



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2017
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.8630 and 5135 of 2017
and
W.M.P. (MD) No.6555, 4121 and 4122 of 2017

K.Karthick : Petitioner in WP(MD)No.8630/2017
R.Chinnathambi : Petitioner in WP(MD)No. 5135/2017

vs.

1. The Principal Secretary to Government,
Municipal Administration and
Water Supply (Na.Ne.1) Dept,
Secretariat,
Chennai - 600 009. : 1st Respondent in WP(MD)No.8630/2017
2. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai - 600 009. : 1st Respondent in WP(MD)No.5135/2017
3. The Member Secretary / Commissioner,
Kodaikanal Municipality,
Kodaikanal Local Planning Authority,
Dindigul District. : 2nd Respondent in both petitions

Prayer in W.P. (MD) No.8630: 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.63/Na.Ni.1/2017 dated 17.02.2017 and quash the same as illegal, arbitrary.

Prayer in W.P. (MD) No.5135 of 2017: 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.113/Na.Ne.1/2016 dated 26.02.2016 and quash the same as illegal, arbitrary.



For Petitioner in both WPs : Mr.B.Saravanan
For Respondents in both WPs : Mr.T.S.Md.Mohideen, AGP

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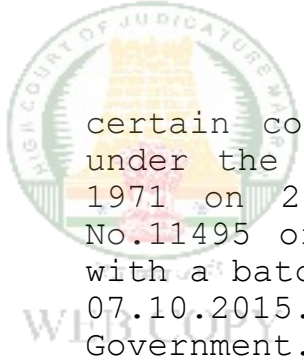
COMMON ORDER**(Order of the Court was made by G.R.SWAMINATHAN, J)**

The petitioners, 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 these writ petitions at the instance of those who are determined to destroy the Hill Station by making it a concrete jungle.

2.The writ petitioner in W.P.(MD) No.8630 of 2017 challenges the Government Letter (pa) No.63/Na.Ni.1/2017 dated 17.02.2017 issued by the first respondent herein rejecting his review petition. Likewise the writ petition in W.P.(MD) No.5135 of 2017 challenges the Government Letter (pa) No.113/Na.Ne.1/2016 dated 26.02.2016 issued by the first respondent herein rejecting his review petition.

3.The writ petitioner in W.P.(MD) No.8630 of 2016 is the owner of the land and building situate at Door No.71, in Re-survey No.375 Part Ward D, Block No.3, T.S.No.35, to an extent of 0.0026 ares in Resurvey Ward D, Block No.3, T.S.No.35 to an extent of 0.01.79 ares in total an extent of 0.02.05 ares or 5.06 cents or 2206 Sq.ft, Mudhalaiarpuram 2nd Street, Kodaikanal, Dindigul District. He submitted an application to the Municipal Commissioner, Kodaikanal, seeking permission for the proposed alteration and change of roof of existing building described above. Approval was given subject to the conditions stipulated in proceedings B.A.No.121/2011/F1 dated 31.01.2012 . Interestingly, the said approval proceedings copy is not enclosed in the typed set of papers. From the impugned order, it can be seen that construction of the commercial lodge building by the writ petitioner and others was in deviation of the approved plan in economically weaker section.

4.The writ petitioner in W.P.(MD) No.5135 of 2017 is the owner of the land comprised in Survey No.24/3A2, Ward-C, Block No.4, to an extent of 2.50 cents, Backiapuram, Kodaikanal, Dindigul District. He submitted an application dated 03.12.2013 to the Municipal Commissioner, Kodaikanal, seeking permission to construct a residential house (Construction of Farm house building with ground floor and first floor measuring 139.00 sq.mts. Permission was granted vide proceedings in B.A.No.123/2013/F1 and B.L.No.4/2014/F1 dated 29.01.2014 by the Municipal Commissioner, Kodaikanal with



certain conditions. Since there was deviation, action was taken under the provisions of Tamil Nadu Town and Country Planning Act, 1971 on 24.06.2015. The writ petitioner herein filed W.P.(MD) No.11495 of 2015 and the said writ petition was disposed of along with a batch of other similar writ petitions by a common order dated 07.10.2015. The writ petitioners were directed to move the Government. The Government, by order dated 26.02.2016, dismissed the review petition on the ground that even though the zone specification was "economically weaker section", the writ petitioner put up a commercial building. Thus, there has been a 100% violation of the master plan. There were several other violations. They have been itemized in the impugned order dated 26.02.2016.

