



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

WP (MD) No.21015 of 2016

and

WMP (MD) Nos.15022 and 15023 of 2016

M.Premavathi

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Director of Town & Country Planning,
No.807, Anna Salai,
Chennai - 600 002.

3.The President/District Collector,
Tanjore Local Planning Authority,
Tanjore, Tanjore District.

4.The Commissioner,
Kumbakonam Municipality,
Kumbakonam, Tanjore District.

5.The Member Secretary,
Kumbakonam Local Planning Authority,
93/8, Kamarajar Salai,
Kumbakonam, Tanjore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to impugned order passed by the 5th Member Secretary, Kumbakonam Local Planning Authority in Na.Ka.No.407/2015/Ku.Oo.Thi.Ku dated 18.10.2016, and quash the same.

For Petitioner : Mr.Isaac Mohanlal, Senior counsel
for Mr.T.Cibi Chakraborty

For Respondents : Mr.S.Chandrasekar (for R1 to R3)
Government Advocate
Mr.M.Raja Rajan (for R4 and R5)



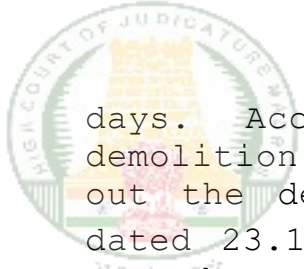
O R D E R

(Order of the Court was delivered by **M.V.MURALIDARAN, J.**)

The instant Writ Petition is filed by the petitioner for Certiorari calling for the records relating to impugned order passed by the 5th respondent/Member Secretary, Kumbakonam Local Planning Authority in Na.Ka.No.407/2015/Ku.Oo.Thi.Ku dated 18.10.2016, and Quash the same.

2.The writ petitioner is the owner of the commercial building complex at Town Survey No.93/1, 93/2 Block 13, Ward 2 of Someswaran Sannathi Street, Kumbakonam Taluk, Thanjavur District. She constructed the building therein as per the building plan approval No.109/12/D2 for the ground and 1st floor vide the proceedings in Ka.Ma.No.112/12/D2 dated 28.11.2012 of the 4th respondent. According to the petitioner, when the construction was nearing its completion, she decided to construct one more floor for lodging and boarding, but there is no averments in this regard whether she constructed the 2nd floor or not. Subsequently she entered into a rental agreement with her son namely Rajesh for running a hotel and restaurant in the name and style of "M.P Temples Inn and Sri Gowri Krishna" respectively and got the rental agreement registered by the Assistant Commissioner, Commercial Taxes, Kumbakonam vide registration No.8525/13-14.

3.The further case of the petitioner is that she received a notice from the 5th respondent dated 22.06.2015 to lock and seal the commercial buildings as deviations were there in the construction by violating the rules and regulations and without obtaining permission from the competent authorities. Further, the 5th respondent also initiated proceeding in Na.Ka.No.407/2015 dated 18.11.2015 stating that the building is indented to be locked and sealed under section 56 (2-A) of The Tamil Nadu Town and Country Planning Act, 1971 with a further instructions to stop the business within a period of one week. Though the son of the petitioner met the 5th respondent and explained the facts, on 27.11.2015 the 5th respondent locked and sealed the hotel building and affixed a notice to that effect. Feeling aggrieved, the petitioner filed an Appeal before the 1st respondent under Section 80 of the Tamil Nadu Town Country Planning Act, 1971, on 20.11.2015 and sought for the direction to the 5th respondent to de-seal the hotel premises with a request to carry out the rectification of the deviation in the building. Moreover, by the letter No.24543/Na.Va.4-1/2015 dated 22.12.2015 forwarded a report of the 2nd respondent dated 18.12.2015, consisting of the shortfalls in the said buildings and instructed her to submit her explanation along with the demolition plan within a period of 15

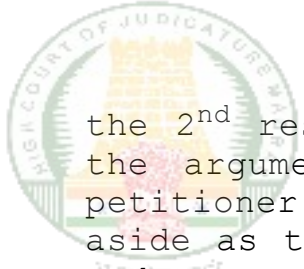


days. Accordingly, the petitioner submitted her plan for demolition of the said building and sought 6 months time to carry out the demolition and rectification process as per her letter dated 23.12.2015. As the petitioner requested the 1st respondent to de-seal the building for commencing demolition and rectifications process, necessary instructions were given to the 3rd respondent and the 5th respondent by the 1st respondent to de-seal the building vide the letter No.24543/UD4-1/2015-1, dated 04.01.2016. Subsequently on 07.01.2016, the 5th respondent unlocked and de-sealed the hotel building. Pursuant to unlock and de-seal, the petitioner demolished and rectified the shortfalls as pointed out by the 2nd respondent as stated in her affidavit. After rectifying the said defects on 02.02.2016, the petitioner submitted a Revised Plan for approval along with documents to the 2nd respondent through the 5th respondent. Moreover, along with the revised plan, the petitioner also made a request to refer the matter to the Empowerment Committee of the Directorate of Town and Country Planning for claiming exemptions.

