

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 06.10.2016

DELIVERED ON : 18.10.2016

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CORAM:

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

W.P (MD) No.19434 of 2016andW.M.P (MD) No.14018 of 2016

K.Vasudeva Rao

... Petitioner

Vs.

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

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records from the respondents 2 and 3 in their proceedings in Na.Ka.No.2768/2007/F1, dated 16.02.2016 and quash the same.

For Petitioner : Mr.N.Sathish Babu

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader for R.1

Mr.T.S.Mohammed Mohideen,
Additional Government Pleader for R.2 & R.3

**ORDER**

The petitioner, challenging the legality of the impugned notice/proceedings of the third respondent, dated 16.02.2016, threatening him with sealing of the premises, seizure off the articles, etc., has filed this writ petition.

2. The petitioner in the affidavit filed in support of this writ petition would aver among other things that he purchased a property situated in Ward C, Block No.14, T.S.No.22/1-A, R.S.No.49/A, Malli Road, Kodaikanal Town, Dindigul District, through a registered sale deed dated 05.12.1995, vide Document No.2502/1995 on the file of the Sub Registrar, Kodaikanal. According to him, at the time of effecting the purchase, a residential building was in existence and though the property admeasures to an extent of 9 acres 60 cents, the constructed area is only 7% of the total land area.

3. The petitioner states that he obtained the building licence and plan permission on 24.09.2003 which was renewed once again on 28.02.2011, to enable him to put up a residential building. The petitioner further states that he has renovated the existing residential building by putting up six cottages and also added extra amenities to accommodate the requirements of general public. He categorically states that renovations were done as per the approved plan and he is running the business under the name and style of 'Wood Lands Resorts Private Limited'.

4. The petitioner on receipt of the impugned notice/proceedings dated 16.02.2016 from the third respondent, submitted a representation dated 08.03.2016 stating among other things that the existing superstructure was more than 20 or 25 years old and the invocation of the provisions of the Tamil Nadu Town and Country Planning Act is not applicable to a Hill Station, namely, Kodaikanal, which is governed by the Tamil Nadu District Municipalities (Hill Stations) Buildings Rules, 1993 and by way of abundant caution also, he filed a revision before the respondents 1 and 2 challenging the legality of the impugned notice/proceedings dated 16.02.2016 and the same is pending and till such time, no action can be taken and also prays for quashment of the said notice/proceedings dated 16.02.2016.

5. The learned Counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that the superstructure occupied nearly 7% of the total land area of 9 acres 60 cents and the petitioner has merely putting up six cottages for the purpose of utilisation by the tourists who are visiting the Hill Station.



6. It is further submission of the learned Counsel for the petitioner that the provisions of the Tamil Nadu District Municipalities (Hill Stations) Buildings Rules, 1993, alone have application and as such, the impugned notice/proceedings dated 16.02.2016 is liable to be quashed.

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7. This Court heard the submissions of Mr.VR.Shanmuganathan, learned Special Government Pleader, who accepts notice on behalf of the first respondent and Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader, who accepts notice on behalf of the respondents 2 and 3 and they would submit that as per the original planning permission, dated 24.09.2003, the petitioner is authorised to put up a residential building with a ground floor - 135.00 Sq. Mts and a first floor - 95.00 Sq. Mts. and in all, 230.00 Sq. Mts and the building licence was renewed for a period of one year from 28.02.2011 to 27.02.2012, vide proceedings of the second respondent dated 28.02.2011, in and by which, the petitioner was authorised to put up a residential building with a ground floor - 121.50 Sq. Mts. and a first floor - 121.50 Sq. Mts., each and contrary to the said planning permission, had put up a construction admeasuring to an extent of 1158.30 Sq. Mts. of ground floor and 695.80 Sq. Mts. of first floor and also used it for commercial purposes in the form of Resort to accommodate the tourists who are visiting Kodaikanal and as such, he has thrown all norms to wind and is also guilty of gross violation of relevant laws and as such, he is not entitled to any relief and therefore, they pray for the dismissal of this writ petition with exemplary costs.

