



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.07.2017

Pronounced on : 22.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P (MD) No.13276 of 2017
and
W.M.P. (MD) No.10335 of 2017

E.J.Davis

.... Petitioner

vs.

1.The Principal Secretary to Government
Municipal Administration and Water
Supply (Na.Ne.1) Dept,
Secretariat, Chennai - 600 009.

2.The Member Secretary/Commissioner
Kodaikanal Municipality,
Kodaikanal Local Planning Authority,
Dindigul District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings in Government Letter (pa) No.250/Na.Ne.1/2017 dated 19.06.2017 and quash the same as illegal, arbitrary.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.T.S.Md.Mohideen, AGP

O R D E R

(Order of the Court was made by **G.R. SWAMINATHAN, J**)

The petitioner, without any regard to the Building Regulations and in violation of the master plan and the sanctioned plan and permit obtained for a residential unit, constructed lodging houses and when the violations were detected, submitted revised plan. The authorities, who are expected to protect the ecologically sensitive Kodaikanal Hill Station, rejected the plan and ultimately, the Review Petition was also rejected by the Government. The proceedings are under challenge in this writ



petition at the instance of those who are determined to destroy the Hill Station by making it a concrete jungle.

2.The writ petitioner challenges the Government Letter (pa) No.250/e.ep.1/2017 dated 19.06.2017 issued by the first respondent herein rejecting his review petition.

3.The writ petitioner is the owner of the land comprised in R.S.No.370 (part), Ward-D, Block No.7, T.S.No.4(part), Wood Wille Road, Kodaikanal. He submitted an application dated 17.07.1996 to the Municipal Commissioner, Kodaikanal, seeking permission to construct Hostel cum Single Person Apartment. He also sought site approval. Permission was accorded vide proceedings bearing R.O.C.No.3035/95/F1 dated 11.09.1996 by the Municipal Commissioner, Kodaikanal. The condition incorporated in the said proceedings reads as under:

"Site "A B C D E F G H I" is approved subject to the condition that the permissible use under Education use Zone of the Master Plan alone are allowed".

4.The expression employed in the said proceedings is "site approval for construction of Hostel cum Single Person Apartment." Even though the petitioner was only permitted to put up a Hostel cum Single Person Apartment, he is actually running a lodging house in the name and style of "Cokkers Tower". In view of the violation of the provisions of the Tamil Nadu Town and Country Planning Act, 1971 committed by the petitioner, the second respondent herein issued notices under Sections 56 and 57 of the said Act vide proceedings in Ka.Ma.No.220/2007/F1 dated 16.12.2016. The details of the violation committed by the petitioner were set out. It was pointed out that the petitioner had put up the first floor without obtaining necessary permission under Section 47 and 49 of the Tamil Nadu Town and Country Planning Act, 1971. Since the prospect of lock and seal loomed large, the petitioner submitted a representation dated 27 December 2016. Thereupon, the second respondent herein passed the order dated 16.12.2016 holding that the construction in question is deemed to be an illegal one and that therefore, the petitioner should demolish the building and restore the statusquo ante. If the petitioner failed to do so, coercive action would be taken. Thereupon, the petitioner herein moved the first respondent. The first respondent by order dated 19.06.2017 rejected the review petition. The first respondent had mentioned therein that the zone in which the petitioner had put up the construction in question is classified as 'Education use Zone'. But the petitioner is running a commercial lodge. Thus, the violation insofar as the Master Plan is concerned is 100%. Since commercial activity is not permissible in the "Education Use Zone" as laid down in the Master Plan, the first respondent rejected the review petition submitted by the petitioner. It is against this order of



rejection that the present writ petition has been filed.

5. Heard the learned counsel for the petitioner.

6. The learned counsel contended that the first respondent herein has proceeded on the premise that the petitioner had violated the provisions of Tamil Nadu Town and Country Planning Act 1971 and that is why the construction in question will have to be demolished. According to the learned counsel, the said Act is not applicable to Kodaikanal hill station. He would point out that Kodaikanal is a Municipality and is governed by the provisions of Tamil Nadu District Municipalities Act, 1920. By Tamil Nadu Act 58 of 1992 Chapter X-A was introduced with effect from 09.12.1992. The said Chapter contains building regulation in hill stations. Section 217-0 contains a overriding clause. It reads as under:

"217-0. Chapter to override other laws.- (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law, custom, usage or contract.

(2) Save as otherwise provided in sub-section (1), the provisions of this Chapter shall, be in addition to, and not in derogation of, any other provisions of this Act."

7. The learned counsel would argue that in view of the said overriding provision, the entire statutory scheme laid down in Tamil Nadu Town and Country Planning Act, 1971 would stand displaced. When the very Statute was not applicable to Kodaikanal, the question of invoking powers laid down therein cannot arise.

8. The Tamil Nadu Town and Country Planning Act, 1971 provides for planning, development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith. Section 1(2) of the said Act states that the act extends to the whole of the State of Tamil Nadu except the places declared to be contonments under Section 3 of the Contonments Act, 1924. In the face of Section 1(2) of Tamil Nadu Act 33 of 1972, it is not open to the petitioner to contend that Kodaikanal would fall outside the purview of the said Act. What has been specifically exempted are only contonments. Kodaikanal or any other hill station has not exempted from the applicability of the Tamil Nadu Town and Country Planning Act, 1971.

