



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.21238 of 2017
and
W.M.P.(MD)No.17514 of 2017

G.Anbarasu : Petitioner

-Vs-

The Executive Officer,
Tiruppovanam Panchayat,
Tiruppovanam,
Sivagangai District. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondent to pass orders on the revised plan submitted by the Petitioner dated 21.07.2016 in respect of their building in Survey No.34/1C1, Tiruppovanam Town, Tiruppovanam Taluk, Sivagangai District and consequently, forbear the Respondent from in anyway taking coercive action against the Petitioner premises pending final orders on the revised plan in light of the order made by this Court in W.P.(MD)No.18547 of 2017, dated 05.10.2017.

For Petitioner : Mr.M.Ajmalkhan,
Senior Counsel,
For M/s.Ajmal Associates

For Respondent : Mr.G.Muthukkannan

O R D E R

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

Heard the Learned Senior Counsel for the Petitioner and the
Learned Standing Counsel for the Respondent/Executive Officer,
Tiruppovanam Panchayat.



2. No counter is filed on behalf of the Respondent.

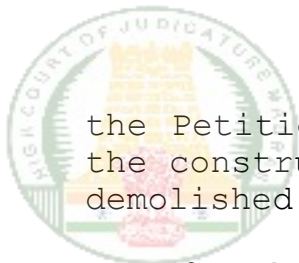
3. By consent, the main Writ Petition itself is taken up for final disposal at the stage of admission.

4. The Petitioner is a resident of Tiruppovanam Village in Sivagangai District. He and his family members own land in Survey Nos.34/1C1 and 34/1A in Tiruppovanam village, Tiruppovanam Taluk, Sivagangai District. In fact, the said land was purchased by him and his family members through a Sale Deed in the year 2012. Subsequently, they applied for planning permission before the Respondent. However, there was no action taken in respect thereof for considering the application in question.

5. The Learned Senior Counsel for the Petitioner points out that one Poovanathan filed a Civil Suit in O.S.No.60 of 2014 on the file of Learned District Munsif -cum- Judicial Magistrate, Manamadurai, seeking to declare the lands in the occupation of the Petitioner and his family members belonging to them and also sought for a relief of permanent injunction. The Interim Applications filed in the said Suit were dismissed by the Trial Court. Aggrieved by the same, Poovanathan filed Appeals in C.M.A.Nos.4 and 5 of 2015 on the file of Learned Sub Judge, Sivagangai, which were also dismissed by the Appellate Court.

6. Thereafter, the said Poovanathan filed W.P.(MD)No.18069 of 2016, praying for passing of an order of this Court in directing the official Respondents therein to take action against the construction made by the Petitioner and his family members claiming the land to be an encroachment and the buildings to be unauthorized construction. The said Writ Petition was disposed of by this Court on 08.08.2017 holding that the land in the occupation of the Petitioner and his family members is not an encroachment. However, in respect of the claim that the construction is an unauthorized one, it was observed by this Court that it would be open to the Writ Petitioner therein to submit a representation regarding the same and the Authority was directed to follow the statutory procedure and due process of law, while dealing with the allegation of the building being unauthorized one.

7. Being dissatisfied with the observation made by this Court in W.P.(MD)No.18069 of 2016, dated 08.08.2017, the Petitioner projected a Special Leave Petition before the Hon'ble Supreme Court and the same is yet to be taken up for hearing. When that be the fact situation, even before the expiry of the time to prefer an Appeal and despite the fact that the revised plan preferred by the Petitioner on 21.07.2016 is pending on the file of the Respondent, stating as though this Court had directed demolition of their dwelling house, the Respondent, without issuing any further notice, straightaway issued a final order dated 27.10.2017 under Section 216 of the Tamil Nadu District Municipalities Act, 1920, calling upon



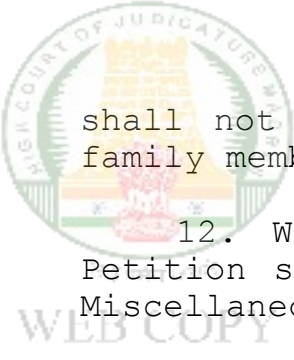
the Petitioner to demolish his construction within fifteen days, as the construction is an illegal one, failing which, the same would be demolished by the Respondent.

8. The Learned Senior Counsel for the Petitioner submits that the Petitioner, on receipt of the aforesaid Proceedings dated 27.10.2017, preferred a representation on 03.11.2017, stating as to how the order passed is an illegal one, especially, having regard to the fact that the revised plan submitted by the Petitioner is pending on the file of the Respondent, without any order, till date. In this regard, the core plea of the Petitioner is that by virtue of Section 321(11) of the Tamil Nadu District Municipalities Act, 1920, application for permission, if any, is made and if no orders are passed/were passed on the application for more than 60 days, even it is deemed that the application was allowed for a period of one year. To put it differently and succinctly, the emphatic stand (plea) of the Petitioner is that the revised plan in question was taken on file on 21.07.2016 by the Respondent and the same is not yet disposed of till date and, therefore, in Law, the same is deemed to have been allowed by virtue of Section 321(11) of the Tamil Nadu District Municipalities Act, 1920. However, the Petitioner points out before this Court that without providing any opportunity to him, the Respondent seeks to take coercive action by means of proceedings dated 27.10.2017 completely unmindful of the Deemed Approval and even without disposing of the revised plan submitted by the petitioner.

9. In response, the Learned Standing Counsel for the Respondent submits that a Site Approval is a pre-condition for scrutinizing the Building Approval. As such, planning permission is not granted.

10. In reply, the Learned Senior Counsel appearing on behalf of the Petitioner submits that application for 'Site Approval' was submitted by the Petitioner and his family members and the same is pending before the Town Planning Authority, Sivagangai District.

11. As far as the present case is concerned, the revised plan submitted by the Petitioner, which was taken on file on 21.07.2016 by the Respondent, till date, has not yet been either disposed of or returned for compliance, if any. As such, this Court, without precipitating the matter any further and also not expressing any opinion on the merits of the matter, at this stage, simpliciter, directs the Respondent to immediately take up the Petitioner's revised plan/relevant papers/file, within a period of ten days from the date of receipt of copy of this order. Thereafter, after scrutinizing the revised plan together with the other connected papers, the Respondent shall take a final call/decision in the subject matter in issue, within a period of four weeks, of course, after providing necessary opportunity to the Petitioner and his family members, by adhering to the Principles of Natural Justice. <https://hcservices.ecourts.gov.in/hcservices/> Till final orders are passed by the Respondent in the subject matter in issue, it is abundantly made quite clear that the Respondent



shall not take any coercive action against the Petitioner or his family members in respect of the premises in question.

12. With the aforesaid observation(s)/direction(s), the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To
The Executive Officer,
Tiruppovanam Panchayat,
Tiruppovanam,
Sivagangai District.

+1CC to M/S.Ajmal Associates, Advocate, SR.No. 87771

Order made in
W.P.(MD)No.21238 of 2017
Dated: 17.11.2017

SML
AM/SKN RSK/SAR 1/28.11.2017/4P/3C