8. In response to the said submission, the learned Counsel for the petitioner has drawn the attention of this Court to the common order passed by the Division Bench of this Court in ***I.Ifthiqar Ashiq and others v. The Deputy Director of Town and Country Planning, Madurai*** [W.P(MD)Nos.14672 of 2015, etc., batch, decided on 07.10.2015] and would submit that the scope of Section 217-C of the Tamil Nadu Town and Country Planning Act, 1971, came up for consideration and the writ petitions were disposed of with a direction to consider the appeals filed by the petitioners therein and initially, took up the applications and pass appropriate orders, with a further direction to dispose of the appeal within a stipulated time and since the petitioner has submitted a revision to the first respondent on 30.07.2016, the third respondent may be directed to defer the proceedings till the disposal of the revision and prays for appropriate orders.

9. This Court paid it's best attention to the rival submissions and perused the materials available on record.

10. The petitioner was initially granted the building licence by the second respondent on 24.09.2003 to put up a residential



building and as per the said permission, the petitioner is authorised to put up a residential building with a ground floor - 135.00 Sq. Mts and a first floor - 95.00 Sq. Mts. and in all, 230.00 Sq. Mts.

11. The conditions also stipulate among other things that if the building is constructed in deviation to the approved plan or deviated to the licence conditions or the licence obtained in contrary to the Tamil Nadu District Municipalities Act or the licence obtained on the basis of false information, the licence will be cancelled or suspended. The said permission is valid for a period of one year from 24.09.2003 to 23.09.2004. Thereafter, the petitioner obtained the renewal from 28.02.2011 to 27.02.2012, vide proceedings of the second respondent dated 28.02.2011 and he was permitted/authorised to put up a residential building with the following extent:

"Ground Floor	-	121.50 Sq. Mts.
First Floor	-	121.50 Sq. Mts.
Total	-	243.00 Sq. Mts."

12. Admittedly, the petitioner had put up six cottages under the guise of renovation and used it for commercial purposes and therefore, the impugned notice/proceedings came to be issued by the third respondent.

13. The petitioner in response to the same, submitted a representation dated 08.03.2016 stating that since the constructed area is only 7% of the total land area, his name is to be removed from the unauthorised constructions and the second respondent, in response to the said representation, sent a reply dated 23.03.2016, informing the petitioner, the following:

"i. The permission mentioned in your letter is to construct residential buildings only. But, you have constructed Commercial/Hotel Building.

ii. At present all the buildings in your premises is used for commercial purpose. For these buildings you have not obtained planning permission from the appropriate authority.

Therefore, notice was issued to your Hotel Building.

Hence, your reply is not acceptable and also it is hereby informed to you, action would be initiated as mentioned in the notice dated 16.2.2016 after lapse of the period mentioned in the notice."

14. The petitioner challenging the legality of the impugned notice dated 16.02.2016, filed a revision on 30.07.2016, for acknowledgement has been produced. Thereafter, the third respondent sent a communication, dated --.02.2016, stating that the petitioner had put up a construction of 1158.30 Sq. Mts in the



ground floor and 695.80 Sq. Mts. in the first floor and used it for commercial purpose.

15. It is very pertinent to point out at this juncture that the petitioner did not dispute the fact of violation of the building licence in the form of unauthorised and excess construction and also using it for commercial purposes.

16. The petitioner insists that the respondents have to adhere to and follow the law for initiating action, forgetting the fact that being the responsible citizen, he is also under an obligation and duty bound to adhere to rule of law and he has failed to do so and in gross and utter violation of the building licence and planning permission, put up unauthorised construction in a famous Hill Station and also using it for commercial purposes.