9. The learned counsel for the petitioner centred his entire argument on Section 217-0 of Tamil Nadu District Municipalities Act, 1920. The said provision states that Chapter X-A of Tamil Nadu District Municipalities Act will have effect notwithstanding



anything inconsistent therewith contained in the said Act or any other law, custom, usage or contract. It therefore becomes necessary to examine the scope of Chapter X-A. Chapter X-A lays down the building regulations in hill station. It does not deal with planning approvals. For developing any land, two things are required: firstly, planning approval and secondly, building approval. Planning approval is granted only by virtue of the power conferred by Tamil Nadu Town Country Planning Act, 1971. Chapter VI of the said Act contains the relevant provisions. Section 47 mandates that use and development of land must be in conformity with development plan. Under Section 49 of the Act, application for permission will have to be made for carrying out any development on any land or building. In the present case, the petitioner did submit such an application way back in the year 1996. Since as per the Master Plan, the land in question fall within Education use Zone of the Master Plan, the petitioner applied for construction of Hostel cum Single Person Apartment. That is why approval was accorded subject to the condition that permissible use under Education Zone of the Master Plan alone was allowed. Contrary to the said condition, the petitioner put up a lodging house and is running the same on commercial basis. Since the use of the land is completely at variance with what is permitted in the Master Plan, the first respondent herein passed the impugned order of rejection.

10. When a hotel by name 'Pleasant Stay' was constructed by putting up extra floors over and above what was permitted, the same was the subject matter of a litigation before a Division Bench of this Court. This Court in the judgment reported in 1995 (2) WLR 737 (Palani Hills Conservation Council etc. Vs. The State of Tamil Nadu etc.) issued a direction for demolishing the building to the extent which is contrary to the plan sanctioned by the authority. Para 36 of the said decision reads as under.

It is too well known that the purpose of preparing and publishing Master plan for a locality and particularly a Hill Station is to maintain an environmental balance. It is the duty of courts to uphold environmental laws and prevent the State and the citizens from upsetting the same by any means. The Rules are framed with the object of preserving the nature's gifts to the living beings such as air, earth, water and atmosphere and protecting them against pollution and if lost those gifts cannot be replaced or replenished. Failure to protect the same causes irreparable harm not only to the present generation but also the Posterity. That is why Articles 48-A and 51-A (g) were introduced. It has been held that the right to life embodied in Article 21 of the Constitution contemplates environment of quality. There is no ground whatever in this case for relaxing the provisions in the Master Plan



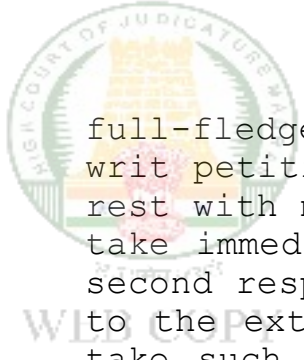
particularly with reference to F.S.I Largescale violation of F.S.I in this country came to be noticed by the Supreme Court in Pratibha Co-operative Housing Society Ltd. V.State of Maharashtra (AIR 1991 SC 1453) and condemned in the following words :-

"We are also of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings."

In that case, the F.S.I violation was found to be of more than 24,000 sq.ft. And the Court upheld the demolition of the eight floors of the building. In the present case the violation is 182% as sated earlier. It is needless to say that any Government that ignores the sanctity of a Master plan and relaxes the Rules without proper reasons is only laying the road to the deterioration of environment and thus acts against public interest.

11.The Hon'ble Supreme Court sustained the aforesaid reasoning 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.**

12.Chapter X-A of the Tamil Nadu District Municipalities Act, 1920 deals only with building regulation. It does not deal with Master Plan or grant of site approval. Therefore, it is futile to contend that Tamil Nadu Act 35 of 1972 has no application to Kodaikanal. Such an argument is taken only to enable the petitioner by wriggle out of the consequences of his illegal action. It is beyond dispute that the commercial activity carried on by the petitioner in the form of running a lodging house is not in conformity with the Master Plan that is applicable to Kodaikanal. The writ petitioner has clearly contravened the condition that was stipulated while granting site approval vide proceeding of the second respondent dated 11.09.1996. The first respondent rightly rejected the review petition filed by the petitioner. The construction put up by the petitioner is inherently illegal. The writ petitioner was permitted to construct Hostel cum Single Person Apartment. What has been put up is a



full-fledged commercial lodging house. The order impugned in the writ petition is definitely sustainable. The authorities must not rest with mere rejection of the petitioner's objection. They must take immediate steps to demolish the offending construction. The second respondent is directed to demolish the building in question to the extent it is in violation of the sanctioned plan and also take such steps as are required including locking and sealing of the premises to prevent any use other than the sanctioned one.

13. There are no merits in this writ petition. It stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government
Municipal Administration and Water
Supply (Na.Ne.1) Dept,
Secretariat, Chennai - 600 009.

2. The Member Secretary/Commissioner
Kodaikanal Municipality,
Kodaikanal Local Planning Authority,
Dindigul District.

+1cc to Mr.B.SARAVANAN, Advocate, SR. 81020

+1cc to M/S. Special Government Pleader, SR.81118

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KK/MR KKR/SAR 2/04.10.2017/ 6P- 5C/