

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07.02.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.6516 of 2017

M.Siva

.. Petitioner

Vs.

- 1.The Director,
Town and Country Planning Department,
No.802, Anna Salai,
Chennai - 2.
- 2.The Commissioner of Municipal Administration,
Ezhilagam,
Chepauk, Chennai - 600 005.
- 3.The Regional Joint Director of Municipal Administration,
No.124, G.S.T. Road,
Chengalpattu.
- 4.The Assistant Director,
Town and Country Planning Department,
No.56-A, Government Hospital Road,
Villupuram.
- 5.The Commissioner,
Panruti Municipality, Panruti.
- 6.The Branch Manager,
Canara Bank,
Rajaji Street, Panruti.

7.R.Mogala

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the fifth Respondent to take action against the seventh Respondent's unauthorised construction located at Door No.84, 85-A, Kumbakkonam Road, Ward-A, Block No.50, T.S.No.37, 38, 39, Panruti Town as per the letters of the fourth respondent dated 10.06.2016 and 15.02.2017 and by affording opportunity to all concerned.

For Petitioner : Mr.P.Kannan Kumar

For RR 1 to 4 : Mr.R.Udayakumar
Additional Government Pleader

For 5th Respondent : Mr.P.V.Selvakumar

For 7th Respondent : Mr.R.Gururaj

ORDER

[Order of the Court was made by S.VAIDYANATHAN, J.]

The petitioner has come forward with this writ petition to direct the 5th respondent to take action against the 7th respondent's unauthorised construction located at Door No.84, 85-A, Kumbakkonam Road, Ward-A, Block No.50, T.S.No.37, 38, 39, Panruti Town.

2.The case of the petitioner is that the 7th respondent has started construction for underground (basement) floor without any approval and that she has put up construction in violation of the Plan. The sum and substance of the pleadings of the petitioner is that when the construction has been made in violation of the sanctioned Plan, the entire violated portion has got to be razed to the ground.

3.Learned counsel for the petitioner contended that the 7th respondent had applied for Planning permission and that Planning permission for ground floor and first floor has been obtained and thereafter, even though an application for additional construction has been made, it has not been processed and orders have not been passed and without waiting for an order from the authorities concerned, she started construction.

4.According to the learned counsel for the 7th Respondent, there is no violation of the provisions of any enactment much less the District Municipalities Act, 1920. He further submitted that in terms of Section 203 of the Act, six provisions are mentioned and that the 7th respondent has made an application in terms of the said provisions, but, unfortunately, without considering her request, action has been initiated by the Panruti Municipality, by issuing various notices including the notice under Sections 205(3), 216(3) of the Act. That apart, proceedings have also been initiated under Section 317 of the said Act.

5.Learned Special Government Pleader appearing for respondents 1 to 4 submitted that there is no Plan at all for construction beyond the first floor and hence, the request of the 7th respondent has been rejected. He further submitted that the Assistant Director of Town and Country Planning sent a communication, dated 28.12.2016 to the Municipal Commissioner that the building of the 7th respondent is in contravention of the Plan approved by the Panruti Municipality and that action has not been taken till date and the complaint is pending. That apart, the 7th respondent has been informed not to construct further and stop work has been intimated. In contravention of the instructions/notice issued by the official respondents, constructions have been made by the 7th respondent in violation of the Plan, as there is no Plan for construction beyond the first floor.

6.In reply, learned counsel for the 7th respondent submitted that a suit in O.S.No.424 of 2004 connected to the case on hand is pending and that the 7th respondent is owning an extent of 8 cents of land and that the Plan has been sanctioned with regard to 8 cents of the land as other portions are in dispute in Civil Suit. It is his further submission that the petitioner has made an endorsement and given consent that the 7th Respondent would continue to construct the building mentioned in the schedule of property in Cuddalore Registration District at Panruti Village, Chennai Kumbakonam Road, Old Survey No.98/25, Total Extent 0.02 ½ Acre (2 ½ Cents) Boundaries: West of "A" Schedule property, East of property purchased by plaintiffs on 17.03.2003, South of Plaintiffs property, North of Kattandikuppam Nagalinga Padayachi's house and the endorsement made by the learned counsel for the writ petitioner is as below:

