

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.Nos.22151 and 22152 of 2017
&
WMP.Nos.23183 to 23186 of 2017

S.Mohamed Ali Jinnah ... Petitioner in both the
Writ Petitions

Versus

1. The Government of Tamil Nadu
rep.by its Secretary
Municipal Administration and
Water Supply Department,
Secretariat, St George Fort,
Chennai.
 2. The Commissioner
Kodaikanal Municipality
Kodaikanal, Dindigul District.
 3. The Director of Town and Country
Planning, No.807, Anna Salai
Chennai 600 002. ... Respondents in all WPs
- ***R3 impleaded Suo motu as per
the order dated 21.08.2017 made
in WP.No.22151 & 22152 of 2017

Common Prayer : Writ petitions filed under Article 226 of the
Constitution of India praying for issuance of a writ of
certiorari calling for the records of the impugned order passed
by the 2nd respondent issued under sections 56 and 57 of the
Tamil Nadu Town and Country Planning Act, 1971, in
Ka.Ma.No.67/2012/F1, Ka.Ma.No.68/2012/F1 dated 08.08.2017 and
quash the same as illegal.

For Petitioner : Mr.M.Purushothaman
in both WPs

For Respondents : Mr.P.Sanjay Gandhi,
in both WPs Additional Government Pleader

COMMON ORDER

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

By consent, the writ petitions are taken up for final disposal and this Court, on going through the contents of the affidavits filed in support of these writ petitions as well as the typed set of documents, is of the view that the Director of Town and Country Planning, is to be arrayed as one of the respondents and accordingly, the said official is suo motu impleaded as the 3rd respondent in this writ petition and the Registry is directed to carry out necessary amendment in the Cause Titles of the respective writ petitions.

2. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the respondents.

3. The petitioner in the affidavits filed in support of these writ petitions would aver among other things that he had originally applied for proper planning permission for construction of a building in Kodaikanal Town, Ward No.C, Block No.1, Shanmugapuram, Town Survey Nos.5/1C and 5/1B and the 2nd respondent, vide Building Permission in BL.Nos.77/2012 and 76/2012 dated 08.06.2012 had accorded permission. According to the petitioner, he has put up the construction in compliance of the said building plan license and he did not make any further construction and he has also sold out the vacant land. The petitioner would also aver that after some time, due to the requirement of his family members, he made a little more further construction in the building plan in BL.No.77/2012 and is using the same. It is the case of the petitioner that Kodaikanal Township is a famous tourist spot and on account of the same, it has been felt that the Master Plan for the Kodaikanal has to be suitably amended to accommodate the needs of the Tourism Industry without affecting the environment and scenic beauty of the Hill Station and accordingly, the Master Plan has been amended vide G.O.Ms.No.147, Housing and Urban Development [UD-4 [2]] Department dated 21.09.2016 and as per the amended Master Plan, deviation/construction can be condoned. It is the further case of the petitioner that the superstructure put up by him is also subjected to statutory levies and to his shock and surprise, the 2nd respondent has issued the Lock and Seal and notice dated 08.08.2017 and also yet another notice on the same day, cancelling the Building Plan License and challenging the legality of the same, the petitioner has come forward to file the present writ petitions.

4. The learned counsel for the petitioner would submit that insofar as the impugned notice cancelling the Building Plan, the petitioner has not been put on prior notice and challenging the impugned lock and seal notice dated 08.08.2017

issued by the 2nd respondent, the petitioner has filed a special revision petition before the 1st respondent and the same is pending and since there is a threat of demolition, the petitioner is constrained to approach this Court by filing the present writ petition and prays for appropriate protection till the disposal of the special revision petition filed before the 1st respondent.

5. Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents has invited the attention of this Court to the order dated 05.06.2017 made in WP.No.12045/2017 and would submit that in the light of the order passed in the above writ petition, action is being taken against the petitioner strictly in accordance with law.

