



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.22851 of 2017
and
W.M.P. (MD) No.19152 of 2017

D.Ravi

: Petitioner

Vs.

- 1.The Chief Secretary,
State of Tamil Nadu,
Fort St. George,
Chennai.
- 2.The Secretary,
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St. George,
Chennai.
- 3.The Secretary,
Housing & Urban Development Department,
Chennai.
- 4.The Director of Town and Country Planning,
Opposite to LIC, Chengalvarayan Building,
Fourth Floor, 807, Anna Salai,
Chennai-600 002.
- 5.The Commissioner,
Kodaikkanal Municipality,
Kodaikkanal,
Dindigul District.
- 6.The Member Secretary/Executive Authority,
Kodaikkanal Local Planning Authority,
Kodaikkanal,
Dindigul District.



7. The Regional Deputy Director of
Town & Country Planning,
Madurai Region,
Madurai.

8. The District Collector,
Thiagi Subramania Siva Malihai,
Velu Nachiyar Valaham,
Chettinaickenpatti,
Dindigul District-624 004.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus, to call for the records of impugned proceedings issued by the sixth Respondent in NA.KA.No.3518/2007/F1, NA.KA.No.3519/2007/F1, NA.KA.No.3520/2007/F1, dated 27.10.2017 and quash the same and consequently, direct the third Respondent to notify the modified Master Plan under Section 28 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.Haja Nazirudeen,
Senior Counsel,
For Mr.A.Saravana Kumar
For Respondents 1to4,7&8: Mr.M.Govindan,
Special Government Pleader
For Respondents 5&6 : Mr.T.S.Mohammed Mohideen

O R D E R

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

The Petitioner has come forward with the present Writ Petition seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings issued by the sixth Respondent in NA.KA.No.3518/2007/F1, NA.KA.No.3519/2007/F1, NA.KA.No.3520/2007/F1, dated 27.10.2017, quash the same and consequently, direct the third Respondent to notify the modified Master Plan under Section 28 of the Tamil Nadu Town and Country Planning Act, 1971.

2. Heard both sides.

3. No counter is filed on behalf of the Official Respondents/R-1 to R-8.

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

5. The Petitioner is challenging the impugned notice dated Nil-09-2017 (but signed on 27.10.2017) issued under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, by



the sixth Respondent, whereby and whereunder, the Petitioner was directed to vacate from the Mansion bearing Door No.17/122A2, Upper Lake Road, Kodaikanal.

6. The main ground of challenge is that the impugned notice dated Nil-09-2017 (but signed on 27.10.2017) of the sixth Respondent is against the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and the Tamil Nadu District Municipalities Act, 1920.

7. The Learned Senior Counsel for the Petitioner projects an argument that the sixth Respondent/Executive Authority had failed to appreciate that as per the modified Master Plan, there shall be a re-classification of Zones in Kodaikanal Town and that the Petitioner's building and other similar constructions will fall within permissible limits, since G.O.(Ms).No.147, Housing and Urban Development [UD4-2] Department, dated 21.09.2016 was issued, taking into account the ground reality of 'Hotels and Lodges' in Kodaikanal. In this regard, the Learned Senior Counsel for the Petitioner points out that only a final notification is awaited and numerous representations were already sent to the Government of Tamil Nadu, requesting for earlier notification of the modified Master Plan.

8. The Learned Senior Counsel for the Petitioner brings it to the notice of this Court that the sixth Respondent had failed to consider G.O.(Ms).No.78, dated 04.05.2017, G.O.(Ms).No.79, Housing and Urban Development [UD4(3)] Department, dated 04.05.2017 and G.O.(Ms).No.172, Housing and Urban Development [UD4(3)] Department, dated 13.10.2017, which provide for regularisation of unapproved layouts and constructions as per the Tamil Nadu Regularisation of Unapproved Layouts and Plot Rules, 2017, taking into account the ground reality and that the same is applicable to lands in Hill areas within Municipalities also, because of the reason that the definition of 'Local Authority' includes 'Municipalities'.

9. The other point urged by the Learned Senior Counsel for the Petitioner is that the sixth Respondent had failed to consider that constructions in Hill areas as per the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993, are also covered under the Tamil Nadu Regularisation of Unapproved Layouts and Plot Rules, 2017 and are eligible for regularisation.