“வாதிக்கு பாதத்தியமான வழக்கு நுனாநு ஁஁ற஁யுல் பிரதிவாதி கட்டிடம் கட்டுவது இல்லை என கூறுவதால் பிரதிவாதி வடக்கு தெற்கில் 36 அடியம் கிழக்கு மேற்கில் கும்பகோணம் சென்னை சாலையில் இருந்து 100 அடி வரையில் கட்டிடம் கட்டிக் கொள்ள வாதிக்கு ஆட்சேபனை இல்லை. பிரதிவாதி கிழக்கு மேற்கில் கும்பகோணம் சென்னை சாலையில் இருந்து 100 அடி நீட்டிற்கு அதிகமாக கட்ட வேண்டாம் என உத்திரவு, பிறப்பிக்க வேண்டியது என வாதி கோருகிறார்.”

7.Heard both sides and perused the materials placed on record.

8.It is not in dispute that the 7th respondent has obtained sanctioned Plan only to an extent of ground floor + first floor and beyond the first floor, there is no Planning approval granted by the authorities. That apart, there is also a

construction in the basement, which has not been approved by the authorities. Merely making an application for construction of additional floors could not be construed that there is a deeming permission granted to the 7th respondent to construct the building in violation of the Plan. In this case, as stated supra, admittedly there is no Planning permission given by any one, much less the authorities in question beyond ground floor + first floor.

9. It is also brought to the attention of this Court by the 7th respondent in the additional affidavit, that an appeal has been preferred by the 7th respondent on 26.08.2016 to the Municipal Council against the order rejecting/returning the approval by the 5th Respondent. That being the case, as on date, there is no permission granted to the 7th respondent to construct a building beyond the approved Plan. The 7th respondent has also stated that he has stopped construction, but the notice issued by the authorities would show that the construction was going on, in spite of notice.

10. According to the 7th respondent, several lakhs of rupees have been invested in the construction of the building in question and it is also stated by the 7th respondent that apart from borrowing loan, she has also invested the retirement benefits of her husband.

11. For the sake of convenience, Sections 200, 202, 203, 205, 216, 317 and 339 of the Tamil Nadu District Municipalities Act, 1920 are extracted below:

"200. Period within which executive authority is to signify approval or disapproval. Within thirty days after the receipt of any application made under section 197 for approval of a site or of any information or further information required under rules or by-laws, the (executive authority) shall by written order either approve the site or refuse on one or more of the grounds mentioned in section 203 to approve the site.

202. Reference to council if executive authority delays grant or refusal or approval or permission.- (1) If, within the period prescribed by section 200 or section 201, as the case may be, the [These words were substituted for the word 'chairman' by section 17(1) of the Madras District Municipalities (Amendment) Act, 1933. (Madras Act XV of 1933)] (executive authority) has neither given nor refused his approval of a building site or his permission to execute any work, as the case may be, the council shall be bound, on the written request of the applicant, to determine by written order whether such approval or permission should be given or

not.

(2) If the council does not, within one month from the receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or by-laws made under this Act.

203. Grounds on which approval of site for, or licence to construct or reconstruct building, may be refused.- The only grounds on which approval of a site for the construction or reconstruction of a building or permission to construct or reconstruct a building may be refused are the following, namely:-

(1) that the work, or use of the site for the work or any or the particulars comprised in the site Plan, ground Plan, elevations, sections or specification would contravene some specified provision of any law, or some specified order, rule, declaration or by-law made under any law;

(2) That the application for such permission does not contain the particulars or is not prepared in the manner required under rules or by-laws;

(3) That any of the documents referred to in section 197 have not been signed as required under rules or by-laws;

(4) That any information or documents required by the (executive authority) under rules or by-laws or have not been duly furnished;

(5) That streets or roads have been made as required by section 175; or

(6) That the proposed building would be an encroachment upon (Government or municipal land).

Whenever the (executive authority) or the council refuses to approve a building-site for a building or to grant permission to construct or reconstruct a building, the reasons for such refusal shall be specifically stated in the order or resolution.

205. Power of executive authority to require alteration of work.- (1) if the (executive authority)

finds that the work-

(a) is otherwise than in accordance with the Plans or specifications. Which have been approved, or.

