persons.

3. It is represented on behalf of the Petitioners that they jointly had purchased 4206 Sq.Fts of land adjacent to the aforesaid 'Lakshmi Mahal' from one K.N.Rajan, as per Sale Deed dated 05.04.1995 (Vide Document No.617 of 1995, Book-I on the file of District Registrar's Office, Gobichettipalayam). In fact, they had obtained Planning Permission and Building Planing Approval in Approval No.256/95/82 on 13.10.1995 for putting up construction and further in the said area they are running another small size Marriage Hall by name 'P.B. Mahal' with a capacity to accommodate Two Hundred persons.

4. The Petitioners took a stand that for providing a convenient parking facility to the aforesaid Marriage Halls in addition to the parking space available, they had purchased 6220 Sq.Ft., of land as per Sale Deed dated 18.05.2006 from 1. Sundaresan and two others by means of registered Document No.954 of 2006 on the file of District Registrar, Gobichettipalayam. These lands are adjacent to the afore stated Marriage Halls in the southern boundaries and the same is maintained exclusively for parking of vehicles. In fact, there is no construction available in it.

5. The Learned Counsel for the Petitioners submits that the Petitioners had obtained necessary license under Section 6 (i) of the Tamil Nadu Building (Licensing) Act, 1965 and Rule 6 of the Rules framed thereunder from the Tahsildar, Gobichettipalayam. Indeed, the license for Lakshmi Thirumana Mandapam was issued on 10.06.2014 in Proceedings No. K.Dis.3504/2014/B1 (Possessing License No.18/2014) for the period from 01.04.2014 to 31.03.2017. Also that license for 'P.B. Mahal' was issued on 10.06.2014 in Proceedings No.K.DIS.3503/2014/B1 (Possessing License No.17/2014) for the period from 01.04.2014 to 31.03.2017. Moreover, there is no

violation of the conditions till date.

6. In short, the plea of the Petitioners is that they had obtained 'NOC' from the District Officer, Fire and Rescue Department, Government of Tamilnadu for the 'Lakshmi Mahal' dated 11.06.2014 in Proceedings No.O.Mu.No. 5077/A2/2014 valid for three years period. In respect of 'P.B. Mahal', the 'NOC' was issued on 11.06.2014 in Proceedings No.O.Mu.No.5078/A2/2014 valid for three years period. For the two 'Marriage Halls', the Petitioners had obtained Sanitary Certificate from the 3rd Respondent/Municipality. Also that it is their case that they are paying Property Tax promptly to the 3rd Respondent/Municipality and as on date there is no arrears.

7. The Learned Counsel for the Petitioners urges before this Court that the Impugned Order of the 3rd Respondent / Municipality dated 27.10.2015 is against Law and the same being in violation of Article 14 of the Constitution of India.

8. The Learned counsel for the Petitioners contends that the Impugned Order dated 27.10.2015 issued by the 3rd Respondent / Municipality (Under Section 57(1)(2)(3)(a)(b)(c)(4)(5)(b)(c) of the Town and Country Planning Act, 1971) directing the Petitioners to close the premises within 7 days from the date of receipt of Notice is not in accordance with Law.

9. The Learned Counsel for the Petitioners submits that in the present case on hand, the Petitioners are not putting up any construction and they had put up construction only after obtaining approval from the 3rd Respondent / Municipality. As such, the very initiation of action against the Petitioners under Section 57 of the Tamil Nadu Town and Country Planning Act, 1971 is against Law and Facts and Circumstances of the case.

10. The Learned Counsel for the Petitioners proceeds to take a stand that in the Impugned Order dated 27.10.2015 of the 3rd Respondent observations were made to the effect that the Petitioners' Building Plan for Approval before the Appellate Authority under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 is pending. Added further, it is the plea of the Petitioners that the Impugned Order dated 27.10.2015 of the 3rd Respondent is issued based on the ground that the Petitioners had not provided 'Parking Area' and this would show that the Impugned Order in question was passed without taking into account that the Petitioners had left exclusive parking area and the same was also submitted by the 3rd respondent before this Court in W.P.No.9207 of 2009.

