

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.8329/2018 & WMP.Nos.10301 & 10302/2018

Sheik Ameer

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Petitioner

Versus

1.The Secretary
Government of Tamil Nadu
Housing & Urban Development
Fort St George, Chennai 600 009.

2.The Commissioner
Tiruppur Municipal Corporation
Kumaran Road,
State Highway 169, Novyal,
Tiruppur.

3.The Commissioner Town and
Country Planning
No.807, Anna Salai,
Chennai 600 002.

4.The Collector
O/o.The Collectorate
Tiruppur District, Tiruppur.

5.The Sub Collector
Tiruppur District, Tiruppur.

6.The Assistant Director/Member Secretary
Tiruppur Local Planning Commission,
Kamarajar Salai, Tiruppur.

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Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the impugned notice dated 02.04.2018 issued by the 2nd respondent in Na.Ka.No.1732/2014/E1/Ma1 and quash the same.

For Petitioner : Mr.S.V.Jayaraman, Senior Counsel
for Mr.R.Natarajan

For RR 1, 3

to 6 : Mr.A.N.Thambidurai, Spl.GP

For R2

: Ms.P.Shanthi

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader appears on behalf of the respondents 1, 3 to 6 and Ms.P.Shanthi, learned counsel appears on behalf of the 2nd respondent.

2 The petitioner claims to be the Muthavalli of Masjid-e-Ihlass Sunnath Jamath Msasjid and Madarasa and according to him, the Masjid and Madarasa is running from the year 2012, at Velampalayam, Ward Nos.14 and 15, Tiruppur Town, and 300 Muslim families are living in and around the locality for the past several years. The Masjid and Madarasa are running for the avowed object of offering prayer and teaching of Islamic education to Muslims under the guidance of the Tamil Nadu Wakf Board. It is further stated that the vacant site was originally purchased by Thiru.R.Syed Fakrudeen, Tmt.Dhanalakshmi and three others through a registered Sale Deed dated 20.05.2011 and thereafter, the purchasers had executed the Hiba Settlement Deed dated 16.04.2012 in favour of the petitioner. The Masjid and Madarasa are also registered that the Tamil Nadu Wakf Board, Coimbatore, bearing Registration No.272/2012 and subsequently, Syed Fakrudeen had executed a registered Settlement Deed dated 27.01.2014 in the name of Masjid-e-Ihlassa Sunnath Jamath Masjid and Madarasa, wherein a superstructure has been put up for the use of Mosque and only limited number of Muslims are offering prayers. The petitioner would further aver that to his shock and surprise, the 3rd respondent has issued a Notice dated 21.05.2014 to stop the construction in front and rear side of the Mosque and challenging the same, the petitioner filed Revision before the Directorate of the Town and Country Planning, Chennai, who vide order dated 06.10.2016, held that the building is not in accordance with the Development Control Rules [DCR].

3 M/s.Venkateswara and Mahalakshmi Nagar Residents Welfare Association had filed a writ petition in WP.No.15613/2014 before this Court, praying for appropriate action of their representation dated 23.09.2013 and this Court,

while disposing of the said writ petition, has indicated that the issue should be decided in the pending Revision on the file of the Directorate of the Town and Country Planning, Chennai. Accordingly, the 2nd respondent has issued the Show Cause notice for demolition dated 18.07.2016 which was served on the petitioner on 26.07.2016 alleging that there are conducting a Mosque in the form of unauthorised structure in Door No.49, Mahalakshmi Nagar, Ward No.15, Velampalayam, Tiruppur in SF.Nos.253/2F, 264/3A, 3B and 4B and immediately, the petitioner had applied for Planning Permission on 16.07.2016 for the existing alleged unauthorised construction / superstructure and it was rejected by the 2nd respondent on the same day on the ground that no objection is to be obtained from the District Collector, Tiruppur.

4 It is the specific case of the petitioner that the District Collector has also approved the functioning of the Mosque and granted Free Rice @ Re.1/- per Kg for distributing gruel during the month of Ramzan, 2016 and as such, it is deemed to be a sanctioned one and however, without taking note of the same, the 2nd respondent has issued Notice dated 26.07.2016 u/s.56 and 57 of the Town and County Planning Act, 1971, for Locking and Sealing of the premises and challenging the same, the petitioner filed a Special Revision u/s.80-A of the said Act before the 1st respondent. The petitioner, apprehending coercive steps in the form of Lock and Seal, has approached this Court, by filing WP.No.26715/2016, seeking appropriate orders to direct the respondents to dispose of the Appeal/Special Revision within the time frame and the said writ petition was disposed of by this Court vide order dated 10.11.2016, by directing the official concerned to dispose of the Special Revision / Appeal within a period of three months from the date of the order.