(b) Contravenes any of the provisions of this Act or any by-law, rule, or declaration made thereunder, he may by notice require the owner of the building within a period stated either-

(i) to make such alterations as may be specified in the said notice with the object of bringing the work into conformity with the said Plans or provisions, or

(ii) to show cause why such alteration should not be made.

(2) If the owner does not show cause as aforesaid, he shall be bound to make the alterations specified in such notice.

(3) If the owner shows cause as aforesaid the (executive authority) shall by an order cancel the notice issued under Sub-section (1), or confirm the same subject to such modifications as he may think fit.

216. Demolition or alteration of building work unlawfully commenced, carried on or completed. - (1) if the (executive authority) is satisfied,

(i) that the construction or reconstruction of any building or well-

(a) has been commenced without obtaining the permission of the (executive authority) or (where an appeal or reference has been made to the council) in contravention of any order passed by the council, or

(b) is being carried on, or has been completed otherwise than in accordance with the Plans or particulars on which such permission or order was based or

(c) is being carried on, or has completed in breach of any of the provisions of this Act or of any rule or by-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or by-laws, or

(i) that any alterations required by any notice issued under section 205 have not been duly made, or

(ii) that any alterations of or addition to any buildings or any other work made or done for any

purpose, into or upon any building, has been commenced or is being carried on or has been completed in breach of section 215, he may make a provisional order requiring the owner or the builder to demolish the work done or so much of it as, in the opinion of the (executive authority), has been unlawfully executed or to make such alteration as may in the opinion of the (executive authority) be necessary to bring the work into conformity with the Act, by-laws, rules, direction or requisitions as aforesaid, or with the Plans and particulars on which such permission or order was base; and may also direct that until the said order is complied with the owner or builder shall refrain from proceedings with the building or well.

(2) The (executive authority), shall serve a copy of the provisional order made under sub-section (1) on the owner of the building or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner fails to show cause to the satisfaction of the (executive authority), the (executive authority) may confirm the order with any modification he may think fit to make, and such order shall then be binding on the owner.

317. Penalty for unlawful building.- If the construction or re-constructions of any building or well-

- (a) is commenced without permission of the (executive authority), or
 - (b) is carried on or complete otherwise than in accordance with the particulars on which such permission was based, or
 - (c) is carried on or completed in contravention of any lawful order or in breach of any provision contained in this Act or in any rule or by-law made hereunder or of any direction or requisition lawfully given or made or if any alterations or additions required by any notice issued under section 205 or section 215 are not duly made, or
- If any person to whom a direction is given by the (executive authority) to alter or demolish a building or well under section 216 fails to obey such direction,

the owner of the building or well or the said

person, as the case may be, shall be liable on conviction to a fine which may extend in the case of a building to five hundred rupees and in the case of a well or hut to fifty rupees, and to a further fine which may extend in the case of a building to one hundred rupees, and in the case of a well or hut to ten rupees, for each day during which the offence is proved to have continued after the first day.

339. Time for complying with order and power to enforce in default.-(1) whenever by any notice, requisition, or order under this Act, or under any rule, by-law or regulation made under it, any person is required to execute any work or to take any measure or do anything a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measures taken, or the thing done.

(2) If such notice, requisition, or order is not complied with within the time so named the (executive authority) may cause such work to be executed or may take any measures or do anything which may, in his opinion, be necessary for giving due effect to the notice requisition or order as aforesaid; and further.

(3) if no penalty has been specially provided in this Act for failure to comply with such notice, the said person shall be liable on conviction before a magistrate to a fine not exceeding fifty rupees for every such offence."

12.A reading of the aforesaid provisions, more particularly, Section 203 of the Act would make it very clear that the said provision will be applicable only to a building that is going to be constructed newly and not to the existing building. In this case, if Section 203 of the Act is going to be made applicable for the Plan that was in existence, the 7th respondent had obtained a Plan only for the ground + first floor and there is also rejection and stop work notice issued by the authority not to construct the building beyond the sanctioned Plan.

