



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2016

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.52 of 2016 (NPD)

and

C.M.P. (MD) .No.222 of 2016

P.Chellapandi

... Petitioner

Vs.

1.The State of Tamilnadu
Rep by its Principal Secretary
Department of Municipal Administration
and Water Supply
Fort.St.George,
Chennai-9.

2.The District Collector,
Dindigul District,
Dindigul.

3.The Member Secretary/Commissioner
Kodaikanal Municipality and
Kodaikanal Local Planning Authority,
Kodaikanal,
Dindigul District.

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the order passed by the first respondent dated 27.10.2015 in his proceedings Government Letter Pa.No.629 Na.Nee 1/2015 and set aside the same by quashing the notice issued by the third respondent dated 06.07.2015 in his reference UAC No.11/2015/F1 and allow the C.R.P.

For Petitioner	:Mr.D.Malaichamy
For R1 and R2	:Mr.G.Muthukannan Government Advocate
For R3	:Mr.K.Dinesh Kumar

ORDER

This civil revision petition has been filed to set aside the order dated 27.10.2015 passed by the first respondent in Government Letter Pa.No.629 Na.Nee 1/25 dated 27.10.2015 confirming the notice dated 06.07.2015 issued by the third



respondent in UAC 11/2015/F1.

2.The petitioner has filed the present civil revision petition challenging the order of the first respondent dated 27.10.2015 bearing reference Government Letter Pa.No.629 Na.Nee 1/2015.

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3.The facts of the case are as follows:-

The petitioner is the owner of the property in Survey No.TS No.39, Door No.3/102, Observatory Road, Kodaikanal. The third respondent issued notice dated 06.07.2015 bearing reference No. UAC 11/2015/F1, calling upon the petitioner to produce the approved plan and if no approved plan is 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 demolished the unauthorized construction within 30 days. The third 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.

4.The petitioner sent a reply dated 05.08.2015 to the notice of the third respondent. According to the petitioner, he had submitted the plan with necessary documents for approval on 28.06.2010 and he has not received any order or permission till date and requested the third respondent to process his application at the earliest, so that, he can get approval for his building. The petitioner also requested the third respondent not to take any coercive steps. The petitioner filed review against the notice of the third respondent before the first respondent. A personal hearing was given to the petitioner on 06.10.2015. The first respondent considering the materials on record, dismissed the review petition filed by the petitioner. Against the said order of dismissal, the present civil revision petition is filed.

5.The contention of the learned counsel for the petitioner is that :-

(i)the first respondent failed to see that the application of the petitioner for construction is pending from 28.06.2010 and the third respondent has not either granted or rejected the said application.

(ii)The third respondent did not pass any orders on the ground that there will be a revision in master plan.

(iii)The first respondent has not furnished the enquiry report of the third respondent to the petitioner and did not give proper opportunity to the petitioner at the time of personal hearing on 06.10.2015.

(iv)The first respondent was doubtful about the classification of the property as a public place, the petitioner's property is situate.

(v)The first respondent failed to see that the building in question is existence and erred in holding that there are



violation in the construction of building.

(vi) The first respondent failed to see that the entire observatory road is a commercial area.

6. The contention of the learned counsel for the respondent is that the petitioner had demolished the existing residential building and put up a 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 hotel in an agricultural zone and prohibited zone. The petitioner was given ample opportunity to put forth his contentions. The first respondent considered all the materials on record and considering the Revision Review Petition, dismissed the same. There is no merit in the contentions of the petitioner and prayed for dismissal of the civil revision petition.

7. I have heard Mr. D. Malaichamy, learned counsel appearing for the petitioner and Mr. G. Muthukannan, learned Government Advocate appearing for the first and the second respondents and Mr. K. Dineshkumar, learned counsel appearing for the third respondent and carefully perused the entire materials on record.

8. 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 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."

9. From the materials on record, it is seen that the petitioner is taking contrary stand with regard to his building in question. In his reply dated 05.08.2015, the petitioner has stated that he has applied for building permission on 28.06.2010 and the third respondent has not considered the same and has not either approved the plan or rejected it. In the Revision Review Petition dated 07.08.2015, filed before the first respondent, the petitioner has stated that he is not constructing any building, but, only he is doing repair work. The first respondent considered the facts that the building in the land was residential building till 1967 and the same was demolished and building for commercial purpose was put up. From the sale deed of 2009 filed by the petitioner before the first respondent, it is seen that he purchased only a vacant land. Hence, it is clear that the petitioner has put up the present super structure for commercial purpose without obtaining any permission from the third respondent. In addition to this violation, the extent of superstructure put up by the petitioner is also 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 buildings are situate. The learned counsel for the petitioner has not produced any materials 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 up by the petitioner is unauthorized construction and as per the judgment of the Division Bench of this Court, the C.R.P is devoid of merits and is liable to be dismissed.

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

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Rep by its Principal Secretary
Department of Municipal Administration and Water Supply
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Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.

+1 CC to Mr.D.MALAICHAMY, Advocate, SR No.21525

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