5. Even though the petitioners herein were only permitted to put up a Residential building, they are actually running lodging houses. In view of the violation of the provisions of the Tamil Nadu Town and Country Planning Act, 1971 committed by the petitioners, the second respondent herein issued notices under Sections 56 and 57 of the said Act. The details of the violation committed by the petitioners were set out therein. It was pointed out that the petitioners had constructed commercial building 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 filed appeals before the first respondent. Thereupon, the first respondent herein passed the impugned orders rejecting the review petitions holding that the construction in question is deemed to be an illegal one. The first respondent had mentioned therein that the zone in which the petitioners had put up the construction in question is classified as 'Economically Weaker Section Zone'. But the petitioners are running commercial lodges. Thus, the violation insofar as the Master Plan is concerned is 100%. Since commercial activity is not permissible in the 'Economically Weaker Section 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 petitions have been filed.

6. Heard the learned counsel for the petitioners.

7. The learned counsel contended that the first respondent herein has proceeded on the premise that the petitioners had violated the provisions of Tamil Nadu Town and Country Planning Act 1971. 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-O contains an overriding clause. It reads as under:

"217-O. Chapter to override other laws.- (1) The

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

provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith



contained in this Act or any other law, custom, usage or contract.

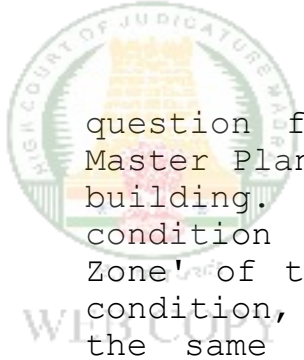
(2) Save as otherwise provided in sub-section (1), the provisions of this Chapter shall, be in addition to, and not in derogation of, any other provisions of this Act."

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8. 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. He would endeavour to demonstrate the validity of his submission by pointing out the unworkable situation inherent in Section 56 of the Tamil Nadu Town and Country Planning Act, 1971. After notice is issued under Section 56(1), there is a possibility of regularizing the position by taking out an application under Section 58(4) of the Act. But, obviously in the case of hill stations, this is not possible. This is sufficient to demonstrate the inapplicability of the provisions of the Tamil Nadu Town and Country Planning Act to Kodaikanal.

9. 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.

10. The learned counsel for the petitioners centred his entire argument on Section 217-O 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. Since as per the Master Plan, the land in



question falls within 'Economically Weaker Section Zone' of the Master Plan, the petitioners applied for construction of residential building. That is why approval was accorded subject to the condition that permissible use under 'Economically Weaker Section Zone' of the Master Plan alone was allowed. Contrary to the said condition, the petitioners put up a lodging houses and are 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.

11. 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.

36. 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. Large scale 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."



demolition of the eight floors of the building. In the present case the violation is 182% as stated 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."

12.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.

13.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 petitioners to wriggle out of the consequences of their illegal action. It is beyond dispute that the commercial activity carried on by the petitioners in the form of running a lodging house is not in conformity with the Master Plan that is applicable to Kodaikanal. The first respondent rightly rejected the review petitions filed by the petitioners. The constructions put up by the petitioners are inherently illegal. The writ petitioners were permitted to construct residential buildings. What has been put up is a full-fledged commercial lodging houses. The orders impugned in the writ petitions are definitely sustainable. The authorities must not rest with mere rejection of the petitioner's review petitions. They must take immediate steps to demolish the offending constructions. 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.

14.There are no merits in these writ petitions. They stand dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (RTI)

/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 Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai - 600 009.

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

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 81117
+ 1 CC TO Mr.B.SARAVANAN, ADVOCATE IN SR No. 81019
+ 1 CC TO Mr.T.S.MOHAMED MOHIDEEN, ADVOCATE IN SR No. 80786

SKM/ARUL

TE/MR-KKR/SAR-IV : 05/10/2017 : 7P/7C

W.P(MD)No.8630 of 2017 and
W.M.P. (MD) No.6555 of 2017
22.09.2017