13. Even though it has been stated that there is enmity between the petitioner and the 7th respondent and that the suit is pending and that the writ petitioner is unnecessarily harassing the 7th respondent, this Court is not going to delve deep into merits of issue in Civil Suit, as these are all disputed questions of fact and it has got to be worked out either before the Civil Court in O.S.No.424 of 2015 or in any other proceedings pending or may be instituted either by the writ petitioner or by the 7th respondent.

14.As far as the undisputed facts are concerned, there is a building in existence which is in violation of the Plan, for which a notice has been issued and that a communication dated 06.04.2016 from the Panruti Municipality has been issued to the 7th respondent which is very clear that the 7th respondent cannot carry on with a building construction, which has not been approved. If the contention of the 7th respondent is accepted that when an application is pending before the authorities, it is open to her to construct without any sanction and that the same has got to be approved by the authorities, it would amount to putting the Cart before the Horse.

15.The 7th respondent drew the attention of this Court to Section 202 of the Act stating that there is a deeming provision. A glance of the said provision which is extracted supra, more particularly, Section 202(2) of the Act would make it very clear that the applicant is to proceed to execute the work, but not so as to contravene any of the provisions of the Tamil Nadu District Municipalities Act, 1920 or any Rules made under the said Act. In this case, a reading of Section 202(1) or the first limb of Section 200(2) in isolation, cannot be accepted. The entire provisions of the Act has to be read as a whole, to enable the Court to give a proper construction.

16.In this case, a reading of Sections 202 and 203 of the Act apart from other provisions would make it very clear that the petitioner will have to construct the building only after a building Plan is sanctioned and that the conditions stipulated under Section 203 as stated supra, is applicable only for a new building or a building that is going to be reconstructed. In this case, dropping an application in the box that is meant to be scrutinised by the authorities will not empower the 7th respondent to proceed with the construction, on the premise that the Plan will be sanctioned.

17.The Apex Court has come down heavily on illegal constructions/encroachments, as could be seen from the following decisions:

(i) In Priyanka Estates International Pvt. Ltd. v. State of Assam (2010) 2 SCC 27, the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:

"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned Plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and

approved Plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

(ii) In yet another decision pertaining to buildings constructed in violation of rules, in the case of Shanti Sports Club v. Union of India, (2009) 15 SCC 705, the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town Planning scheme and no relief should be given to the violator of the town Planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master Plans, zonal development Plans, sanctioned Plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to Planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of Planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious

view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

18. This Court, by an order dated 29.09.2016 in W.P.No.29985 of 2016 in the case of Aara Silks V. The Principal Director, Southern Command, IDES Guest House, Cross Road, Pune, Maharashtra State, [in which one of us S.V.N.J. is a Member], by following the decisions of the Apex Court, has categorically held that if the building is in violation of the sanctioned Plan, the violated portions have got to be razed to the ground by taking assistance of the police. In that case also, basement was not approved, apart from that, permission was sanctioned and the Plan was issued to the extent of nearly 3550 sq. ft. and over and above the sanctioned limit, an extent of 7730 sq.ft. was constructed. Hence, this Court directed that the building has got to be razed to the ground. The 7th respondent herein cannot be in a better footing, even though a decision has been rendered, while dealing with the provisions of the Cantonment Act, 2006. There are similar provisions, even stringent provisions of the District Municipalities Act, 1920 and that as there is no prior approval sanctioned by the authorities, we are of the view that the 7th respondent cannot be shown any indulgence, as we find much force in the arguments of the writ petitioner. Spending money for construction knowing that there is no sanction will not permit the violator to breach the provisions of law.

19. In the case of Babita Badasaria and others V. Patna Municipal Corporation and Others, AIR 2016 SC 1460, the Apex Court has held that unauthorised constructions/illegal constructions cannot be compounded by paying compounding fees. Also, in view of the directions issued by the Apex Court in Priyanka Estates International Private Limited V. State of Assam (2010) 2 SCC 27, illegal constructions are required to be dealt with firm hands, otherwise the builders would continue to construct buildings beyond the sanctioned/approved Plan and they will go scot-free.

20. In view of the above, the 7th respondent is directed to demolish the violated portions within a period of one month from the date of receipt of a copy of this order, failing which, immediate action shall be taken by the authorities concerned within a period of one month thereafter. Till the building is brought in accordance with the sanctioned Plan, electricity service connection shall be disconnected to the violated portions. The Writ Petition is allowed with the above directions and observations. No costs.

