

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

WP.No.30026/2017

B.J.Wilson

...

Petitioner

VS

1.The Chairman & Secretary to the Government
State of Puducherry, Puducherry Town &
Country Planning Authority, Jawahar Nagar,
Boomianpet, Puducherry 605005.

2.The Member Secretary
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry 605005.

3.The Inspector of Police
Orleanpet Police Station
Puducherry.

4.Mrs.Jayachitra

...

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India
praying for a writ of mandamus directing the respondents 1 and 2 to
demolish the illegal construction of the building in Plot No.93, Main Road,

Thirumal Nagar, Kosapalayam, Puducherry,-13, which was constructed by the 4th respondent, against the regulatory rules of Puducherry Planning Authority and in violation of the approved plan granted vide permit No.PPA/675/237/Z [S8]4] 2013/ dated 27.05.2013 and direct the 3rd respondent to ensure the safety and protection to the petitioner and his family members.

For Petitioner : Mr.A.Arulmozhi

For R1 to R3 : Mr.B.Nambiselvam, AGP
[Pondy]

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mr.B.Nambiselvam, learned Additional Government Pleader [Puducherry] accepts notice on behalf of the respondents 1 to 4.

2 The petitioner, on an earlier occasion, had approached this Court by filing WP.No.9358/2014, praying for issuance of a writ of mandamus, directing the respondents 1 to 3 therein / respondents 2 and herein and another, to take action against the 4th respondent herein for violating the Regulatory Rules of Puducherry Planning Authority and to protect the petitioner's property from damage and trespass by the 4th respondent therein engaged in construction work at Plot No.93, Main

Road, Tirumal Nagar, Kosappalayam, Puducherry-13.

3 The Hon'ble First Bench of this Court, vide order dated 31.01.2017 has disposed of the said writ petition, directing that the application for regularisation submitted by the 4th respondent be disposed of within a maximum period of one month from the date of receipt of a copy of the said order and depending same the fate of the application, if the regularisation does not take place, the 4th respondent will be called upon to remedy the position within one month from the date of the order, after causing inspection and if the rectification has not been carried out, action to be taken in accordance with law within the stipulated time.

4 The learned counsel for the petitioner has drawn the attention of this Court to the proceedings of the 2nd respondent dated 06.04.2013 and 12.04.2017 respectively and would submit that since the 4th respondent has carried out the construction with deviations from the revised approval plan, the deviation notice was issued to stop all the works immediately and subsequently, the 4th respondent has submitted an application on 15.04.2014 seeking revised plan approval for three-storeyed residential building in the said location and the site was inspected and it

was observed that the set backs were beyond the compoundable limits of the authority and therefore, the revised proposal submitted by the 4th respondent was rejected and the demolition notice was issued on 28.04.2014 and challenging the same, she moved the 1st respondent by way of an appeal. The learned counsel would also submit that the 1st respondent, vide proceedings dated 08.04.2017, after scrutinising the building plan application submitted by the 4th respondent dated 15.04.2014, made the following observation, viz., *"Necessary action against the said deviated/unauthorised construction carried out by Tmt.Jeyachitra will be taken by the Puducherry Planning Authority in accordance with law, soon after the disposal of the appeal by the Puducherry Town Country Planning Board"* and based on which, the approval has been rejected and the appeal filed before the 1st respondent by the 4th respondent is yet to be disposed of and taking advantage of the same, the 4th respondent continues to be in occupation of a wholly illegal construction and hence, prays for appropriate orders.

5 The learned counsel appearing for the 4th respondent seeks time to get instructions.

6 The Court has considered the rival submissions and also

perused the materials placed before it.

7 Admittedly, the 4th respondent aggrieved by the Demolition Notice dated 28.04.2014, issued by the 2nd respondent, has filed an appeal before the 1st respondent and it is said to be pending. It is not clear whether any interim order is in operation in the said appeal.

8 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 1st respondent to put the petitioner as well as the 4th respondent on notice and thereafter, dispose of the appeal petition filed by the 4th respondent on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order and depending upon the result of the disposal of the said appeal, the 2nd respondent shall take further and appropriate steps in accordance with law. It is also made clear that if either the petitioner or the 4th respondent is aggrieved by the said order, they are at liberty to work out their remedy in accordance with law before the competent Forum.

M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,
AP

9 The writ petition stands disposed of with the above direction.

No costs.

(M.S.N.J.,) (N.S.S.J.,)
22.11.2017

Internet : Yes

AP

To

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