

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2016

PRONOUNCED ON : 29.09.2016

CORAM:

The Honourable Mr. Justice HULUVADI G. RAMESH
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.29985 of 2016

M/s.Aara Silk
rep. by its Partner,
MAM. Hayath
S/o.M.A.Mohamed Masthan,
8/42 & 8/42-A, B - Ranganatha Mudhali Street,
C.Pallavaram, Chennai. .. Petitioner

Vs.

1. The Principal Director,
Southern Command,
IDES Guest House,
Cross Road,
Pune, Maharashtra State.

2. The Chief Executive Officer,
Cantonment Board,
St. Thomas Mount,
Chennai 600 043. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Mandamus, forbearing the respondents or their subordinates from either sealing, removing, damaging or demolishing any portion of the building of the petitioner situate at No.8/42 & 8/42-A, B - Ranganatha Mudali Street, C.Pallavaram, Chennai by way of implementing the order passed by the 2nd respondent vide No.STM/Works/8/2350, dated 08.08.2016 pending disposal of the above appeal dated 22.08.2016 filed by the petitioner before the 1st respondent.

For Petitioner : Mr.L.Chandrakumar
for Mr.I.C.Vasudevan

For 2nd Respondent : Mr.C.Mohan
for M/s.King & Patridge

O R D E R
S.VAIDYANATHAN,J.

The petitioner, having constructed a three-storied building at No.8/42 & 8/42- A & B, Ranganatha Mudali Street, C.Pallavaram, Chennai is running a Textile business therein. He has come up with

this Writ Petition seeking to forbear the respondents or their subordinates from either sealing, removing, damaging or demolishing any portion of the said building by way of implementing the order passed by the 2nd respondent vide No.STM/Works/8/2350, dated 08.08.2016 pending disposal of the appeal dated 22.08.2016 filed by him before the 1st respondent.

2. According to the petitioner, the 2nd respondent passed the order dated 08.08.2016 without giving him any opportunity and without considering the objections made by him. Since there is every apprehension that the building in question will be demolished by the 2nd respondent, the petitioner filed an appeal along with a petition seeking interim stay of the operation of the order dated 08.08.2016 passed by the 2nd respondent.

3. Learned counsel appearing for the petitioner vehemently contended that the order passed by the 2nd respondent is against the principles of natural justice, since it has been passed without conducting any enquiry and without giving any opportunity of hearing to the petitioner. He also submitted that when an appeal is pending, the officers of the 2nd respondent came to the petitioner's office on 23.08.2016 and informed the petitioner that they are going to demolish the building within a week. Left with no other remedial measure, the petitioner has approached this Court.

4. Denying the factual averments of the petitioner, learned counsel appearing for the 2nd respondent submitted that the total square feet of the land in question is 3614 sq. ft. and the sanction plan for construction of the building was issued on 16.10.2009 to an extent of 3549.05 sq. ft., which includes ground floor to an extent of 2396.15 sq. ft. and first floor to an extent of 1152.90 sq. ft. As per the plan, the total F.S.I. is 0.98, but, the actual construction by the petitioner is 2.13 F.S.I. and the total extent of violation is 7727.08 sq. ft. It is his further submission that though there is no sanction for basement, second and third floors, the petitioner has constructed basement to an extent of 3226.30 sq. ft. and second and third floors to an extent of 3083.43 sq. ft. and 1920.25 sq. ft., respectively.

5. It is the further submission of the learned counsel for the 2nd respondent that in spite of three notices issued to the petitioner on 04.01.2016, 02.02.2016 and 21.03.2016, respectively under Sections 247(1), 248(1) and 320 of the Cantonments Act, 2006, informing him to demolish the said building within a specified period, the petitioner paid no attention to the same. Hence, according to the learned counsel, the contention of the petitioner that he was not given any opportunity in this regard, cannot be accepted. It is also his contention that the 2nd respondent is right in rejecting and returning the appeal of the petitioner, as it was filed beyond 30 days, which is the period of limitation specified in Schedule V of the Cantonments Act.

