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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2017

Pronounced on : 30.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)No.2232 of 2017 (PD)

and

CMP(MD)No.10913 of 2017

J.Vasantharajan

... Petitioner/Petitioner

Vs.

1.The Principal Secretary,
Municipal Admin &
Water Supply Department,
Secretariate, Chennai - 600 009.

2.The District Collector,
Dindigul District, Dindigul.

3.The Commissioner,
Kodaikanal Municipality,
Kodaikanal, Dindigul District.

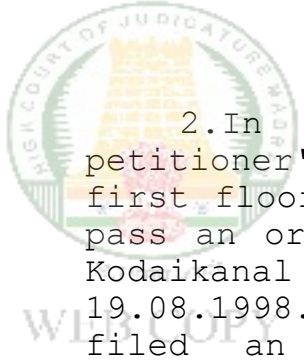
... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India and 217 (L) of the Tamil Nadu District Municipality Act, 1920, to set aside the impugned proceedings in Government Letter (Pa) No.61/Na.Ni.1/2017, dated 17.02.2017 passed by the 1st respondent signed on 20.02.2017.

For Petitioner : Mr.S.A.Ajmal Khan

O R D E R

The Revision petitioner's father Thiru.V.Jothirajan owned a certain extent of land in Resurvey Nos.56 and 57 in Fern Hill Road, Kodaikanal. He wanted to put up a construction in his land. He obtained site approval on 19.02.1992. He thereafter applied to the Commissioner Kodaikanal, Municipality for building approval to put up 7 shops in the residential shopping complex. Building sanction appears to have been granted. The petitioner's father after completing the construction of 7 shops in the ground floor, also applied to put up a first floor and submitted a revised plan to that effect. It was returned.



2. In anticipation of approval of the revised plan, the petitioner's father had proceeded ahead with the construction of the first floor. It was then that the District Collector proceeded to pass an order of rejection. Based on the same, the Commissioner, Kodaikanal Municipality passed an order of rejection, dated 19.08.1998. Questioning the same, the revision petitioner's father filed an appeal dated 09.09.1998. There was exchange of correspondence between the revision petitioner's father and the Government in this regard. On 23.02.2005, the revision petitioner's father settled the property in favour of the revision petitioner. The schedule of property of the said settlement deed describes the property as "Jothi Shopping Complex". Since Kodaikanal Municipality by then had taken up the work of removing the unauthorized constructions, the revision petitioner was called upon by the government to offer his explanation in that regard.

3. The Madras High Court also had issued a continuing Mandamus in WP.No.268 of 2004. The Local Planning Committee of Kodaikanal had also submitted its report dated 07.07.2015. In this back round, the revision petitioner submitted his review petition dated 15.10.2015, calling upon the Government not to take any coercive action against his building.

4. The core contention of the revision petitioner was that the exercise of revising the master plan was under way. He contended that the authorities concerned have already recommended for re-classifying the area in question as a commercial zone. Since there was a real and definite possibility of reclassifying the zone in question as a commercial zone, he wanted the authorities to put on hold the proposal for demolishing. He submitted one more letter dated 19.01.2017 to the Principal Secretary, Municipal Administration and Water Supply Department, Chennai. He wanted the Government to condone the building violation and regularise the construction in question. The Government gave an opportunity of personal hearing to the revision petitioner. The revision petitioner took part in the same. The Government after a consideration of the entire material on record, passed the final order vide letter No.(Pa) No.61/Na.Ni.1/2017, dated 17.02.2017. The review petition filed by the petitioner herein stood rejected. Aggrieved by the same, this statutory revision petition has been filed.

5. Heard the learned counsel for the revision petitioner.

6. The revision petitioner reiterated the contentions set out in the grounds of revision. It is beyond dispute that as on date the land in question stands classified as a primary residential zone. This Court must test the correctness of the impugned order only with reference to the current zoning classification. This Court cannot attach any weight to the hope expressed by the revision petitioner that the zoning classification would be changed and that the land in question will be reclassified as a commercial one. The revision petitioner committed a serious illegality in putting up the shopping complex in a primary residential zone. That is why the



extent of violation is mentioned as 100%. The revision petitioner admittedly has not left any set-back area on any side. The set-back violations are also 100%. The revision petitioner is not in a position to point out even a single factual error in the impugned order.

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7. In the decision reported in 1995(2) WLR 737 (*Palani Hills Conservation Council etc. Vs. The State of Tamil Nadu etc.*), this Court issued a direction for demolishing the building to the extent it was contrary to the plan sanctioned by the authority. The Hon'ble Supreme Court sustained the aforesaid direction when the matter was taken on appeal. Courts have consistently emphasized the need to strictly adhere to the planning and zoning regulations. If under the Master Plan, a sector has been reserved for a certain purpose, it is not open even to the authority to permit a different user. (vide *R.K.Mittal V. State of Uttar Pradesh*) - 2012(2) SCC 232.

8. It is beyond dispute that the revision petitioner had put up a commercial complex. This is clearly in violation of the Master Plan which is applicable to Kodaikanal. The construction put up by the revision petitioner is inherently illegal. The order impugned in this Civil Revision Petition is clearly sustainable. There are no merits in this revision petition. It stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Secretary,
Municipal Admin & Water Supply Department,
Secretariat, Chennai - 600 009.
2. The District Collector,
Dindigul District,
Dindigul.
3. The Commissioner,
Kodaikanal Municipality,
Kodaikanal, Dindigul District.

+One cc to Mr.S.A.Ajmal Khan, Advocate, SR.No.90758

skm

RL/5C/3P/SV/MMS/SAR1/17/1/2018

Order made in
CRP (MD) No.2232 of 2017 (PD)

and
CMP (MD) No.10913 of 2017
30.11.2017