17. At this juncture, it is relevant to consider some of the judgments rendered by the Honourable Supreme Court hereunder:

17.1. In **Dipak Kumar Mukherjee v. Kolkata Municipal Corporation** reported in (2013) 5 Supreme Court Cases 336 : 2013 - 2 - L.W. 130 (SC), the action of the Kolkata Municipal Corporation in demolishing an unauthorised structure came up for consideration. The Honourable Supreme Court after considering it's earlier decisions in (i) **K.Ramadas Shenoy v. Town Municipal Council, Udipi** reported in (1974) 2 SCC 506; (ii) **Pratibha Coop. Housing Society Ltd. v. State of Maharashtra** reported in (1991) 3 SCC 341; (iii) **Friends Colony Development Committee v. State of Orissa** reported in (2004) 8 SCC 733; (iv) **Shanti Sports Club v. Union of India** reported in (2009) 15 SCC 705 and (v) **Priyanka Estates International (P) Ltd. v. State of Assam** reported in (2010) 2 SCC 27, held as under:

"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the



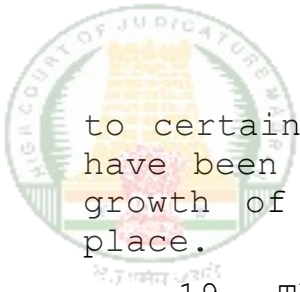
State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."

17.2. In **Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corporation of Mumbai** reported in (2013) 5 Supreme Court Cases 357, unauthorised constructions were put up in the form of residential buildings and flats and when regularisation of the same was sought, the Municipal Corporation refused to regularise the same and the Housing Society pleaded that they should not be penalised for the unauthorised construction made by the builders. The Honourable Supreme Court has taken into consideration it's earlier decisions, which include **Shanti Sports Club case** and **Priyanka Estates International (P) Ltd. case** (cited supra) and observed as follows:

"In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc., have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the concerned authorities against arbitrary regularization of illegal constructions by way of compounding and otherwise. (para 1)

8. At the outset, we would like to observe that by rejecting the prayer for regularization of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the Appellate Authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it."

18. In the case on hand, the writ petitioner knowing pretty well about the consequences of putting up unauthorised construction and that too, for commercial purposes, might have got information that no precipitative action will be taken to demolish the unauthorised construction on the ground that in respect of every such type of unauthorised constructions in the Hill Station, namely, Kodaikanal, no action has been taken and he may be right



to certain extent for the reason that if proper inspection would have been made by the concerned officials, such alarming mushroom growth of unauthorised constructions would not have been taken place.

19. The Hill Station is a very fragile area and for the purpose of putting up constructions, crores and crores of trees are being cut and the earth is also removed to create space for undertaking such constructions. In the event of natural disaster, there is every likelihood of land slide which would definitely result in loss of human lives and properties. But unfortunately, the concerned authorities, for the reasons best known to them, had turned their blind eyes and only on account of the orders passed by this Court in W.P.No.32747 of 2007, W.P(MD)No.925 of 2011 and W.P.No.268 of 2004, action is being taken against the unauthorised constructions and developments.

20. In the considered opinion of this Court, the petitioner is not entitled to any sympathy or indulgence from this Court in the light of his conduct of putting up a huge extent of unauthorised construction for the purpose of using it for commercial purposes.

21. Therefore, this writ petition is dismissed. If the petitioner is so advised and if it is open to him under the law, he may pursue/avail the remedy before the first respondent. No costs. Consequently, the connected writ miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(as)

/True Copy/

Sub Assistant Registrar

rsb

To

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

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

<https://hcservices.ecourts.gov.in/hcservices/>
3. The Member Secretary/The Commissioner,
Kodaikanal Municipality,
Kodaikanal Local Planning Authority,



Kodaikanal,
Dindigul District.

+1cc to Mr.N.SATHISH Advocate Sr.No. 61175

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PRE-DELIVERY ORDER MADE IN
W.P (MD) No.19434 of 2016
and
W.M.P (MD) No.14018 of 2016

18.10.2016