



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.74 of 2016 (NPD)

and

C.M.P. (MD) .No.298 of 2016

Thiru.R.G.Subbarayalu

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep by its Principal Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal.

... Respondents

Civil Revision Petition is filed under Section 217-L of the Tamil Nadu District Municipalities Act, 1920, against the order passed by the first respondent under Government Letter (U) No.630/நநி.1/2015, dated 27.10.2015.

For Petitioner :Mr.A.R.Sethupathy

For R2 :Mr.K.Dinesh Babu

ORDER

This civil revision petition has been filed against the order passed by the first respondent under Government Letter (U) No.630/நநி.1/2015, dated 27.10.2015.

2. Facts of the case:

(i) The petitioner is the owner of the property in T.S.Nos.33 and 34, Door No.17/361, Suba Guest House, Bern Hill Road, Kodaikanal. The second respondent issued notice dated 07.07.2015, bearing reference No.UAC 2861/2007/F1, calling upon the petitioner to produce the approved plan and if the same is not produced, the construction being put up by the petitioner would be construed as unauthorized construction and called upon the petitioner to remove all the construction materials and stop using the building and demolish the unauthorized construction within 30 days. The second respondent furnished details of unauthorized construction and informed the petitioner that if he fails to comply with the demand made in the said notice, the building would be sealed and all the materials would be seized.



(ii) The petitioner has filed appeal petition to the Government on 11.08.2015 and the appeal petition was taken up for personal hearing on 06.10.2015. The petitioner appeared before the Principal Secretary to Government, Municipal Administration and Water Supply Department, Chennai and submitted his explanations. The petitioner's site has been classified as "Agricultural Zone" and in Agricultural Zones, only farm houses are permitted. But, the petitioner has constructed a lodge. The petitioner has purchased the property as a vacant site during the year 1996. The sale deed shows that one residential building was in existence from the year 1973. But, during the year 1999, the petitioner has demolished the said existing residential building and newly constructed the lodge building against the Tamil Nadu Hill Area Building Rules, 1993 and Kodaikanal Master Plan Regulations. After careful examination, the Government rejected the appeal petition filed by the petitioner vide Letter No. (U) No.630/நநி.1/2015, dated 27.10.2015. Against the said order of dismissal, the present civil revision petition is filed.

3. The contentions of the learned counsel for the petitioner are that :-

(i) the site measuring about 12 cents was originally donated to the vendor of the petitioner herein and as early in 1971 itself, the site has been converted as a Building site, which is evidenced in the Gift Deed and the Donee himself has raised a building with ground floor and first floor even in late seventies;

(ii) the second respondent failed to observe that the land is covered in two S.Nos.385/7 and 59/B3;

(iii) the first respondent failed to observe that in the sale deed, dated 05.08.1996, it is made clear that the construction and vacant site are only in T.S.Nos.33 and 34, which again proves that the zone wherein the building is located ought not to have been classified as Agriculture Zone;

(iv) the finding of the first respondent that the petitioner has raised the building without any building plan is not correct. It is evidenced that as early as on 10.04.1997, the petitioner has submitted a plan for construction, for which, he has paid an amount of Rs.1,610/- towards fees, the receipt for which also has been filed;

(v) when a plan has been approved as early in 1976 for raising ground floor and first floor, a subsequent construction of ground floor and first floor according to the plan submitted in 1997 cannot be viewed as an unauthorized construction;

(vi) when the owner in respect of the remaining half portion executed a sale deed on 09.11.2011 in favour of the petitioner, copy of original plan submitted to the second respondent on 10.04.1997, has not been handed over to the petitioner; and

(vii) the first respondent failed to see that the second respondent exercised its jurisdiction and placed demand for enhancing the property tax to Rs.26,233/-, whereby the existing building has been considered as proper one. As such, the order of



the first respondent, as if the construction has been raised unauthorizedly, is not sustainable.

