

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM

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

W.P.No.24469 of 2017
&
W.M.P.No.25848 of 2017

S.Sudarsan

... Petitioner

Versus

1. The State of Tamil Nadu
rep.by its Secretary,
Housing & Urban Development
Department, Fort St George
Chennai 600 009.
2. The Member Secretary,
Coimbatore Local Planning Authority,
Coimbatore City Municipal Corporation
Sivananda Colony, Coimbatore.
3. The Commissioner
Coimbatore City Municipal Corporation
Coimbatore.
4. S.Srinivasan

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 2 and 3 from demolishing the additional construction put up by the petitioner in his premises bearing No.B-1, Phase-I, Parsn Sesh Nestle Campus, Nanjundapuram Road, Coimbatore-641030 till final orders is passed by the respondents 2 and 3 on the application of the petitioner dated 01.04.2016 for regularisation of the additional construction and consequently direct the respondents 2 and 3 to forthwith pass orders on the application of the petitioner dated 01.04.2016 for regularisation.

For Petitioner : Mr.K.Selvaraj

For RR 1 & 2 : Mr.P.Sanjay Gandhi,
Additional Government Pleader

For R3 : Mr.R.Sivakumar

For R4 : Mr.V.Kalyanaraman for
M/s.Aiyar and Dolia

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2 ; Mr.R.Sivakumar, learned Standing counsel accepts notice on behalf of the 3rd respondent and Mr.V.Kalyanaraman, learned counsel accepts notice on behalf of the 4th respondent.

2. The petitioner would aver that his father and maternal uncle had purchased 1720 sq.ft., of house site comprised in Survey Nos.215, 216 and 552 [part] of Ramanathapuram, Coimbatore East Taluk and District, through a registered Sale Deed dated 03.03.1993. Thereafter, his father and maternal uncle have entered into a Construction Agreement with "Suburban Partnership Firm" for construction of twin Bungalow Unit, having a plinth area of 1115 sq.ft. in the plot admeasuring to an extent of 1720 sq.ft. It is further averred by the petitioner that the other legal heirs of the father and maternal uncle had leased out in favour of the petitioner and as such, he has become the owner of the said building. It is further stated by the petitioner that admittedly, he has put up an additional construction of 360 sq.ft., on the first floor of his house without any planning permission and the 4th respondent, who is on enmical terms with the petitioner, with an oblique motive, had filed WP.No.10514/2016 against the respondents 2 and 3 as well as the writ petitioner herein, praying for issuance of a writ of mandamus, directing the respondents 1 and 2 therein to proceed further in terms of their demolition notice dated 16.12.2015 and 21.12.2015 respectively and to demolish the offending portion of the construction in accordance with law and a Division Bench of this Court, while passing final orders on 04.04.2016, had disposed of the said writ petition by directing the 3rd respondent therein / the writ petitioner herein to place his case before the authorities concerned, with a further direction, directing them to take consequential action by demolishing the unauthorized portion within a period of one week thereafter.

3. The learned counsel for the petitioner would submit that the petitioner has invoked section 49 of the Tamil Nadu Town and Country Planning Act, 1971, by submitting the request for according approval/revised plan through a representation dated 08.04.2016 enclosing necessary and relevant documents and the 1st respondent, without taking note of his representation, has ordered for de-sealing of the premises for a period of six months to carry out the rectification and to obtain regularisation/approval. Despite the said application dated 08.04.2016 is pending, the respondents 2 and 3 threatened to demolish the offending construction and would further add that as on today, the said portion lies vacant and prays for appropriate orders.

4. Per contra, Mr.Sivakumar, learned standing counsel appearing for the 3rd respondent would submit that in the light of the earlier order dated 04.04.2016 made in WP.No.10514/2016/2016 and also on account of the initiation of the contempt proceedings by the 4th respondent herein, action is being taken on the deviated portion of the construction put up by the petitioner.

5. Mr.V.Kalyanaraman, learned counsel appearing for the 4th respondent would submit that the petitioner, in utter violation and disregard to the planning permission, has put up the additional structure and also leased out the same in favour of the third parties for commercial purpose and thereby, causing nuisance and hardship to the residents of the locality and in the light of the order dated 04.04.2016 made in WP.No.10514/2016, the respondents 2 and 3 may be directed to carry out the lawful exercise to demolish the offending construction.

6. This Court has considered the rival submissions and also perused the materials placed before this Court.

7. This Court, while disposing of WP.No.105514/2016 on 04.04.2016, granted liberty to the 3rd respondent therein / writ petitioner herein to place his case before the authorities and accordingly, the petitioner has submitted an application under section 49 of the Town and Country Planning Act, 1971, in the form of representation dated 08.04.2016 enclosing the documents. The petitioner also moved the 1st respondent for removal of the lock and seal and vide communication dated 20.04.2016, the premises was de-sealed for a period of six months for carrying out necessary rectification and to obtain regularisation of the building / planning permission. The primordial submission made by the learned counsel for the petitioner is that though the petitioner has submitted the application seeking for

regularisation under section 49 of the Act, it is yet to be given disposal and in the interregnum, steps are being taken to demolish the offending construction and in that event, the application submitted by the petitioner may become infructuous. However, it is the submission of the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned standing counsel appearing for the 3rd respondent would submit that since the contempt proceedings have already been initiated for non-compliance of the order passed in WP.No.10514/2016, they are taking action.

8. This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner in his application / representation dated 08.04.2016, directs the 2nd respondent to entertain the said application / representation, if the papers are otherwise in order and after putting the 4th respondent on notice, shall dispose of the said application on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order and till such time, the respondents 2 and 3 shall defer further decision. It is also made clear that the petitioner shall not put up any additional construction or alter the physical features and shall not create any third party rights in respect of the property/superstructure in question till the disposal of the application submitted by him for regularisation of the offending construction/approval of the revised plan.

9. The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

AP

To

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

WEB COPY

2. The Member Secretary,
Coimbatore Local Planning Authority,
Coimbatore City Municipal Corporation
Sivananda Colony, Coimbatore.

3. The Commissioner
Coimbatore City Municipal Corporation
Coimbatore.

+lcc to Mr.K.Selvaraj, Advocate, S.R.No.65709
+lcc to Mr.R.Sivakumar, Advocate, S.R.No.66074
+lcc to M/s.Aiyar and Dolia, Advocate, S.R.No.66977
+lcc to the Government Pleader, S.R.No.66643

W.P.No.24469 of 2017

CS IV
CA(18/09/2017)



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