

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.28394 of 2016
and WMP.Nos.24519 & 24520 of 2016

1 N.Varadarasu ...Petitioner

Vs.

1 The Member Secretary
Puducherry Planning Authority
Jawahar Nagar
Bhoomianpet
Puducherry

2 The Municipal Commissioner
Oulgaret Municipality
Puducherry

3 The Inspector of Police
Danvandri Nagar
Korimedu Police Station
Puducherry

4 The Commissioner
Hindu Religious Institution
Puducherry

5 N.Deivasigamani

6 A.V.Sekar ..Respondents.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the record of the 1st respondent herein under No. 375/TCP/Board/JTP (Dev.) 2016/508 dated 3.3.2016 and quash the same and against the basic principles of natural justice.

For Petitioner : Mr.G.Thangavel

For Respondents : Mr. A.Tamilvanan
Government Advocate (Puducherry)
for R1 to R4

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Heard Mr.G.Thangavel, learned counsel for the Writ Petitioner and Mr.A.Tamilvanan, learned Government Advocate (Puducherry), counsel for respondents 1 to 4. Notice to respondents 5 and 6 is dispensed with at this stage, inasmuch as no adverse order is passed against him in this Writ Petition.

2. This Writ Petition is filed as against the order of the 1st respondent dated 03.03.2016, wherein, the 6th respondent herein was directed to approach the Member Secretary, Puducherry Planning Authority, Puducherry as regards plan approval of building. It was further pointed out that the Town and Country Planning Board, after detailed deliberation directed the Puducherry Planning Authority to issue building plan approval, since the proposal is only for demolition and reconstruction of old temple.

3. It appears that in connection with the unauthorised construction stated to be allegedly made by the 5th respondent- M.Deivasigamani, in the patta land belonged to the petitioner, the petitioner already shown to have moved this court by way of W.P.No.39542 of 2015, wherein, by order dated 16.12.2015, this court held as follows:-

"Mr.M.Govindaraj, learned Government Advocate (Puducherry) submits that the first respondent is seized of the matter as the Oulgaret Municipality is directed to submit a report, which is likely to be submitted in a day or two and consequential action shall be taken thereafter, at once and if there is any unauthorised construction or encroachment, as alleged by the petitioner, the same shall be removed in accordance with law within a period of six weeks."

4. As per the finding given by the 1st respondent, there is no encroachment in Oulgaret Municipality. Further, in the impugned order dated 03.03.2016, it is stated as follows:-

" The Board considered the content in the notice dated 25.01.2015, issued by the Puducherry Planning Authority, wherein, the appellant(6th respondent herein) was directed to remove the excess portion of Temple Pragaram. The Board also considered the i) NOC issued by the District Magistrate for reconstruction of Sri Gengaiamman Temple (Private) situated at R.S.No.127/1,2, Chinnaiyanpet, Saram Revenue Village, Oulgaret Municipality, Puducherry and (ii) Non encroachment of road portion adjoining to the temple conveyed by the Commissioner, Oulgaret Municipality, Puducherry in his letter dated 18.11.2015. In view of the above, the board after detailed deliberation directed the Puducherry Planning Authority to issue building plan approval, since the proposal is only for demolition and reconstruction of old temple."

5. However, now the grievance of the petitioner is that the 6th respondent by suppressing certain facts, preferred appeal before the 1st respondent and the 1st respondent without referring to the pending proceedings, had allowed the 6th respondent to continue the unauthorised construction and encroachment.

6. In our considered view, the only remedy for the petitioner is to seek remedy before the appropriate authority seeking removal of the encroachment or unauthorised construction made in his patta land. In the event of the petitioner's representation seeking such removal of encroachment is ordered, the petitioner is eligible to get compensation or damages, which shall be worked out by the Planning Authority concerned.

7. As far as the other ground raised by the petitioner that the 1st respondent failed to comply with the order of this court dated 16.12.2015 is concerned, it is pertinent to note that the petitioner already filed a Contempt Petition No.1348 of 2016 and the same is pending consideration. Hence, this Writ Petition is premature to consider the above ground.

8. In view of the foregoing reasons, this Writ Petition is disposed of with liberty to the Petitioner to approach the appropriate forum for his remedy and shall also work out his remedy in the Contempt Proceedings already initiated by him. Since the matter as regards encroachment of the patta land belonging to the petitioner by respondents 5 and 6 is concerned, we are of the considered view that it is a matter involving fact finding and hence, the same has to be decided by the civil court, which requires adjudication after hearing both parties. In any event, the matter does not merit consideration or to pass

any orders at this stage. No costs. Consequently connected MPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 The Member Secretary
Puducherry Planning Authority
Jawahar Nagar
Bhoomianpet
Puducherry
- 2 The Municipal Commissioner
Oulgaret Municipality
Puducherry
- 3 The Inspector of Police
Danvandri Nagar
Korimedu Police Station
Puducherry
- 4 The Commissioner
Hindu Religious Institution
Puducherry

+1 cc to Mr.G.Thangavel Advocate sr 46610

+1 cc to Government Pleader for puducherry sr 46877

सत्यमेव जयते

W.P.No.28394 of 2016

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