

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

Tuesday, the Seventh day of November Two Thousand Seventeen

PRESENT

THE HON`BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON`BLE MR.JUSTICE N.SESHASAYEE

WMP No.30495 of 2017

IN WP.21639/2017

T.KANDASAMY,

[PETITIONER]

Vs

1 P.SELVARAJAN

[RESPONDENTS]

2 THE COMMISSIONER OF
MUNICIPAL ADMINISTRATION, MUNICIPAL
ADMINISTRATION DEPT., EZHILAGAM ANNEX, 6TH
FLOOR, CHEPAUK, CHENNAI-5

3 THE ZONAL DIRECTOR
DIRECTORATE OF TOWN AND COUNTRY PLANNING
SALEM REGION, 5, SANNATHI STREET, SALEM
DISTRICT, TAMILNADU 636 005

4 THE COMMISSIONER
ATTUR MUNICIPALITY, MUNICIPALITY OFFICE,
ATTUR, SALEM DISTRICT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Direct the TANGEDCO to restore the electricity supply to the building of the Petitioner, pending WP.No.21639/2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.AR.L.SUNDARESAN, SENIOR COUNSEL FOR M/S.AL.GANTHIMATHI, Advocate for the petitioner and of MR.A.RAJAKUMAR, Advocate for the 1st respondent and of MR.A.N.THAMBIDURAI, Special Government Pleader on behalf of the 2nd and 3rd Respondents and of MR.P.SANJAI GANDHI, Advocate for the 4th respondent, the court made the following order:-

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

The 4th respondent in the counter affidavit filed in support of the writ petition would aver among other things that this Court vide interim order dated 11.09.2017, taking note of the violation of the planning permission putting up of unauthorised and deviated construction, has directed the Tamil Nadu Electricity Board to disconnect the Electricity connection given to the Basement, 2nd and 3rd floors of the 4th respondent / petitioner herein premises within a period of two weeks from the date of receipt of copy of this order, with a further direction to file a status report and challenging the said order, the petitioner herein / 4th respondent filed the SLP No.26509 of 2017 and vide order dated 13.10.2017, the Hon'ble Supreme Court of India has taken note of the fact that the application for regularisation is pending and the writ petition was to be listed before Hon'ble High Court on 23.10.2017 and hence, granted liberty to him to raise all pleas before the High Court, with a further direction that the High court shall consider all the pleas and decide in accordance with law.

2. In the light of the said observation made by Hon'ble Supreme Court while disposing of SLP, the petitioner herein has filed the above miscellaneous petition seeking for restoration of electricity supply on the ground that his application for regularisation is yet to be disposed of.

3. Mr.A.R.L.Sundaresan, learned Senior counsel appearing for the petitioner / the 4th respondent in the writ petition would submit that the petitioner has submitted a revised building application under the newly introduced scheme of Unauthorised Building Regularisation Scheme, 2017 addressed to the Deputy Director of Town and Country Planning, Salem through Attur Municipality and in turn, it has been forwarded to Deputy Director of Town and Country Planning, Salem on 21.08.2017 and till the disposal of the application for regularisation, the Electricity supply may be restored to the premises in question.

4. Per contra, the learned counsel appearing for the 1st respondent / writ petitioner has drawn the attention of this Court to the typed set of documents and other materials and would submit that as per the building plan No.F1/45/2005 dated 25.05.2005 and building application No.F1/17/2005 dated 29.04.2005 issued by the Commissioner of Attur Municipality which was valid for a period during 25.05.2005 to 24.05.2008, granting permission to the 4th respondent in the writ petition / the petitioner herein, for the construction of ground and 1st floors, in utter violation and deviation of the same, he has not only put up construction in the basement floor but also put up an additional construction of Ground and three floors without any authorization or planning permission and not stopping to that, also using it for running a lodge.

5. It is the further submission of the learned counsel appearing for the 1st respondent / writ petitioner that the persons like the petitioner herein/4th respondent in the writ petition, who violate the law with absolute impunity, is not entitled any indulgence or leave from this Court and prays for directing the Attur Municipality to proceed further and issue lock and seal notice.

6. Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the 3rd respondent has invited the attention of this Court to the Statutory report dated 06.11.2017 and would submit that in compliance of the order passed by this Court dated 11.09.2017, the Assistant Engineer (Operation and Maintenance), TANGEDCO has disconnected a total of seven numbers of EB Service Connections from the 4th respondent premises i.e.SC No.1414D (Three Phases), SC No.1488D (One Phase), S.C.No.1421D (One Phase), SC No.1422D (One Phase), SC No.1423 D (one Phase) - a total of five electricity connections are disconnected from the basement floor; and on the second floor SC No.1428D (Three phase) - one connection and Third Floor SC No.1424D(Three phase) - one connection.

7. It is the further submission of the learned Senior counsel appearing for the petitioner herein / 4th respondent in the writ petition, that originally the petitioner herein / 4th respondent in the writ petition has submitted his request for revised building plan on 23.09.2005 and it was refused to be entertained on 07.10.2005 on the ground that it comes within the purview of Deputy Director, Town and Country Planning and admittedly, the petitioner herein did not pursue his remedy thereafter. The petitioner herei was issued with a notice under Section 205(1) (2) of District Municipalities Corporation Act, 1920 on 14.08.2014, it was followed by yet another notice dated 25.08.2014 under Section 205(3) of the said Act.