6. In response to the said submission, the learned counsel appearing for the petitioner would submit that there are very many unauthorised superstructures / constructions both residential and commercial, exist in Kodaikanal Township and Town limits and therefore, the 2nd respondent is not justifiable in targeting the superstructure put up by the petitioner alone.

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

8. It is relevant to extract the nature of deviations pointed out in the impugned notice dated 08.08.2017 issued by the 2nd respondent :-

Sl.No	Details / Nature of the Building	Details of the Permitted Construction	Measurement of the Present Construction	Deviations
1	Residential	B.L.No.76/2012:- Ground Floor 11637 sq.m. First Floor 116.37 sq.m. B.L.No.77/2012: Ground Floor 103.87 sq.m. First Floor 119.18 sq.m.	Ground Floor 160.48 sq.m. First Floor 160.48 sq.m. Second Floor 160.48 sq.m. Tin Sheet 160.48 sq.m.	Two Building plans were merged and constructed the building as a commercial lodge building with deviations in the name of Hotel Sierra.

9. Though it is the primordial submission of the learned counsel appearing for the petitioner that in the light of the amended Master Plan, the deviated construction put up by the petitioner can be authorised, prima facie the fact appears that the petitioner in violation of the sanctioned plan, has put up the superstructure and using it for a commercial purpose, though he has obtained permission to use the said superstructure for residential purpose. This Court has come across very many cases, especially, Hill Stations like Kodaikanal, Ooty, Coonoor and other places where very many unauthorised constructions have come into being and in the event of rain and land slide, the effect will be catastrophic and there is a likelihood of heavy property damages as well as loss of lives.

10. The Hon'ble Supreme Court of India in the decision reported in 2016 [3] Scale 206 [Babitha Badasaria and Others V. Patna Municipal Corporation and others], had also observed that regarding unauthorised construction and regularisation, it cannot be set right by levying compounding fees. Even on an earlier occasion, in the judgment reported in 2004 [8] SCC 733 [Friends Colony Development Committee Vs. State of Orissa and others], the Hon'ble Apex Court has held so.

11. Be that as it may, the fact remains that the special revision filed by the petitioner under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, is pending before the 1st respondent and this Court, in the light of the above facts and circumstances is of the view that it would be suffice to direct the 1st respondent to dispose of the revision at an early date and till such time, the order of demolition passed in the impugned notice dated 08.08.2017 by the 1st respondent shall be deferred and that the electricity supply to the said premises shall also be disconnected.

12. In the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in the special revision or in this writ petition, directs the 1st respondent to put Mr.A.Mohammed Atham - petitioner in WP.No.12045/2017 [disposed of on 05.06.2017] on notice and thereafter, consider and dispose of the special revision petition filed by the petitioner on merits and in accordance with law within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the said A.Mohammed Atham and till such time, the 2nd respondent shall defer further decision to demolish the superstructure. It is made clear that till the disposal of the revision petition by the 1st respondent, the electricity supply to the premises in question shall be disconnected.

13. The writ petitions stand disposed of with the above observations and direction. No costs. Consequently, the connected miscellaneous petitions are closed.

14. In the light of the submissions made by the learned counsel for the petitioner that there are very many unauthorized constructions, especially, the superstructures which are used for business activities are existing, the respondents 2 and 3 are directed to carry out inspection and file a Status Report.

15. Call on 10.11.2017 for filing Status Report.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary
Government of Tamil Nadu
Municipal Administration and
Water Supply Department,
Secretariat, St George Fort,
Chennai.
2. The Commissioner
Kodaikanal Municipality
Kodaikanal, Dindigul District.
3. The Director of Town and Country
Planning, No.807, Anna Salai
Chennai 600 002.

Copy to:

The Superintending Engineer
TNEB., TANGEDCO/DEDC/Dindigul Distribution Circle,
Dindigul, Dindigul District.

+2cc's to Mr.M.Purushothaman, Advocate, S.R.No.60012
+1cc to the Government Pleader, S.R.No.60215

W.P.Nos.22151 and 22152 of 2017

SAI(CO)
CA(06/09/2017)