



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.979 of 2017
and
WMP(MD) No.827 of 2017

K.Ganesan

... Petitioner

vs.

1. The District Collector,
Thanjavur District,
Thanjavur.
2. The Sornakadu Village Panchayat,
Peravurani,
Now represented by its
Special Officer /
Block Development Officer,
(Village Panchayat),
Peravurani, Avanam,
Thanjavur District.
3. A.Shakthi Vinayagam

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.2401/Aa3/2016, dated 07.12.2016 and quash the same and further directing the second respondent to consider the application for building and planning approval submitted by the petitioner dated 05.07.2016.

For Petitioner : Mr.M.P.Senthil
For Respondents : Mr.M.Govindan, Spl.G.P for R1
Mr.R.Karthic Rajan
for Mr.R.Anandharaj for R2
Mr.K.Balasundharam for R3

**O R D E R****(Order of the Court was made by G.R.SWAMINATHAN, J)**

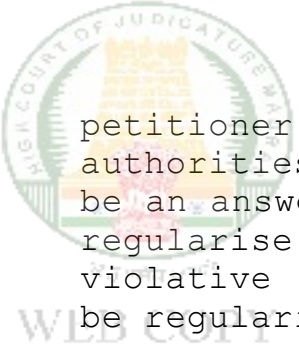
The petitioner challenges the order dated 07.12.2016 issued by the second respondent. By the said order, the second respondent had informed the writ petitioner that since his building had been constructed without getting approval, action is to be taken in terms of Rule 36 of Town Panchayat Building Rules for demolishing the said building.

2.The petitioner pleaded before this Court that he is eking out his livelihood by working as agricultural coolie. He purchased a small portion of land in S.No.170/3A in Sornakkadu Village. His son went abroad to work as coolie. While working in the company, he met with an accident and sustained grievous injuries. A sum of Rs.12 lakhs was paid as compensation for the injuries sustained by his son. Since they needed a house to live, a small residential house was constructed by the petitioner after removing the earlier thatched shed.

3.The third respondent herein filed O.S.No.109 of 2016 on the file of the District Munsif, Pattukottai against the writ petitioner herein impeaching the validity of the sale deed dated 17 November 1990 standing in the name of the petitioner. The said suit is still pending. On account of the said civil dispute, complaint was given to the authorities with regard to the construction of the building. That is how the impugned order came to be passed.

4.It is true that before putting up any construction, building approval will have to be obtained. If any building has come up without such an approval, the authority will have to take action against the same. But, the authority cannot act at the instance of persons, who have got their own private scores to settle. In this case, there is a civil dispute pending between the petitioner and the third respondent. It is for the third respondent to pursue his civil proceedings against the petitioner. Ultimately, the rights of the authorities will be governed by the outcome of the civil suit. But, in this case, after all, a residential house has been put up. There is no encroachment on any public property. The petitioner also belongs to the lower income group. His son met with an accident and out of the sum received towards compensation, the building has been put up. If the said building is demolished, the petitioner and his family would be literally roofless.

5.The learned counsel for the petitioner states that the petitioner has given an application dated 05 July 2016 for regularising the construction. If the building put up by the



petitioner is within the norms, it is certainly open to the authorities concerned to regularise the same. Demolition need not be an answer for every illegal construction. If it is possible to regularise the construction, that is, when the construction is not violative of the building norms, then certainly, the same should be regularised.

6.We therefore direct the second respondent to consider the application dated 05.07.2016 submitted by the petitioner for regularising the construction made in S.No.170/3A and 3C, Sornakkadu village. We make it clear that till the application is disposed of in the manner known to law, the notice impugned in the writ petitioner shall not be acted upon.

7.The writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Thanjavur District,
Thanjavur.

2. The Sornakkadu Village Panchayat,
Peravurani,
Now represented by its
Special Officer /
Block Development Officer,
(Village Panchayat),
Peravurani, Avanam,
Thanjavur District.

+ 1 CC TO MR.M.P.Senthil, ADVOCATE IN SR No.69993
+ 1 CC TO MR.K.Balasundharam, ADVOCATE IN SR No.69600
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 70276

SkM / Arul
MK/GT/SAR-2/08.09.2017/3P/6C