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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) .Nos.17122 and 17123 of 2016
and
W.M.P. (MD) .Nos.12416 and 12417 of 2016

P.Vijil Raj ... Petitioner in both WPs

Vs

1.The District Collector,
Madurai District.

2.The Commissioner,
Madurai City Municipal Corporation,
Municipality Office,
Madurai-625 002.

... Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Ma3A7/6816/16 and Ma3A7/6817/16 dated 20.08.2016 and quash the same as illegal and consequently direct the 2nd respondent to provide sufficient time to the petitioner to submit the application for the purpose of obtaining building plan approval

For Petitioner :Mr.L.George Paul Anto
For R.1 : Mr.M.Murugan
Government Advocate
For R.2 : Mr.Shanmuga Selvan

COMMON ORDER

[Order of the Court was made by

M. SATHYANARAYANAN, J.]

<https://hcservices.ecourts.gov.in/hcservices> Since the issue involved in both the Writ Petitions is one and the same, they are taken up together and disposed of, by



this common order.

2. The petitioner in his affidavits filed in support of the Writ Petitions would state among other things, that he has purchased the land admeasuring to 26 cents in Re.Survey No.17/13B1 in Chinthamani Village, Madurai vide Document No.10620/2011 registered on the file of the District Registrar, Madurai, (South) and also purchased another extent of land admeasuring to an extent of 8 $\frac{3}{4}$ cents in S.No.895 in Chinthamani Village, Madurai, vide document No.6359 of 2015 registered on the file of the District Registrar, Madurai (South). The petitioner claims to have got an electricity service connection bearing No.05-038-007-526 and 05-038-007-543. The petitioner would state that at present, he is running a weigh-bridge, which has been put up on the said lands in the name of 'Nesamani Weigh-Bridge at 130-M, Chinthamani Main Road, Madurai. He also claims to have paid the property tax and professional tax. The petitioner would state that he is constructing two asbestos sheds measuring 3150 Sq.ft and 1550 Sq.ft in the above said lands for the purpose of godown to store scrap plastic materials and it is upto the basement level. The petitioner himself would state that no planning permission has been obtained from the second respondent till now, for constructing the asbestos shed.

3. The grievance now expressed by the petitioner is that the officials attached to the second respondent without giving any prior notice had barged into the lands of the petitioner on 06.09.2016 at about 12.00 p.m., and demolished and damaged the fencing and other constructions and articles worth Rs.20,000/- was also taken away by them in a vehicle and it was also followed by the impugned order dated 20.08.2016, served on him only on 06.09.2016. The order purported to have been served to the petitioner under Sections 282, 296(1) (2) of The Madurai City Municipal Corporation Act, 1971.

4. Learned Counsel for the petitioner would no doubt submit that he has put up the constructions in the afore-said lands and in all fairness, he is entitled to get post-facto approval of the construction and without putting the petitioner on notice, whatsoever, the unauthorised demolition has taken place, which is followed by the impugned orders and hence, prays for interference.

5. Mr.M.Murugan, learned Government Advocate accepts notice for R.1 and Mr.Shanmugaselvan, learned Standing Counsel accepts notice for the second respondent.

6. The learned Standing Counsel appearing for the second respondent would submit that even as per his own admission, the petitioner had started putting up the construction without any planning permission and therefore, the second respondent



constrained to take action against the petitioner in accordance with law and prays for dismissal of the Writ Petitions.

7. This Court has carefully considered the submissions made by the parties concerned and peruse the materials placed before us.

8. This Court often come across cases, wherein, the persons such as the petitioner, who are offenders of law insisting the concerned official respondents to follow the law forgetting the fact that they are also under obligation and duty to follow the law in letter and spirit. Admittedly, the petitioner has conceded to the fact that he has not obtained planning permission before putting up construction, which is averred at paragraph No.6 of the affidavits filed in support of the Writ Petitions and infact, the offending construction has come upto the basement level. Needless to mention that only account of such illegal constructions which are taking place through out the State of Tamil Nadu and eventually, the common man becomes victim of such illegal constructions and for the best reasons known to the concerned Government Officials, they turn to blind eye on such illegal constructions, which happen before their wide eyes. There are mushrooming growth of illegal structures and in the process of the same, they are also encroaching the Government lands and water bodies which also leads to ecological disaster during monsoon times and the catchment areas becomes shrinking day-by-day. Due to efflux of time, such illegal constructions also came to be approved by the officials for the best reason known to them leaving the environment in a lurch. Therefore, in the considered opinion of this Court, such illegal constructions have to be sternly dealt with, with iron hands and in any event, without second thought, such acts of illegal constructions have to be nipped in the bud.

9. At this juncture, it is relevant to quote the judgment of this Court reported in **(2016) 3 MLJ 385, Parameswari Vs. Commissioner and others**, wherein, the Supreme Court has heavily come down on the law offenders. The relevant portion found in that judgment is usefully extracted below:-

"9. The Supreme Court in **Friends Colony Development Committee v. State of Orissa and Others AIR 2005 SC 1 : (2004) 8 SCC 733 : LNIND 2004 SC 1111**, held as under :

"21. The conduct of the builder 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 each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorised. In spite of the disputes and litigation pending he



parted with his interest in the property and inducted occupants on all the floors, including the additional one. 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.

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

25. Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than **MLJ-28-04-2016** the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing



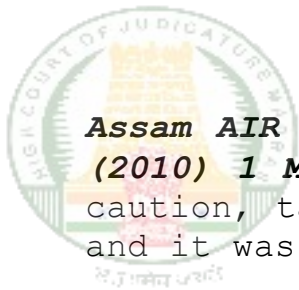
from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

10. The Supreme Court in ***Shanti Sports Club v. Union of India*** **AIR 2010 SC 433 : (2009) 15 SCC 705 : LNIND 2009 SC 1724 : (2009) 7 MU J 258**, observed that the executive must take stringent action to curtail the menace of illegal construction and it was held as under :

"75. 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."

<https://hcservices.ecourts.gov.in/hcservices/>

11. In ***Priyanka Estates International (P) Ltd v. State of***



Assam AIR 2010 SC 1030 : (2010) 2 SCC 27 : LNIND 2009 SC 2062 : (2010) 1 MU 1005, the Supreme Court once again sounded a note of caution, taking into account large scale unauthorised construction and it was observed as under :

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"55. 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 multistoreyed 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.

56. Even though on earlier occasions also, under similar circumstances, there have been judgments of this Court which should have been a pointer to all the builders that raising unauthorised construction never pays and is against the interest of society at large, but, no heed has been given to it by the builders. Rules, regulations and bye-laws are made by Corporations or by Development Authorities, taking in view the larger public interest of the society and it is a bounden duty of the citizens to obey and follow such rules which are made for their benefit. If unauthorised constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. An individual has a right, including a fundamental right, within a reasonable limit, it inroads the public rights leading to public inconvenience, therefore, it is to be curtailed to that extent."

10. In the light of the reasons assigned coupled with the decisions of this Court as well as the Supreme Court, in the considered opinion of this Court, the impugned orders of the second respondent does not warrant any interference. The petitioner deserves no sympathy or leniency at the hands of this Court and both the Writ Petitions are dismissed at the admission stage. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writ)



To:

1.The District Collector,
Madurai District.

2.The Commissioner,
Madurai-625 002.

+2cc to Mr.L.GEORGE PAUL ANTO,Advocate, Sr.No: 51245

+1 cc to Mr.N.S.SHANMUGA SELVAM ,Advocate, Sr.No: 51288

+1cc to M/S Special Government Pleader, Sr No. 51634

JAM/SKS-RR/20.09.16/ 7P-8C

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