

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.3.2018
CORAM

The HON'BLE MR.JUSTICE M.VENUGOPAL
AND
The HON'BLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.5001 of 2018 &
WMP.Nos.6186 & 7438 of 2018

P.Nancy

...Petitioner

Vs

1. The Commissioner, Directorate
of Town and Country Planning,
Chengalvarayan Building, 4th &
5th Floor, 807, Anna Salai, Chennai-2.
2. The Zonal Director, Directorate
of Town and Country Planning,
Salem Region, 6, Sannathi Street,
Subramanaiya Nagar, Suramangalam, Salem-5.
3. The Commissioner, Attur Municipality,
Municipality Office, Attur-636102.
Salem District.
4. D.Mahalingam

...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Mandamus directing the 2nd
& 3rd Respondents herein to take appropriate action for
demolition of the unauthorized construction of the 4th
Respondent premises which is situated in S.F.No.471/4, Patta
No.7490, Ward No.D, Block No.28, TSLR.Nos.87/1 and 737/165-C,
Kamarajanar Road, Attur Town & Municipality, Salem District
based on the Petitioner's representation dated 16.8.2017.

For Petitioner : Mr.A.Rajakumar
For Respondents 1 & 2 : Mr.R.Udayakumar, AGP
For Respondent-3 : Mr.A.S.Thambusamy
For Respondent-4 : Mr.T.Sellapandian
For the Executive Engineer
(Operation and Maintenance)
TANGEDCO, Attur Town,
Salem District : Mr.S.K.Rameshwar

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

Heard the Learned Counsel for the Petitioner and the respective Learned Counsel for the Respondents and also the Learned Standing Counsel appearing for the Tamil Nadu Generation and Distribution Corporation Limited.

2. According to the Petitioner, she, being a resident of Attur Town and Taluk, is working as a hostel manager of the CSI School, Attur Taluk, Salem District. The grievance of the Petitioner is that the Fourth Respondent herein, without obtaining permission from the Authority concerned, had constructed one floor roofing commercial building in S.F.No.471/4, Patta No.7490, Ward No.D, Block No.28, TSLR.Nos.87/1 and 737/165-C, Kamarajanar Road, Attur Town & Municipality, Salem District. As a matter of fact, the Fourth Respondent is running a petrol bunk illegally in a dangerous condition and the same is in adjacent compound of the Petitioner's school compound.

3. The Learned Counsel for the Petitioner proceeds to point out that without securing a no objection certificate from the National Highways Authority to run the afore stated petrol bunk, the Fourth Respondent is carrying on his business and as per the proceedings of the Third Respondent dated 19.6.2015, the application of the Fourth Respondent was refused and in fact, the Fourth Respondent had constructed the premises against the Rules and Regulations and it is against the ingredients of Rule 14(3) of the Tamil Nadu Municipalities Building Rules, 1972 and the Third Respondent refused the same. Thereafter, the Fourth Respondent has not filed an appeal. Hence, the Petitioner has filed the above writ petition seeking to direct Respondents 2 and 3 to take appropriate action for demolition of the unauthorized construction of the 4th respondent premises which is situated in S.F.No.471/4, Patta No.7490, Ward No.D, Block No.28, TSLR. Nos.87/1 and 737/165-C, Kamarajanar Road, Attur Town & Municipality, Salem District based on the Petitioner's representation dated 16.8.2017.

4. Per contra, it is the submission of the Learned Standing Counsel appearing for the Tamil Nadu Generation and Distribution Corporation Limited that No.1 service connection was effected in the premises of the Fourth Respondent under Tariff V category and in fact, the order copy in the above writ petition was received on 14.3.2018 to disconnect the electricity supply, that the Third Respondent received the notice on 15.3.2018 to disconnect the electricity service connection in the premises of the Fourth Respondent and that the service connection was disconnected on 16.3.2018.

5. The Learned Additional Government Pleader appearing for Respondents 1 and 2 brings it to the notice of this Court that the premises of the Fourth Respondent was inspected on 25.3.2018 and the following were noted :

"(i) The total site extent of the existing petroleum outlet is 1101 square meters. The site is classified partly as commercial use and partly as educational use in the approved master plan for master plan for Attur town. Siting of petroleum outlets are permitted as per the Land Use Zoning Regulations.