4.It is the further case of the petitioner that as per the proceeding in Na.Ka.No.880/15/Ku.Oo.Thi.Ku dated 23.12.2016, the 5th respondent forwarded the revised plan of the petitioner to the 2nd respondent and the same is pending. As the facts are being so, the 5th respondent issued the impugned proceedings in Na.Ka.No.407/2015 Ku.Oo.Thi.Ku dated 18.10.2016 by stating that the building of petitioner is indented to be locked and sealed under section 56 (2-A) of the Tamil Nadu Town and Country Planning Act, 1971 within a period of one week. The petitioner has pointed out that the impugned order might be issued on the basis of the report of the 3rd respondent dated 30.09.2016 under the impression that the petitioner had not rectified the deviations within the time of 6 weeks. So, the petitioner prays for the Writ of Certiorari to call for the records pertaining to the order passed by the 5th respondent in Na.Ka.No.407/2015 Ku.Oo.Thi.Ku dated 18.10.2016 and to quash the same.

5.We heard Mr.Isaac Mohanlal, learned senior counsel for Mr.T.Cibi Chakraborty, learned counsel appearing for the petitioner and Mr.S.Chandrasekar, learned Government Advocate for the respondents 1 to 3 and Mr.M.Raja Rajan, learned counsel appearing for the respondents 4 and 5.

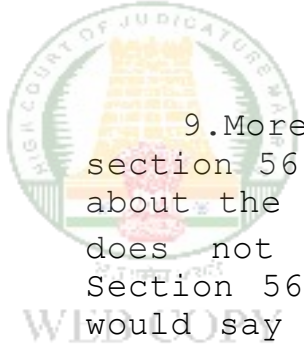
6.The learned Senior Counsel for the petitioner has submitted that the impugned order passed by 5th respondent is wholly misconceived as the same has not adverted the pendency of the revised plan of the petitioner dated 02.02.2016 for approval to



the 2nd respondent through the 5th respondent. The second fold of the arguments of the learned Senior Counsel appearing for the petitioner would be that the impugned order is liable to be set-aside as the same has not complied with the stipulations has made under section 56(1) of the Tamil Nadu Town and Country Planning Act, 1971. Further, the learned Senior Counsel for the petitioner pointed out that the appropriate planning authority has served on the owner a notice requiring him within such period being not less than one month as may be specified therein after the service of this notice to take such steps as may be specified in the notice. The learned Senior Counsel for the petitioner has contended that the impugned notice of the 5th respondent is arbitrary as the 5th respondent has not recorded his satisfaction prima-facie to initiate action as per the Act, because section 56(2-A) has stipulated that the appropriate planning authority may take action if he prima-facie satisfied. Here, in the impugned order, the 5th respondent has not recorded his satisfaction for the initiation of the legal action under section 56 (2-A) to lock and seal of the buildings.

7. Per contra, the learned Government Advocate has submitted that the issuance of the impugned notice by the 5th respondent is in accordance with the provisions of the Tamil Nadu Town and Country Planning Act, 1971. Further he also contended that the impugned notice is issued only after complying with the provisions of the said act and also the principles of natural justice.

8. After the careful perusal of the entire materials available on record and also the arguments advanced by either side, it is the case that the notice of the 5th respondent is issued for the unauthorized development on the buildings carried out by the petitioner as stated supra. Further, it is not disputed by the respondents that the petitioner has preferred a revised building plan for approval with relevant documents to the 2nd respondent through the 5th respondent on 02.02.2016. As per the proceedings of the 5th respondent dated 23.02.2016 it was forwarded to the 2nd respondent with recommendations. The perusal of the letter of the 5th respondent dated 23.02.2016 in Na.Ka.No.880/2015/Ku/Oo/Thi.Ku would show that the revised plan has been forwarded with some recommendations. At the same time the impugned notice has not referred the own letter of the 5th respondent dated 23.02.2016. The 5th respondent has no say as to why her letter dated 23.02.2016 has not been referred in the impugned notice. There could not be any justification on the part of the 5th respondent to issue the impugned notice without getting finalization of the application of the petitioner for the revised plan that too before the 5th respondent.