8. The Deputy Director of Town and Country Planning, Salem has also issued lock and seal notice dated 17.11.2014 to the petitioner herein / 4th respondent in the writ petition under section 56 & 57 of Town and Country Planning Act, 1971 and thereafter, nearly after 3 years, the petitioner submitted his plea for revised building application seeking for regularisation of unauthorised construction under the newly introduced scheme of Unauthorised Building Regularisation Scheme, 2017 and it has been forwarded to the Deputy Director of Town and Country Planning for perusal and further action on 21.08.2017. The Attur Municipality / 2nd respondent herein / the 3rd respondent in the writ petition also requested the Deputy Director, Town and Country Planning Salem, informing that they are ready to put lock and seal on the premises and will extend their maximum co-operation.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. It is an undisputed fact, the petitioner herein / 4th respondent in the writ petition was accorded planning permission to

put up Ground + First Floors only and in violation of the same, he has constructed Basement as well as the 2nd and 3rd floors which are totally unauthorised. The basement floor measures about 8,300 Sq.ft., the 2nd floor measures 8,300 Sq.ft. and the third floor measures 8,300 S.ft. and thereby he has put up unauthorised construction to an extent of 24,900 Sq.ft. and not stopping to that, he is using it for running a lodge.

11. The primordial submission of the learned senior counsel appearing for the petitioner herein / 4th respondent in the writ petition is that since the revised building plan application has been submitted on 11.07.2017 and it is under process, the disconnection of electricity supply to Basement, 2nd and 3rd floor can be restored forthwith.

12. It is to be pointed out at this juncture that the building license was given by Attur Municipality for construction of commercial building consisting of Ground + 1st Floors only and even three months thereafter, the deviation was noted by the said local body, the petitioner herein / 4th respondent in the writ petition was issued with notice under Section 205 (1) (2) of the District Municipalities Act, 1920 while the construction was going on and it was also followed by deviation notice dated 02.09.2005 under Section 205(3) of the District Municipalities Act, 1920. The petitioner was also charge sheeted for having done so before the Court of Judicial Magistrate and the petitioner herein / 4th respondent in the writ petition was found guilty and was imposed with a fine of Rs.300/-.

13. The Attur Municipality once again issued a notice dated 13.07.2006 under Section 317(c) and 319 of Tamil Nadu District Municipalities Act, 1920 for confirmation of the offence regarding non-compliance of the building rules and on 23.09.2005, the petitioner herein had submitted the revised building plan to Attur Municipality seeking approval and it was returned on 07.10.2005 on the ground that Jurisdiction regarding revised building plan comes within the purview of the Deputy Director Town and Country Planning and admittedly, the petitioner herein did not pursue the same. The petitioner was further issued with a notice dated 14.08.2014 under Section 205(1)(2) of the Tamil Nadu District Municipalities Act, 1920, which was followed by yet another notice dated 25.08.2014 under Section 205(3) of the same Act and it was followed by lock and seal notice dated 17.11.2014 by the Deputy Director of Tamil and country planning under Section 56 and 57 of Town and Country Planning Act, 1971 and nearly 3 years thereafter, the petitioner has submitted the revised building application seeking regularisation of the unauthorised construction and it has been once again forward to the Deputy Director, Town and Country Planning who issued the lock and seal notice on 17.11.2014.

14. The above said fact would disclose that the petitioner herein has no respect for law and though, even at the time of construction, deviation was noted, the Attur Municipality has

issued notice on 02.08.2005 and the petitioner ignored the same and proceeded with the construction and completed the same and also using it for running a lodge. The Hon'ble Supreme Court of India in the decision reported in **2004 [8] SCC 733, [Friends Colony Development Committee Vs. State of Orissa and others]**, has considered the issue relating to unauthorised construction which is deviated from sanction plan and also seeking regularisation of the same by levying compounding fees and has held as follows:-

" The material on record discloses a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorised construction in the city of cuttack. Builders violate with impunity the sanctioned building plans and indulge in deviations. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and Non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorised constructions, but who failed in doing so either by negligence or due to connivance.

In the present case, the builder added an additional fifth floor on the building which 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.

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. But for that reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. The power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of 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 public health, safety, morals or general welfare and ecological considerations.

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 where the benefit gained by demolition would be far less than disadvantage suffered. Deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. Deviations by professional 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. The State Government should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensation and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.

15. In 2016 (3) SCC 206 [**Babita Badasaria & others Vs. Patna Municipal Corporation & others**] once again the issue relating to unauthorized construction by compounding of the illegal construction by paying compounding fee came up for consideration and the Hon'ble Supreme Court of India had taken note of the fact that there was enormous deviation from the sanctioned plan in construction of multi-storeyed building and found no reason to change our mind and allow to keep the illegal construction which is contrary to law.

16. In the light of the reasons assigned above, this Court is not inclined to order restoration of Electricity Supply to the premises. Thus, the miscellaneous petition is dismissed.

17. However, the petitioner is at liberty to pursue the revised building application dated 11.07.2017 and the Deputy Director of Town and Country Planning shall process the same in accordance with law.

-sd/-
07/11/2017

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE COMMISSIONER OF
MUNICIPAL ADMINISTRATION, MUNICIPAL
ADMINISTRATION DEPT., EZHILAGAM ANNEX, 6TH
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ATTUR MUNICIPALITY, MUNICIPALITY OFFICE,
ATTUR, SALEM DISTRICT

C.C. to M/S.AL.GANTHIMATHI Advocate on payment of necessary
charges

The Special Government Pleader, High Court, Madras - 104.

C.C. To MR.A.RAJAKUMAR, Advocate on payment of necessary charges

C.C. To MR.P.SANJAI GANDHI, Advocate on payment of necessary
charges

Order
in
WMP.30495/2017

in
WP.21639/2017

Date :07/11/2017

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RR 15/11/2017