6. On the question of limitation, learned counsel for the 2nd respondent has relied on the following decisions:

(i) a Supreme Court decision in the case of the Commissioner of Sales Tax, U.P., Lucknow vs. M/s.Parson Tools and Plants, Kanpur, (1975) 4 SCC 22

"22. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, than the tribunal concerned has no jurisdiction to treat within

limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of s. 14(2) of the Limitation Act.

23. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham (1) has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself :

"It is true of course that the courts will lean heavily, against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view (1)At P. 11 in *Pearl Berg v. Varty* [1972] 2 All E. R. 6, 752 of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment."

(ii) yet another Supreme Court decision in the case of *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and others*, (2008) 7 SCC 169

"20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule for any suit, appeal or application by any special or local law, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

7. We have heard the learned counsel for the parties and gone through the material records.

8. In the affidavit, the petitioner has stated that he has been paying property tax to the competent authority properly. The notice dated 08.08.2016 was issued by the 2nd respondent directing the petitioner to demolish the building in question within ten days from the date of the issuance of the order, failing which, the building will be demolished and the cost of the expenses incurred would be collected from the petitioner for the unauthorised construction in the ground floor and the first floor by deviating from the original sanction plan and also directing him to demolish the unauthorised portion in the second and third floors.

9. Admittedly, the petitioner has constructed second and third floors without obtaining permission and the entire building has been used for commercial purpose. When the sanction plan for the construction of the building, i.e. ground and first floors is only to the extent of 3549.05 sq. ft., the petitioner has violated the same by constructing basement, second and third floors without obtaining permission. With regard to the extent of construction, a notice dated 04.01.2016 under Section 247 of the Cantonments Act, 2006 was issued to the petitioner and a notice 02.02.2016 under Section 248(1) of the Cantonments Act was also issued. A further notice under Section 320 of the Cantonments Act was also issued to the petitioner on 21.03.2016. On 08.08.2016, a letter was sent by the 2nd respondent to the petitioner on the unauthorised construction put up by him, with copies marked to the authorities concerned.

10. The petitioner has admitted in paragraph 2 of the affidavit that he has constructed a three storied building in the place in question and is also paying property tax properly. It is also an admitted fact that the sanction plan is only to an extent of 3549.05 sq. ft. and there is no sanction for constructing basement and second and third floors.

11. While so, on 22.08.2016, the petitioner filed an appeal under Section 340 of the Cantonments Act and on 24.08.2016, the said appeal was rejected and returned, as the same was preferred beyond the statutory period provided under Section 340 and Schedule V of the Cantonments Act.

12. For the sake of convenience, relevant Sections of the Cantonments Act, 2006 are extracted hereunder:

247. Illegal erection and re-erection.- Whoever begins, continues or completes the erection or re-erection of a building-

(a) without having given a valid notice as required by sections 235 and 236, or before the building has been sanctioned or is deemed to have been sanctioned; or

(b) without complying with any direction made under sub-section (1) of section 238; or

(c) when sanction has been refused, or has ceased to be available or has been suspended by the General Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 58, shall be punishable with fine which may extend to fifty thousand rupees and the cost of sealing the illegal construction and its demolition.

248. Power to stop erection or re-erection or to demolish.

(1) A Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under section 247 and may, in any such case or in any other case in which the Board considers that the erection or re-erection of a building is an offence under section 247, within twelve months of the completion of such erection or re-erection in like manner, direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected:

Provided that the Board may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable:

Provided further that the Board shall not, without the previous concurrence of the General Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing

proviso in respect of any building on land which is not under the management of the Board.