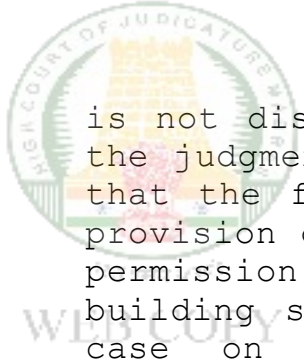


9. Moreover, it is on the part of the 5th respondent as per section 56(2-A), to record his satisfaction in the impugned notice about the reasons for the lock and seal, but the impugned notice does not consist of the satisfaction of the 5th respondent. Section 56(2-A) of Tamil Nadu Town and country planning Act 1971 would say that if the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice serve under sub-section (1), within the time specified therein, the appropriate planning authority if prima facie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under section 49 or appeal under section 79 or any litigation before a court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises.

10. So, it is imperative on the part of the appropriate planning authority that he has to record his prima facie satisfaction to discontinue the use of such land or building by locking and sealing the premises. But in the instant case when the impugned order is subjected for careful perusal, it does not consist of the prima facie satisfaction for the issuance of the impugned order.

11. In this regard the Hon'ble division bench of this Hon'ble court in Parameshwari vs Commissioner, Coimbatore Corporation, Coimbatore District and another reported in 2016 (3) MLJ 385 has held as follows. Section 56 of the act 1971 read with section 296 of Act 1981 contemplate that prior permission before commencement of construction- In event there is slight deviation or modification, owner of building, who has obtained permission to commence construction, may make application under section 56(1)(d) (ii) of Act, 1971- Sub section (2-A) of section 56 of Act 1971 provides that if owner or occupier of land or building has not been discontinued within time specified, appropriate planning authority may take action to discontinue use of such land or building by locking and sealing premises irrespective of pendency of any application under section 49 or appeal under section 79 of Act 1971- section 56(3) of Act 1971 provides that any person aggrieved by such notice may apply for permission under section 49 of Act 1971 for retention of land or any building or works- All these provisions are applicable only in case here there is slight modification or deviation in building already constructed with prior permission of competent authority under law.

12. However, in the instant case the pendency of the revised building plan sent to the 2nd respondent through the 5th respondent



is not disputed. At the same time this court keeps in mind that the judgment rendered in the aforesaid reported case is also held that the failure on the part of the petitioner to point out any provision of law which permits commencing, of construction without permission and then seeking for approval of the unauthorized building subsequently after long period, would differentiate the case on hands. In the instant case, the petitioner has continuously taken action to get her building plan approved from the early stage of construction. So, the petitioner has commenced her construction with the permission of the authority concerned and she can be shown leniency to some extent.

13. In view of the aforesaid discussions, this court is of the considered view that the pleas raised on behalf of the petitioner as against the impugned order especially the non-recording of the satisfaction of the 5th respondent and the pendency for the approval of the revised plan are acceptable and therefore the impugned notice is unsustainable and needs interference of this Court.

14. In the result:

(a) the writ petition is allowed by setting aside the impugned order passed by the 5th respondent/Member Secretary, Kumbakonam Local Planning Authority in Na.Ka.No.407/ 2015/Ku.Oo.Thi.Ku dated 18.10.2016;

(b) the Director, Town and Country Planning shall pass orders on the revised plan submitted by the petitioner within a period of 6 months;

(c) the petitioner shall co-operate with the Director by rectifying defects anything brought to the notice of the petitioner by the Director; and

(d) until final order is passed by the Director, the impugned notice shall be kept in abeyance. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/



To

1. The Secretary,
The State of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

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Kumbakonam, Tanjore District.

5. The Member Secretary,
Kumbakonam Local Planning Authority,
93/8, Kamarajar Salai,
Kumbakonam, Tanjore District.

+1 cc to Mr.T.Cibi Chakraborty, Advocate, SR.No.70383

+1 cc to Mr.M.Rajarajan, Advocate, SR.No.70019

+1 cc to Special Government Pleader, SR.No. 70287

**WP (MD) No.21015 of 2016
and**

**WMP (MD) Nos.15022 and 15023 of 2016
17.11.2016**

vsa/skn

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