10. The Learned Senior Counsel for the Petitioner strenuously takes a plea that the sixth Respondent had failed to appreciate that the Government had taken a policy decision as per G.O.(Ms).No.79, Housing and Urban Development [UD4(3)] Department, dated 04.05.2017, wherein sites situated within the Hill Area Conservation Authority are also to be regularized by transfer of use from agricultural to non-agricultural purpose, through the

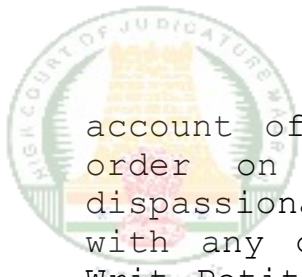


Tamil Nadu Change of Land Use (From Agriculture to Non-Agriculture Purposes in Non-Planning Areas) Rules, 2017 and that the same is applicable to lands located within the Municipalities.

11. The Learned Senior Counsel for the Petitioner contends that the classification of the Petitioner's site is claimed to be 'primary vegetative zone'. But, on a current check of the guideline value of his property, the same is displayed as 'Residential Class I Type II' as per the Official Website of the Tamil Nadu Registration Department. Thus, there is no certainty as to the classification of the site of the Petitioner and in such a situation, it is projected on the side of the Petitioner that the sixth Respondent cannot force the Petitioner to demolish his Lodge, while the modified Master Plan itself is yet to be implemented.

12. Admittedly, the Petitioner, till date, has not responded to the impugned notice/order dated Nil-09-2017 (but signed on 27.10.2017). In this connection, it is not out of place for this Court to make a pertinent mention that a mere perusal of the impugned notice/order dated Nil-09-2017 (but signed on 27.10.2017) issued by the sixth Respondent shows that the Petitioner was directed to vacate from the property in question, within 15 days from the date of receipt of copy of the notice/order. As a matter of fact, the impugned notice/order dated Nil-09-2017 (but signed on 27.10.2017) latently and patently indicates that the same was issued under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971. Section 56 of the Act, 1971 speaks of 'Power to require removal of unauthorised development'. Indeed, Section 57 of the Act, 1971 speaks of 'power to stop unauthorised development'.

13. Be that as it may, considering the fact that the Petitioner has not given any reply or addressed any communication for the impugned notice/order dated Nil-09-2017 (but signed on 27.10.2017) till date, this Court, in the interest of justice, fair play and based on all relevant attendant facts and circumstances of the present case, in an encircling fashion, points out that it is incumbent on the part of the Petitioner to furnish a reply to the sixth Respondent for the impugned order/notice dated Nil-09-2017 (but signed on 27.10.2017), within a period of two weeks from the date of receipt of copy of this order. Thereafter, the sixth Respondent, after receipt of the representation/reply of the Petitioner, is to look into the same and to pass a reasoned speaking order on merits, after providing necessary opportunity to the Petitioner, by adhering to the Principles of Natural Justice (including the opportunity of <https://hccservices.madras.gov.in/services>, if the Petitioner so requires/if situation so warrants). It is open to the Petitioner to raise all Factual and Legal Pleas before the sixth Respondent, who shall take into the



account of the same and advert to the same and pass a reasoned order on merits, in a fair, free, impartial, unbiased and dispassionate manner and that too, uninfluenced and untrammelled with any of the observations made by this Court in the present Writ Petition. Till final orders are passed in the subject matter in issue, the sixth Respondent is directed to maintain status quo prevailing as on today (13.12.2017).

14. 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(T&P)

/True Copy/

Sub Assistant Registrar

To

- 1.The Chief Secretary,State of Tamil Nadu,Fort St. George,Chennai.
- 2.The Secretary, Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George, Chennai.
- 3.The Secretary, Housing & Urban Development Department, Chennai.
- 4.The Director of Town and Country Planning,
Opposite to LIC, Chengalvarayan Building,
Fourth Floor, 807, Anna Salai, Chennai-600 002.
- 5.The Commissioner, Kodaikkanal Municipality, Kodaikkanal,
Dindigul District.
- 6.The Member Secretary/Executive Authority, Kodaikkanal Local
Planning Authority,Kodaikkanal, Dindigul District.
- 7.The Regional Deputy Director of Town & Country Planning,
Madurai Region, Madurai.
- 8.The District Collector, Thiagi Subramania Siva Malihai,
Velu Nachiyar Valaham, Chettinaickenpatti,
Dindigul District-624 004.

+1CC to Mr.A.Saravana Kumar, Advocate, SR.No. 92563

+1CC to Mr.T.S.Mohamed Mohideen, Advocate, SR.No. 92633

+1CC to the Special Government Pleader SR.No.93203

Order made in

W.P.(MD)No.22851 of 2017

Dated: 13.12.2017