(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the order under section 238 sanctioning the erection or re-erection has been suspended by the General Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 58, and shall in any such case in like manner direct the demolition or alteration, as the case may be, of the building or any part thereof so erected or re-erected where the General Officer Commanding-in-Chief, the Command, thereafter directs that the order of the Board sanctioning the erection or re-erection of the building shall not be carried into effect or shall be carried into effect with modifications specified by him:

Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence of the demolition or alteration of any building which has been erected or re-erected prior to the date on which the order of the General Officer Commanding-in-Chief, the Command, has been communicated to him.

320. Powers of Board in case of non-compliance with notice, etc.- In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Board, or the civil area committee or the Chief Executive Officer at whose instance the notice, order or requisition has been issued whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the Chief Executive officer on demand, and if not paid within ten days after such demand, shall be recoverable in the same manner as moneys recoverable by the Board under section 324:

Provided that where the action or step relates to the demolition of any erection or re-erection under section 248 or the removal of any projection or encroachment under section 252, the Board or the civil area committee or the Chief Executive officer may request any police officer to render such assistance as considered necessary for the lawful exercise of any power in this regard and it shall be the duty of such police officer to render forthwith such assistance on such requisition.

340. Appeals from executive orders : (1) Any person aggrieved by any order described in the third column of Schedule V may appeal to the appellate authority specified in that behalf in the fourth column of the said Schedule.

(2) The Central Government may, for the purposes of expeditious disposal of the pending appeals, by notification in the Official Gazette, amend Schedule V so as to designate additional appellate authority in the fourth column of the said Schedule.

(3) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fifth column of the said Schedule.

(4) The period specified as aforesaid shall be computed in accordance with the provisions of the Limitation Act, 1963, with respect to the computation of periods of limitation thereunder.

341. Petition of Appeal. -

(1) Every appeal under section 340 shall be made by petition in writing accompanied by a copy of the order appealed against.

(2) Any such petition may be presented to the authority which made the order against which the appeal is made, and that authority shall be bound to forward it to the appellate authority, and may attach thereto any report which it may desire to make by way of explanation.

342. Suspension of Action Pending Appeal:

On the admission of an appeal from an order, other than an order contained in a notice issued under section 144, section 183, section 238, section 273 or section 302, where the appellate authority so directs, all proceedings to enforce the order and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and, if the order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

13. Learned counsel for the petitioner submitted that when an appeal is pending, a direction may be issued to the appellate authority to dispose of the appeal within the time frame. This Court suggested that the unauthorised construction of second and third floors should be demolished and only thereafter, the petitioner's request can be considered, provided his plea is in accordance with the provisions of the Act. The petitioner's grievance is that the 2nd respondent has no jurisdiction to return his Appeal, dated 22.08.2016 and it is only for the appellate authority to consider and pass appropriate orders.

14. From a reading of the aforesaid provisions, it is very clear that a time limit has been prescribed for filing an appeal. The appeal filed by the petitioner cannot be treated as an appeal in the eye of law, as it is not filed within time. The purported appeal dated 22.08.2016 is filed only based on the letter dated 08.08.2016 issued by the 2nd respondent and not based on the original notice issued by the 2nd respondent. The limitation for the period of appeal has got to be taken only from the date of the original order.

15. The contention of the petitioner that the appeal has been rejected by the 2nd respondent, who has no jurisdiction does not sound merit, as it is only a consequential order. The petitioner having clandestinely constructed the building and played fraud, cannot be shown any indulgence. Further, the case of the petitioner that he has not been given any opportunity is also totally incorrect and it is a misleading and self-serving statement. Even Section 340(3) of the Cantonment Act is very clear that no appeal shall be admitted, if it is made after the expiry of the period specified in the V Schedule. Also, Section 340(4) will not support the case of the petitioner as it is clearly stated that the period specified shall be computed in accordance with the provisions of the Limitation Act. It nowhere says that the Limitation Act is made applicable to the appeal or any petition filed under the Act. Hence, this Court cannot extend the period of time, which is not granted/specified in the enactment.