5 The Special Revision/Appeal was disposed of by the 1st respondent on 28.08.2017 vide Letter No.15054/UD4[1]/2017-14 on the following conditions:-

- The LSD Notice and De-occupation Notice already issued is stayed till 31.12.2017.
- The appellant is not allowed to use the building for the religious purpose after 31.12.2017.
- The appellant should make necessary correction/rectifications in the existing structure to comply with the DCR apply to the concerned authorities and obtain Planning Permission.
- If the appellant fails to get the building approved before 31.12.2017 the competent authority may continue the enforcement action in accordance with the rules and regulations.

6 The petitioner, on receipt of the order of the 1st respondent, approached the Chartered Civil Engineer for making

necessary correction/rectification in the existing building and it was also submitted to the 2nd respondent for approval on 08.12.2017 and he has also filed a petition on 20.12.2017 for extension of stay before the 1st respondent and it was extended till 31.03.2018 by Deputy Secretary of the 1st respondent Department. The petitioner also filed WP.No.366/2018 praying for appropriate orders for approval of the Planning Permission and it was directed to be disposed of by granting certain directions and accordingly, the 2nd respondent has issued the proceedings dated 16.02.2018 stating that in the application submitted, No Objection Certificate issued by the 4th respondent, has not been enclosed and the petitioner approached the said official for issuance of the No Objection Certificate and it is pending.

7 In the interregnum, the 5th respondent has issued the order dated 27.03.2016 for implementation of the order dated 16.06.2016 made in WP.No.15613/2014 filed by Venkateswara and Mahalakshmi Nagar Residential Association and the 4th respondent, in turn, had issued the order dated 30.03.2018, stating that unless the respondents 2 and 6 approve the Planning Permission, the 4th respondent will not issue the No Objection Certificate for running the Mosque and it is requirement under Rule 6[4] of the Tamil Nadu District Municipal Building Rules, 1972.

8 The 1st respondent, also passed an order dated 29.08.2017, directing the petitioner to make correction / rectification in the existing building according to the Development Control Rules and though the petitioner had approached the concerned respondent in this regard, no orders have been passed and therefore, the petitioner came forward to file the present writ petition challenging the impugned Notice dated 02.04.2018.

9 Mr.S.V.Jayaraman, learned Senior Counsel assisted by Mr.R.Natarajan, learned counsel appearing for the petitioner would submit that since the approval of the existing structure is pending consideration, he may not be in a position to obtain the No Objection Certificate from the 4th respondent in terms of Rule 6[4] of the Tamil Nadu District Municipal Building Rules, 1972 and as on today, prayer is going on and in the event of Locking and Sealing, the sentiments of the people belonging to the particular faith is likely to be affected and it may lead to law and order problem.

10 Per contra, the learned counsel appearing for the 2nd respondent would submit that in the absence of the No Objection Certificate for putting up a religious structure to be issued by the 4th respondent, further process cannot go on.

11 Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1, 3 to 6 would submit that the petitioner is under obligation to comply with the order passed in WP.No.15613/2014 and a contempt petition is also pending in Cont.P.No.2485/2016.

12 This Court has considered the rival submissions and also perused the materials placed before it.

13 It is an admitted fact that the petitioner has put up an unauthorised superstructure without any planning permission or approval and started using it as a Mosque and alleging such a violation, M/s.Venkateswara and Mahalakshmi Nagar Residents Welfare Association filed WP.No.15613/2016 praying for appropriate action on their representation dated 23.09.2013 and it was also disposed of with certain directions.

14 The petitioner has also invoked the Revisional Jurisdiction of the 1st respondent, who vide order dated 28.09.2017, has disposed of the same, subject to certain directions and once such direction is that the petitioner, if fails to get the Building Approval before 31.12.2017, the competent authority may continue the enforcement action in accordance with the rules and regulations and thereafter only, the petitioner has submitted the application seeking post-facto approval of the unauthorised religious structure.

15 The primordial submission of the learned Senior Counsel for the petitioner is that since the premises is being used as a religious structure in the form of Mosque, in the event of locking and sealing, the religious sentiments may be affected and unless and until the application submitted for post-facto approval of the unauthorised structure is granted, the authorities cannot put lock and seal to the premises. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that the petitioner is also under equal obligation to follow the law and would have taken care and caution to obtain the

Planning Permission and necessary approval / permission from the 4th respondent to put up the religious structure under Rule 6[4] of the Tamil Nadu District Municipal Building Rules, 1972, and admittedly, he has not obtained any permission whatsoever and on his own, has put up the superstructure and started using the same as a Mosque. The application submitted by the petitioner seeking post-facto approval is also of very recent origin and therefore, the official concerned cannot be expected to take the application out of turn and give a disposal.