4. The contention of the learned counsel for the second respondent is that the petitioner had demolished the existing residential building and put up building for commercial purpose without obtaining any approval. The petitioner has put up building in total violation of rules and regulations. The petitioner is running a lodge in an agricultural zone and prohibited zone. The petitioner was given ample opportunity to put forth his contention. The first respondent considered all the materials on record and considering the appeal petition, dismissed the same. There is no merit in the contention of the petitioner and prayed for dismissal of the civil revision petition.

5. I have heard the learned counsel appearing for the parties and carefully perused the entire materials on record.

6. In similar matter, the petitioner therein, challenged the order passed by the first respondent, in W.P.(MD)No.21675 of 2015. A Division Bench of this Court, by order dated 04.12.2015, in paragraphs 5 and 6, has held as under:-

"5. The first respondent considered the objections went through the records and rejected the review petition and confirmed the order of demolition. Three reasons are stated in the impugned order. They are (i) though the construction of the building was in a prohibited zone, the petitioner did not obtain permission from the competent authority, (ii) the existing building was of a measurement of 500 square feet in the ground floor and 500 square feet in the first floor. It was built in 1934. But the petitioner bought it in 2010 and demolished the same and constructed a ground floor of an extent of about 1200 square feet and a first floor of an extent of 1200 square feet. In other words, the construction was two times more than the existing one and (iii) the existing rules permit only renovation of the existing buildings and not the construction or demolition and construction of new buildings. This is why the petitioner showed it to be a case of renovation.

6. All the three reasons stated in the impugned order are perfectly valid. As a matter of fact, in a public interest litigation, the First Bench of this Court has taken note of unauthorised constructions of huge numbers in the hill station of Kodaikanal which had spoiled the ecology of the region. A Committee has been constituted by the First Bench to take a list of all unauthorised constructions. Therefore, when one Bench of this Court has issued directions for taking the list of unauthorised constructions for the purpose of removing them, it is not fair on the part of the another Bench to put spokes by



granting stay of such demolition notice. Therefore, the writ petition is dismissed. No costs. Consequently, M.P. (MD) No.1 of 2015 is closed."

7. From the materials on record, it is seen that the petitioner has filed appeal petition to the Government on 11.08.2015 and the appeal petition was taken up for personal hearing on 06.10.2015. The petitioner appeared before the Principal Secretary to Government, Municipal Administration and Water Supply Department, Chennai and submitted his explanations. The petitioner's site has been classified as "Agricultural Zone" and in Agricultural Zones, only farm houses are permitted. But, the petitioner has constructed building for commercial purpose namely, a lodge. The petitioner has purchased the property as a vacant site during the year 1996. On a perusal of the sale deed, it is seen that one residential building was in existence from the year 1973. But, during the year 1999, the petitioner has demolished the said existing residential building and newly constructed the lodge building against the Tamil Nadu Hill Area Building Rules, 1993 and Kodaikanal Master Plan Regulations. After careful examination, the Government rejected the appeal petition filed by the petitioner. Hence, it is clear that the petitioner has put up the present superstructure for commercial purpose without obtaining any permission from the second respondent and without any building plan and approval. In addition to this violation, the extent of superstructure put up by the petitioner is also in violation of rules and regulations. The petitioner has put up a construction for commercial purpose in agricultural zone and prohibited zone. The learned counsel for the petitioner has contended that in the entire observatory road only commercial building are situate. The learned counsel for the petitioner has not produced any material to show that the observatory road is in commercial zone. For the above reasons, the civil revision petition is devoid of merits. The petitioner has demolished the existing building and put up a new construction without obtaining permission. Hence, the construction put by the petitioner is unauthorized construction and as per the Judgment of the Division Bench of this Court, the civil revision petition is devoid of merits and is liable to be dismissed.

8. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is also closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar



To

1.The Principal Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.

2.The Commissioner, Kodaikanal Municipality, Kodaikanal.

+1 CC to Mr.A.R.SETHUPATHY, Advocate, SR No.21014

C.R.P. (MD) .No.74 of 2016 (NPD)
and

C.M.P. (MD) .No.298 of 2016
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