11. The Learned Counsel for the Petitioners projects a legal plea that the 1st Petitioner had received the Notice dated 24.07.2015 and that he submitted an Appeal Building Plan

for Approval on 22.08.2015 and as per Section 56(4) (a) of the Tamil Nadu Town and Country Planning Act, 1971, the Notice dated 24.07.2015 shall not have any effect pending final determination. In effect, the stand of the Petitioners is that further action of the 3rd Respondent by means of an Impugned Order dated 27.10.2015 (Based on the Show Cause Notice dated 24.07.2015) is contrary to the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and hence the Impugned Order is liable to be quashed in the Eye of Law.

12. Lastly, it is the submission of the Learned Counsel for the Petitioners that the Petitioners are running the 'Marriage Halls' for the past 23 years without any complaints and the said Halls are utilized by the Lower Middle Class People and if the Marriage Halls are locked, the Petitioners would be put to an unbearable and irreparable hardship.

13. Per contra, it is the contention of the Learned Counsel that the 3rd Respondent/Municipality that the 3rd Respondent/Municipality had not granted any Building Plan Permission to the Petitioners for running the Marriage Halls and in fact the Division Bench of this Court in W.P.No.9207 of 2007 on 26.06.2015 had granted three months time to the Petitioners to obtain requisite permission in accordance with Law to run their Marriage Halls and also held that they would have to make arrangements for dedicated parking.

14. The Learned Counsel for the 3rd Respondent contends that by granting 30 days time on 24.07.2015, 3rd respondent issued Notice to the Petitioners to obtain the requisite permission for running the Marriage Halls and inspite of the same, they had not obtained the requisite permission in terms of the Order passed by this Court in W.P.No.9207 of 2009 dated 26.06.2015. It is also represented on behalf of the 3rd Respondent that the Petitioners filed an Appeal Plan on 22.08.2015 and the same was forwarded to the 2nd Respondent / Deputy Director of Town and Country Planning, Salem on 22.09.2015 and further that inasmuch as the Petitioners had not obtained permission for running the Marriage Halls, as per Section 57(1) (2) (3) (a) (b) (c) (4) (5) (6) (b) (c) of Town and Country Planning Act, 1971, on 27.10.2015, the 3rd Respondent had issued a 7 days, Notice for Lock and Seal of the 'Marriage Halls' in question.

15. The Learned Counsel for the 3rd Respondent brings it to the notice of this Court that since the Petitioners had not enclosed the majority of documents and as well as for the violation of the Building Plan and access of the Marriage Halls is less than 9.00 Meter wide, the 2nd Respondent / Deputy Director of Town Planning, Salem on 04.11.2015 had returned the Appeal Plan submitted by them and informed the Petitioners to submit the same before the Director of Town and Country Planning, Chennai, which fact was intimated to them on 12.11.2015.

16. The Learned Counsel for the 3rd Respondent proceeds to submit that the Petitioners on 18.11.2015, submitted an Appeal Plan to the Director of Town and Country Planning, Chennai and on 24.11.2015, the Appeal Plan of the Petitioners was forwarded to the Director of Town and Country Planning, Chennai. Continuing further, the clear cut stand of the 3rd Respondent is that for construction of Community Hall, B.A.No.162/90 in license no.25/90 dated 22.10.1991, the Petitioners have obtained the Approval Plan for construction of Community Hall and that the 3rd Respondent never granted any building license or planning permission to the Petitioners for running Marriage Halls. Also that they had not provided the parking area and in fact the Petitioners had constructed the entire extent as 'Marriage Halls'.

17. The Learned Counsel for the 3rd Respondent submits that the Petitioner in W.P.No.8633 of 2007 had stated that the Marriage Halls were not constructed in terms of the Town and Country Planning Act 1971 and that the 3rd Respondent/Municipality was directed to proceed in terms of the Town and Country Planning Act, by means of an Order dated 29.02.2008. Further, the Division Bench of this Court in W.P.No.9207 of 2009 on 26.06.2015 between Dr.G.R.Ragunathan V. 1. The Director of Town and Country Planning, Chennai to 11 Others (in which the Lakshmi Mahal and P.B.Mahal represented by its Proprietor K.Balasubramaniam, Perumal Koil Street, Gobichettipalayam, Erode District were arrayed as R9 and 10 - First Petitioner and his wife Pushpaleelavathi (2nd Petitioner) in W.P.Nos.35911 and 35912 of 2015 at Paragraph Nos.2 to 5 had observed the following:-

"2. Learned Counsel appearing for the Tamil Nadu Pollution Control Board states that requisite permission has not been obtained from the Tamil Nadu Pollution Control Board and such permission can be obtained only if all other formalities are completed.