16 The 1st respondent in the revisional order dated 28.09.2017 also made it clear that if the petitioner herein

fails to get approval before 31.12.2017, further process would follow and accordingly, the 2nd respondent has initiated further proceedings u/s.56 and 57 of the Town and Country Planning Act, 1971, vide proceedings dated 02.04.2018 and earlier to that, the 5th respondent has taken note of the earlier proceedings and also noted that time was also extended till 31.03.2018, with a further notification that no extension of time will be granted and even after granting extension of time, the petitioner has failed to obtain necessary clearances in the form of No Objection Certificate from the 4th respondent.

17 Therefore, this Court is of the view that there is no error apparent or infirmity in the impugned notice dated 02.04.2018 of the 2nd respondent for the reason that as per the direction of the superior official, viz., the 1st respondent, they are expected to follow due process of law and accordingly, they are following the same.

18 It is made clear that till the petitioner obtains necessary permission from the District Collector, Tiruppur District - 4th respondent herein, under Rule 6[4] of the Tamil Nadu District Municipal Building Rules, 1972, demolition of the superstructure shall not take place. However, the 2nd respondent is at liberty to proceed further and put the Lock and Seal on the premises in question.

19 In the result, the writ petition stands dismissed with the above observation. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

AP

To

1.The Secretary
Government of Tamil Nadu
Housing & Urban Development
Fort St George, Chennai 600 009.

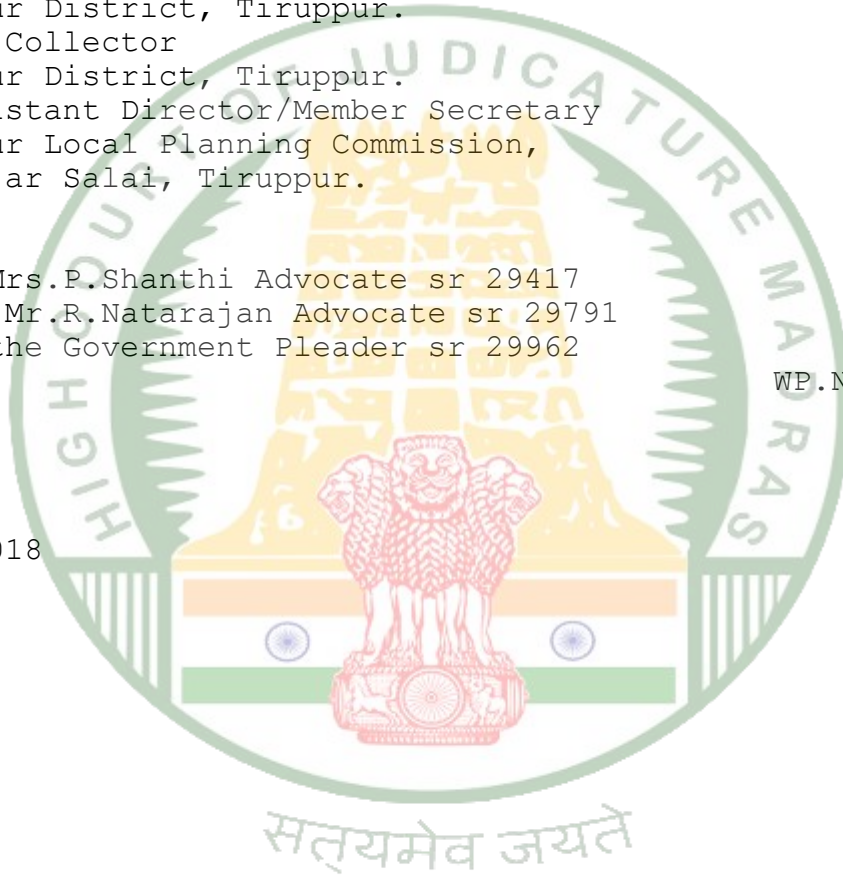
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Kamarajar Salai, Tiruppur.

+1 cc to Mrs.P.Shanthi Advocate sr 29417
+2 ccs to Mr.R.Natarajan Advocate sr 29791
+1 cc to the Government Pleader sr 29962

WP.No.8329/2018

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