



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2017

Delivered on : 04.08.2017

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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.[MD].No.6509 of 2017

and

W.M.P.(MD)Nos.5101 to 5103 of 2017

H.Mohamed Riaz

: Petitioner

Vs.

1.The Chairman/District Collector,
Tirunelveli Local Planning Authority,
Tirunelveli District,
Tirunelveli.

2.The Member Secretary,
Tirunelveli Local Planning Authority,
Tirunelveli.

3.S.Jegadeesan : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondents in their proceedings Na.Ka.No.1521/2009 The.Vu.The.Ku dated 08.04.2017 and to quash the same as illegal and in violation of provisions of Tamil Nadu Town and Country Planning Act, 1971 and consequently directing the first and second respondents to pay compensation of Rs.1,00,000/- per day to the petitioner for the illegal locking and sealing of the petitioner's shops at V.V.Towers.

For Petitioner : Mr.B.Saravanan

For Respondents 1 & 2: Mr.M.Govindan,
Special Government Pleader

For Respondent No.3 : Mr.S.Vinayak

O R D E R

K.K.SASIDHARAN, J.

<https://hcservices.ecourts.gov.in/hcservices/>

THIS Writ Petition is directed against the order dated 08 April, 2017, whereby and whereunder, the Local Planing Authority,



Tirunelveli, locked the premises in the possession of the petitioner without giving him notice, as required under the proviso to Section 56(2) of the Tamil Nadu Town and Country Planning Act, 1971.

THE FACTS:

2. The third respondent constructed a commercial building at No.127, Thiruvananthapuram Road, Palayamkottai, Tirunelveli District. The Local Planning Authority granted permission to construct ground plus four floors. The petitioner is a tenant in respect of the ground and a portion of the first floor of the said premises. The petitioner has been running a Non-Vegetarian Restaurant and a Supermarket, pursuant to the lease agreement.

3. While so, the Tirunelveli Local Planning Authority issued the impugned order dated 08 April, 2017 for sealing the premises on account of the unauthorized construction put up by the third respondent in violation of the approved plan. It is the grievance of the petitioner that notice was not issued to him before locking and sealing the premises. The petitioner is, therefore, before this Court.

SUBMISSIONS:

4. The learned counsel for the petitioner contended that the petitioner, being the tenant, is entitled to a notice under the proviso to Sub-Clause (2) of Section 56 of the Tamil Nadu Town and Country Planning Act, 1971. According to the learned counsel, no such notice was given by the Tirunelveli Local Planning Authority and as such, there was no legal basis for sealing the premises in the possession of the petitioner.

5. The learned Special Government Pleader appearing on behalf of the Tirunelveli Local Planning Authority contended that the third respondent constructed fifth floor to the existing building in violation of the building permit. According to the learned Special Government Pleader, in view of the construction of fifth floor, the building would come within the meaning of "multi-storeyed building". The Local Planning Authority has no jurisdiction to issue planning permission for a multi-storeyed building. The learned Special Government Pleader further contended that the action taken by the Local Planning Authority for locking and sealing was challenged by the third respondent before the Government. The appellate authority granted a limited interim order directing opening the premises for a period of six months for the purpose of rectification. It was further contended that notice was affixed on the premises and as such, it cannot be said that prior notice was not issued before locking and sealing.

ANALYSIS:

6. The third respondent obtained permission from the Local Planning Authority for construction of a commercial building with four floors. The petitioner is a tenant in respect of the ground



and a portion of the first floor. The third respondent, without any regard to the planning permit, constructed one more floor. The fifth floor is found to be totally unauthorized. The second respondent, therefore, took action by issuing a locking and sealing notice.

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7. The petitioner is, admittedly, a tenant. The notice impugned in this Writ Petition was issued to the third respondent directing discontinuance of the use of the building. The proviso appended to Sub-Clause (2) of Section 56 clearly provides that in case the notice requires discontinuance, the Planning Authority shall serve a notice on the occupier also.

8. Before us, the Tirunelveli Local Planning Authority contended that the notice was served on the petitioner by affixture. There is nothing on record to show that attempt was made to serve the notice personally. Similarly, there is no record to show that the petitioner refused to receive the notice and as such, affixture was made in the presence of revenue officials. The self-serving statement made by the officials, attached to the Local Planning Authority, would not suffice to prove that notice was served on the petitioner.