16. Therefore, no purpose is going to be served in asking the appellate authority to decide the appeal, which is going to give only one more round of litigation. Courts are here to give a finality to the litigation. If we ask the appellate authority to decide the matter, it is a relief only to the Advocates, who are going to appear in the subsequent litigations and it is certainly not a relief to the litigants, more particularly to the Government in this case.

17. The conduct of the petitioner in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built-up area on the ground and first floors but also added additional second and third floors on the building apart from the basement, which are totally unauthorised. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulation. This impression must prove to be wrong.

18. In *Priyanka Estates International Pvt. Ltd. v. State of Assam* (2010) 2 SCC 27, the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:

□It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.□

19. In yet another decision pertaining to buildings construction in violation of rules, in the case of *Shanti Sports Club v. Union of India* (2009) 15 SCC 705, the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.□

20. It is pertinent to note that recently, the First Bench of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus: "4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised

construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

21. And, this Court (Huluvadi G.Ramesh, J. & M.V. Muralidaran,J.), while dealing with the removal of encroachments, in the case of A.Kumar vs. The Commissioner, Greater Corporation of Chennai vide judgment dated 13.06.2016, has held as under:

17. In view of the act of the petitioner in making repeated representations, the Corporation could not remove the encroachment as directed by this Court. Therefore, the Corporation had to face contempt proceedings in Contempt Petition No.1391 of 2015, which was closed after recording the submission of the Corporation that they would remove the same within a period of two weeks. Again, since the the encroachment could not removed due to the attempts made by the petitioner and other encroachers, the Corporation faced another contempt proceedings in Contempt Petition No.13 of 2016. In that matter, the Corporation sought one week time to comply with the order and the same was granted on depositing a sum of Rs.20,000/- within a week.

18. In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan [(1997) 11 SCC 123], the Supreme Court after referring to the earlier decisions, has observed thus:

"The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment."

19. In view of the decision cited above, we are of the considered view that the encroachment has to be removed forthwith, since the petitioner and others were given notice and their objections were also heard and considered, in accordance with law. Therefore, this writ petition is disposed of, with a direction to the Corporation to demolish the encroachment, in the presence of the petitioner on 13.7.2016 and also with a direction to the petitioner to pay a fine of Rs.1,000/- (Rupees one thousand only) to the credit of the Tamil Nadu Mediation and Conciliation Centre, Chennai, within a period of one week from the date of receipt of a copy of this order. This order shall be treated as notice to the petitioner for demolishing the encroachment made in the land in question. There shall be no order

as to costs. Consequently, WMP No.16456 of 2016 is closed.

22. In view of the decisions cited supra, this Court is of the view that the violated portions have got to be razed to the ground. In terms of the provisions of the Cantonment Act, the police shall give full protection for the demolition of the building and the petitioner is given a week's time from today, to remove the belongings in the building, otherwise, it will be construed that the belongings have been vacated by the petitioner. This Writ Petition is dismissed with the above direction and observation.

23. Since the petitioner has played fraud with regard to construction of building, by grossly violating the sanction plan, this Court imposes fine of a sum of Rs.50,000/- (Rupees Fifty Thousand only) on the petitioner to be payable by him in favour of Government Higher Secondary School for the Blind, Poonamallee, Chennai - 600056, 044-26272080 within a period of one week from the date of receipt of a copy of this order. Consequently, connected W.M.P.No.25954 of 2016 is closed.

(H.G.R.,J.) (S.V.N.,J.)

29.09.2016

Index : Yes/No

Internet : Yes/No

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To:

1. The Principal Director,
Southern Command,
IDES Guest House,
Cross Road,
Pune, Maharashtra State.

2. The Chief Executive Officer,
Cantonment Board,
St. Thomas Board,
Chennai 600 043.

HULUVADI G. RAMESH,J.

AND

S.VAIDYANATHAN,J.

aeb/

Pre-delivery order

in

W.P.No.29985 of 2016

Dated: 29.09.2016