(ii) The site is situated in between the two urban road junctions. It is situated at a distance of 54.5 meters from the left side road junction and 64 meters from the right side junction. In order to provide safe length for weaving of traffic, the Indian Roads Congress (IRC 12-2009) (Guidelines for Access, Location and Layout of Roadside Fuel Stations and Service Stations) stipulates the minimum distance from the intersections. Guideline 4.5.2 emphasizes a minimum distance of 100 meters for siting of petroleum outlets from the intersection with any category of road in urban area with population of one lakh and above.

(iii) The petrol pump to size of 11 m X 14 m has been reportedly constructed and is in usage for more than ten years. But, a building to size of 3.9 M X 11.70 m [45.63 square meters (491 square feet)] has been constructed with a side setback of 1.4 meters and a rear setback of 1.4 meters for which approval of the Attur Municipality was not obtained. The photos of the petroleum outlet is herewith enclosed for perusal."

6. It is the version of Respondents 1 and 2 that the powers were delegated to the Local Bodies to approve commercial buildings upto 2000 sq.ft. vide ROC.No.9862/2010/BA1 dated 14.6.2010 of the Director of Town and Country Planning. Moreover, the petroleum outlets are commercial establishments and the construction approvals upto the plinth area of 2000 sq. ft are coming within the delegated powers of Local Body/Attur

Municipality. The Fourth Respondent reportedly projected an application before the Third Respondent seeking approval for construction of an office building within the petroleum outlet campus and the Third Respondent had reportedly denied the approval stating that the constructed building violated the setback norms vide letter No.28/2005/F1 dated 19.6.2015. In this regard, the Petitioner made a representation requesting the Third Respondent to take appropriate action against the unauthorized construction put up by the Fourth Respondent vide letter dated 16.8.2017.

7. In view of the fact that on the side of the Second Respondent, a counter affidavit as well as status report dated 26.3.2018 is filed before this Court categorically asserting that powers are delegated to the Local Bodies to approve commercial building upto 2000 sq.ft., vide ROC.No.9862/2010/BA1 dated 14.6.2010 of the Director of Country Planning, at this stage, this Court, without precipitating the matter any further and also not dwelling in the case simpliciter, directs the Fourth Respondent to submit necessary application/petition seeking approval of the commercial building in question within two weeks from the date of receipt of a copy of this order. The Fourth Respondent shall also enclose necessary documents required for seeking approval together with requisite plan, etc. In this regard, if any fee is to be paid, the same shall be remitted by the Fourth Respondent before the Third Respondent upon hearing of the same from the Third Respondent. If the papers submitted by the Fourth Respondent together with necessary application seeking approval are in order, then it is open to the Third Respondent/Municipality to dispose of the application for approval in a manner known to law after providing necessary opportunity to the Fourth Respondent, the Petitioner and others concerned, of course, after adhering to the principles of natural justice. In any event, if such an application is filed by the Fourth Respondent and if the application for approval is complete in all respects, then final orders shall be passed by the Third Respondent within four weeks thereafter. In the event of the application of the Fourth Respondent is not approved, then it is open to the Third Respondent/Municipality to take necessary enforcement action to demolish the building in question. However, this Court abundantly makes quite clear that while carrying out enforcement action, if situation warrants/if need be, necessary precautionary measures shall be taken by the Third Respondent/Municipality. If approval is granted to the Fourth Respondent, even then, safety of the children shall be taken care of by the Fourth Respondent as well as other Authorities concerned.

8. With the above directions, the Writ Petition is disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To:

1. The Commissioner, Directorate of Town and Country Planning, Chengalvarayan Building, 4th & 5th Floor, 807, Anna Salai, Chennai-2.
2. The Zonal Director, Directorate of Town and Country Planning, Salem Region, 6, Sannathi Street, Subramanaiya Nagar, Suramangalam, Salem-5.
3. The Commissioner, Attur Municipality, Municipality Office, Attur-636102. Salem District.
4. The Executive Engineer (Operation and Maintenance), TANGEDCO, Attur Town, Salem District.

+1cc to Mr.T.Sellapandian, Advocate, S.R.No.23124

+1cc to the Government Pleader, S.R.No.23343

WP.No.5001 of 2018 & WMP.
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CS/10/04/18

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