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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2017

CORAM:

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

W.P. (MD) No.21511 of 2017

and

W.M.P (MD) No.17791 of 2017

George Benny

: Petitioner

.vs.

The Commissioner,
Madurai corporation,
Madurai.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned orders of the Respondent dated 01.11.2017 and order dated 09.11.2017 in No.k1v9/04751/20167 and quash the same and consequently forbear the respondent from interfering with the peaceful possession and enjoyment of the petitioner over the property pending disposal of the civil suit in O.S.No.85 of 2015 on the file of District Munsif, Madurai Town, Madurai.

For Petitioner : Mr.J.Anandkumar
For Respondent : Mr.R.Murali

O R D E R

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

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the impugned orders of the Respondent dated 01.11.2017 and 09.11.2017 in No.k1v9/04751/20167 and quash the same and consequently forbear the Respondent from interfering with the peaceful possession and enjoyment of the petitioner over the property pending disposal of the civil suit in O.S.No.85 of 2015 on the file of District Munsif, Madurai Town, Madurai.

2.Heard both sides. No counter-affidavit is filed on behalf of the Respondent/Corporation.



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

4. According to the Petitioner, one K.J.venkatachalapathy had purchased Plot No.T11 in Survey No.2A part of Ponmeni Village, Ellis Nagar, Madurai, measuring an extent of 1972 sq. ft. with the building measuring on the North 25'0, on the East 79'6, on the South 24'6 and in the West 81'6 feet from Tamil Nadu Housing Board, Ellis Nagar Scheme (vide document No.913 of 2009) and later, the said Venkatachalapathy sold the property in question to one T.Parameshwari as per document No.913 of 2009.

5. The stand of the Petitioner is that he purchased the property in question from the said T.Parameshwari on 15.11.2010 by means of Document No.4112 of 2010. In the above stated property, the Tamil Nadu Housing Board has constructed a building in the year 1987 as 'Twin House Model' and his vendors were in possession and enjoyment of the property ever since the date of allotment and the building became dilapidated and not fit for residence. After his purchase, the property was assessed to taxes etc., and he started renovation work of the property in question and immediately, at the instance of his neighbour, the Respondent/Corporation issued proceedings stating that the construction is made without any building plan. As such, he stopped the work and applied for building plan. After obtaining appropriate plan from the Respondent dated 21.03.2012, he carried out the works as per the approved plan.

6. It appears that the Petitioner's neighbour projected W.P(MD)No.8646 of 2011 with an averment that the Petitioner is constructing house without appropriate approval and at that point of time, no notice was served on the principal since the principal was in abroad. The Petitioner being a power agent had obtained the building plan approval in the meantime and further, constructed the First Floor through another approval dated 07.11.2013. That apart, as against the Petitioner, a suit in O.S.No.85 of 2015 on the file of the Learned District Munsif, Madurai, seeking the relief of permanent injunction, was filed by one Pitchai. The said suit is contested by the Petitioner.

7. It comes to be known that in W.P(MD)No.8646 of 2011, this Court had issued a direction to the Respondent/Madurai Corporation, to provide an opportunity of hearing to the Petitioner by means of a show-cause notice and after receiving his objection, necessary orders were to be passed. Only when the Respondent/Corporation pursuant to the direction issued by this Court, issued a notice calling upon the Petitioner to appear for enquiry on 31.10.2017 together with document, he came to know of the same. In consequence, he had filed a review application in Review Application SR.No.72630 of 2017 before this Court.



8. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that on 01.11.2017, a Provisional/Transitory order was passed by the Respondent/Madurai Corporation stating that within the prescribed time, the Petitioner had not shown sufficient reasons and not acted thereto and he was informed that the order was passed under Section 296(3) of Madurai City Municipal Corporation Act, 1971, wherein a reference was made under Section 282, 296 (1) & (2) of the Act, etc. Furthermore, the Petitioner was informed that without the order of the Commissioner of Madurai Corporation and also contrary to the approved plan, the Petitioner was informed that he was putting up the construction. Added further, he was also informed that he would be prosecuted etc.

9. It transpires that in continuation of Transitory/Provisional order of the Respondent/Madurai Corporation, dated 01.11.2017, the Commissioner of Madurai Corporation had passed an order on 09.11.2017 among other things requiring the Petitioner to demolish the construction put up contrary to the approved plan, failing which, the same would be removed as per Section 473 of the Madurai City Municipal Corporation Act, 1971 and penalty would be recovered from him. Admittedly, the Petitioner had not given a reply to the Respondent/Corporation either for the Provisional/Transitory Order dated 01.11.2017 or to the final order/final proceedings of the Commissioner of the Respondent Corporation dated 09.11.2017.

10. At this juncture, the Learned Standing Counsel for the Respondent/Corporation informs this Court that if the Petitioner submits any detailed representation in regard to the Provisional/Transitory notice dated 01.11.2017 or the final proceedings of the Respondent/Commissioner, dated 09.11.2017 within a reasonable period, then, the Respondent/Corporation would take into account of the same and pass a detailed, complete and a comprehensive order concerning the subject matter in issue.

11. The submission of the Learned Counsel for the Respondent/Corporation has substance and force, in the considered opinion of this Court.

12. It cannot be gainsaid that Section 452 of the Madurai City Municipal Corporation Act, 1971, speaks of Appeals from Commissioner to Standing Committee and if there is no Committee, then an Appeal can be preferred before the Council of the Corporation. Indeed, if any notice issued or other action taken or proposed to be taken by the Commissioner of the Corporation under Sections 161, 210, 218, 219, 220, 222, 223(2), 282, 296(3), 327(1), 328(1), 333(1), 334, 338, 343, 353, 354 or 362, Appeal ~~can be preferred~~ by the aggrieved person.



13. In the instant case, the Writ Petitioner has not resorted to such procedure of preferring an Appeal before the Standing Committee of the Respondent/Corporation. Instead, he has approached this Court seeking necessary relief as prayed for by him in the Writ Petition.

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14. As such, this Court without traversing upon the merits and demerits of the contents of the Provisional/Transitory notice dated 01.11.2017 and the subsequent order dated 09.11.2017, in the interest of justice and Fair Play, simpliciter, directs the Petitioner to submit his explanation to both the Transitory/Provisional order dated 01.11.2017 and the final order dated 09.11.2017, within a period of ten days from the date of receipt of a copy of this order. Soon after the receipt of objections by the Respondent within the time adumbrated by this Court, the Respondent/Corporation shall pass necessary speaking orders on the Representation/Objection of the Petitioner, within a period of three weeks thereafter, of course, after providing necessary opportunity to the Petitioner and others concerned by adhering to the principles of natural justice.

15. It is open to the Petitioner to raise all factual and legal pleas before the Respondent/Corporation and the Commissioner of the Respondent/Corporation at the time of passing final orders is to advert to the said pleas (both factual and legal pleas) and to answer the same in a complete and comprehensive manner. Till such time, the Respondent is directed to maintain status-quo prevailing as on today.

16. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Madurai corporation,
Madurai.

PM

VB/KK/SAR1/30/11/2017/4P/2C