3. We grant three months time to respondent nos.8 to 12 to obtain requisite permission in accordance with law. Apart from this, they would have to make arrangements for dedicated parking. The Corporation will monitor the area and if the people running the marriage halls are not in a position to prevent parking on the roads, there will be no option but to shut them down.

4. We make it clear to the fourth respondent, for that matter any Municipality, if any marriage halls are permitted, they should also verify that adequate arrangements for parking are simultaneously made available, keeping in mind the number of persons for whom the license has been granted.

5. No further directions are required."

18. In pith and substance, the crystalline stand of the 3rd Respondent/Municipality is that the Petitioners had not obtained the requisite permission for running the marriage halls as ordered by the Division Bench of this Court in W.P.No.9207 of 2009 dated 26.06.2015. Only on 28.08.2015, the Petitioners had submitted an Appeal Plan, which was forwarded to the 2nd Respondent/Deputy Director of Town and Country Planning, Salem on 22.09.2015. Further the 2nd Respondent/Deputy Director of Town and Country Planning, Salem on 04.11.2015 had returned the Appeal Plan submitted by the Petitioners and further that the Petitioners were informed on 12.11.2015 to submit the same before the Director of Town and Country Planning, Chennai.

19. At this stage this Court very pertinently points out that in the decision of Hon'ble Supreme Court in M.I.Builders Pvt., Ltd., V. Radhey Shyam Sahu and Others reported in AIR 1999 Supreme Court at Page 2468 at Special Page 2470 wherein it is observed as follows:-

"Judicial discretion in moulding the relief cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

20. Also this Court aptly points out that in the decision Salahudeen Babu V. P.T.Prabhakar and another reported in 2005 (1) Law Weekly at page 643 it is held that construction should strictly comply with the rules and regulations. If the buildings are constructed in violation of rules and regulations the authorities should demolish the construction.

21. It is to be borne in mind that inasmuch as the Petitioners had not obtained the requisite permission for running the Marriage Halls in terms of the ingredients of Section 57(1)(2)(3)(a)(b)(c)(4)(5)(6)(b)(c) of the Act, the 3rd Respondent/Municipality was perforced to issue Notice to them on 27.10.2015 interalia stating that as per the Court's Order, within seven days from the date of receipt of the Order, they should remove all articles in the Marriage Hall and stop the usage of building as Marriage Hall, intimate

the same etc., Moreover, the Petitioners were also informed that in terms of the Court's Order and as per Section 57(1)(2)(3)(a)(b)(c)(4)(5)(6)(b)(c) of the Tamilnadu Town and Country Planning Act, the Marriage Hall would be closed and sealed within seven days on receipt of the Notice.

22. On an anxious consideration of the respective contentions advanced on behalf of the Petitioners and the 3rd Respondent/Municipality and also this Court bearing in mind a primordial fact that the Petitioners had not obtained the requisite permission for running the Marriage Halls in the subject matter in issue within the time prescribed by the Hon'ble Division Bench of this Court in W.P.No.9207 of 2009 dated 26.06.2015 and further that they had violated the Building Plan, this Court comes to an inescapable and irresistible conclusion that the impugned Order of the 3rd Respondent in Na.Ka.No.2353/2007/F1 dated 27.10.2015 is not liable to be quashed, inasmuch as the same is a valid and legally tenable one. As such the Writ Petitions fails.

In fine, the Writ Petition Nos. 35911 and 35912 of 2015 filed by the Petitioners are dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are also closed.

ssd

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

TO

- 1.The Director of Town and Country Planning,
No.807, Anna Salai, Chennai -2
- 2.The Deputy Director of Town and Country Planning,
Salem Zone, No.6, Sanathi Street,
Subramaniyam Nagar, Salem.
3. The Member Secretary / Commissioner (Inc)
Local Planning Authority,
Gobichettipalayam Municipality,
Gobichettipalayam, Erode District.

+ 2ccs to Ms.R.Revathy, Advocate Sr. Nos.12099, 12100
+ 2 ccs to Mr.R.G.Narendhiran, Advocate Sr. No.12105
+ 1 cc to The Govt.Pleader, Sr 12584

KR/3/3/16

W.P.Nos.35911 and 35912 of 2015
and

M.P.Nos. 1 and 1 of 2015