21.The Registry is directed to list this matter for reporting compliance on 18.07.2018.

Sd/-

Assistant Registrar (CS-VII)
dt.27.2.2018

*Corrected as per letter given by
Mr.P.Kannankumar, Advocate dt.28/3/2018

Sd/-

Assistant Registrar (CS VII)
dt.3.4.2018

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The Director,
Town and Country Planning Department,
No.802, Anna Salai, Chennai - 2.
- 2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai - 600 005.
- 3.The Regional Joint Director of
Municipal Administration,
No.124, G.S.T. Road, Chengalpattu.
- 4.The Assistant Director,
Town and Country Planning Department,
No.56-A, Government Hospital Road,
Villupuram.
- 5.The Commissioner,
Panruti Municipality, Panruti.

To be Substituted
to the order
already despatched
on 1/3/2018

***Copy to:**

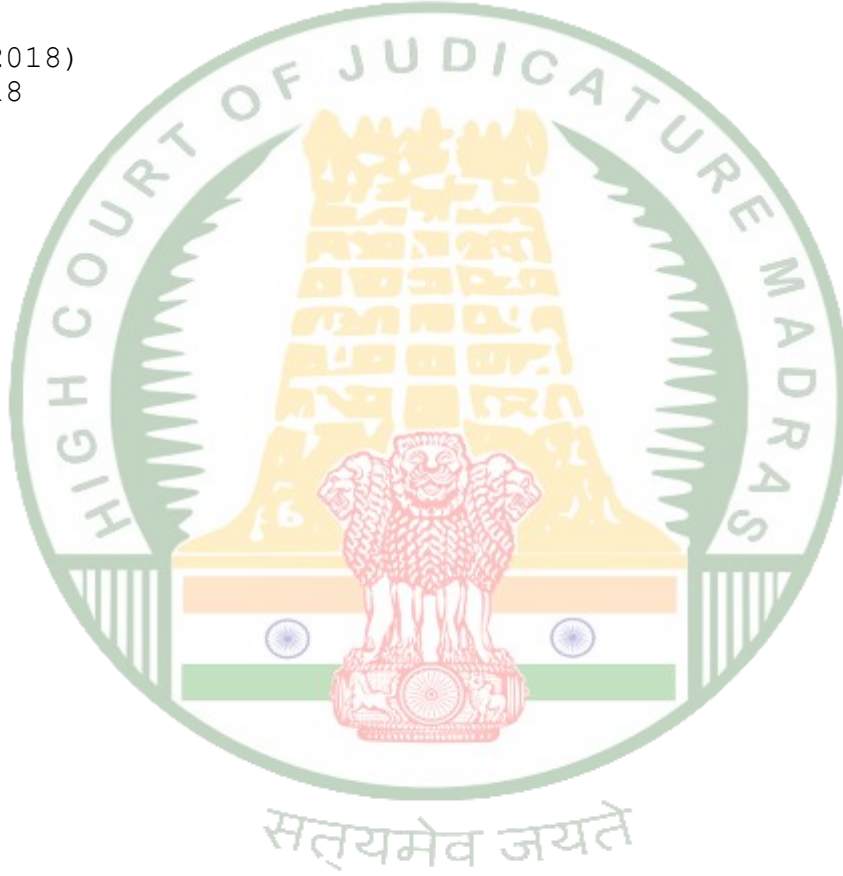
- 1)The Chairman, Tamilnadu Generation
and Distribution of Electricity Corporation
Ltd., No.144, Annasalai, Chennai 600 002.**

**2)The Assistant Engineer,
TANGEDCO, Panruti Town,
LN Puram, Poongunam,
Cuddalore 607 106**

+3cc to Mr.R.GURURAJ, Advocate, S.R.No.9485
+1cc to Mr.P.V.SELVAKUMAR, Advocate, S.R.No.10532
+1cc to the Government Pleader, S.R.No. 9771
+1 CC to Mr.P. Kannan Kumar, Advocate sr 9601(06/03/2018)

W.P.No.6516 of 2017

EV(CO)
TR(27/02/2018)
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