9. Section 107 of the Tamil Nadu Town and Country Planning Act, 1971, provides the method and manner in which notices shall be served. The provision reads thus:

"107. Service how to be effected.- When any notice, bill or other document is required by this Act, or any rule or regulation made thereunder to be served upon or issued or presented to any person, such service, issue or presentation shall be effected-

(a) by giving or tendering the said document to such person; or

(b) if such person is not found, by leaving such document at his last known place of abode, or by giving or tendering the same to some adult member or servant of his family; or

(c) if his address elsewhere is known, by forwarding such document to him by registered post under a cover bearing the said address; or

(d) if none of the means aforesaid is available, by causing a copy of such document to be affixed on some conspicuous part of the land or building, if any, to which the document relates."

10. When the Statute says that a particular thing has to be done in a particular manner, it shall be done only in that manner. In the subject case, there is a statutory requirement to deliver notice to the occupier. The question of affixture would arise only in case all the three modes are not feasible. In the subject case, the petitioner is conducting a Hotel. Nothing prevented the second



respondent from effecting service personally on the petitioner or his authorized agent.

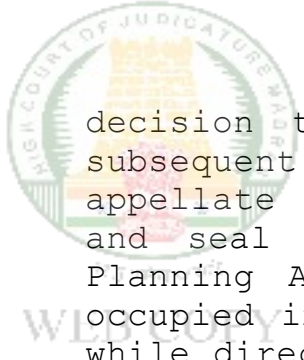
11. There are certain subsequent developments that took place after filing this Writ Petition. The third respondent challenged the locking and sealing notice before the Government invoking the provisions of the Tamil Nadu Town and Country Planning Act, 1971. The appellate authority, by order dated 20 April, 2017, granted limited interim order directing the Local Planning Authority to de-seal the premises for a period of six months. The third respondent was directed to complete the rectification work to make it conform to the planning permit issued by the Local Planning Authority. The appellate authority made it clear that the building should not be used for occupation or habitation purpose.

12. Since the sealing was made without issuing notice to the petitioner, the impugned order is liable to be set aside. However, in the subject case, no such course is necessary, in view of the initiation of statutory proceedings by the third respondent. The appellate authority safeguarded the interest of the third respondent by directing de-sealing the building for a period of six months. However, the third respondent violated the said order with impunity.

13. The Local Planning Authority, by proceedings dated 09 May, 2017, called upon the third respondent to give an undertaking, pursuant to the order dated 20 April, 2017. The third respondent submitted his undertaking on 12 May, 2017. The Local Planning Authority, thereafter, removed the lock and seal, so as to enable the third respondent to undertake the rectification work. It is a matter of record that the third respondent in total violation of the undertaking and condition imposed by the appellate authority inducted tenants. The Local Planning Authority issued notice to the third respondent on 05 July, 2017, for re-sealing on account of the violation of undertaking.

14. The builder, like the third respondent must realize that the Law is above all. The statutory provisions are enacted only for compliance and not for its non-compliance. The petitioner is only the occupier. The technical violation of non-service of notice on the occupier should not give undue benefit and advantage to the owner. In case the building is allowed to open on account of the technical violation, it would give premium to a builder, who has neither regard to the Laws of the Land nor his own undertaking not to occupy or give the building on lease till it is made to conform to the sanctioned plan.

15. The jurisdiction under Article 226 of the Constitution of India is a discretionary jurisdiction. We do not want to exercise the equity jurisdiction in favour of a builder, who has no concern to the Building Laws. Since the Local Planning Authority has taken a



decision to seal the premises once again and in view of the subsequent events that took place after the order passed by the appellate authority, we do not find any ground to quash the lock and seal notice dated 08 April, 2017. We direct the Local Planning Authority to ensure that the illegal structure is not occupied in violation of the condition imposed by the Government, while directing de-sealing the premises.

16. In the upshot, we dismiss the Writ Petition. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To

1.The Chairman/District Collector,
Tirunelveli Local Planning Authority,
Tirunelveli District,
Tirunelveli.

2.The Member Secretary,
Tirunelveli Local Planning Authority,
Tirunelveli.

+1cc to M/S.Special Government Pleader,SR. 70980

+1cc to Mr.S.Vinayak,Advocate,SR.70552

+1cc to Mr.B.Saravanan,Advocate,SR.70551

W.P.[MD].No.6509 of 2017
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KK/AA MSA/SAR3/07.08.2017/5P-6C