

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.04.2018
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.21288 of 2017
and WMP.No.22229 of 2017

N.Banumathi

... Petitioner

Vs.

1.The State of Tamilnadu, rep. by
its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.

2.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore-641 001.

3.The Assistant Commissioner,
Coimbatore City Municipal Corporation,
South Zone, Kuniamuthur,
Coimbatore-641 008.

4.The Executive Engineer (Planning),
Town Planning,
Coimbatore City Municipal Corporation,
Big Bazaar Street, Coimbatore-641 001.

5.S.Bangarusamy

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents 2 to 4 from taking any action on the Order in Na.Ka.Nos.9973, 9977 & 9979/2016/H1(s) / W.P.No.11052 of 2017 dated 20.06.2017, till the disposal of the Revision Petition dated 17.07.2017, pending on the file of the 1st respondent.

For Petitioner	: Mr.N.Manokaran
For Respondents	: Mr.A.N.Thambidurai, Special Government Pleader for R1 Mr.J.Sathyanarayana Prasad Standing Counsel for R2 to R4 Mr.C.Veeraraghavan for R5

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this writ petition is taken up for final disposal.

2. The petitioner claims that her husband, who was eking out his livelihood as Goldsmith, has purchased a property comprised in S.Nos.148 & 156, admeasuring to an extent of 2527 sq.ft. in Komarapalayam Village, Coimbatore through registered sale deed bearing Doc.No.575 of 2016 dated 03.02.2016. The petitioner would further state that the entire layout are unapproved layout and on account of the same, the respondents 2 to 4 have not granted any planning permission or approval in view of the bar under Section 273 of the Coimbatore City Municipal Corporation Act, 1981. It is the specific case of the petitioner that all the constructions put up in the said unapproved house sites are unauthorized and the fifth respondent is the owner of house site No.60, which is located on the eastern side of the property and taking advantage of her absence, he has encroached upon the land to an extent of 2 feet from North to South to the eastern side and also installed 20 windows facing towards the petitioner's property and thereby affecting the flow of air and light and without planning permission, he has completed the construction work.

3. The petitioner would further aver that the fifth respondent has filed a suit in O.S.No.1347 of 2016, on the file of the II Additional District Munsif Court, Coimbatore praying for the relief of permanent injunction restraining the petitioner from proceeding with the construction and thereafter, the third respondent issued three notices dated 19.11.2016 directing the petitioner to make remittance of some amounts for the purpose of regularizing the deviations. It is further averred that the fifth respondent also filed a writ petition in W.P.No.11052 of 2017, praying for a direction to the respondents 2 and 3 to initiate action against the petitioner with regard to the alleged unauthorized construction put up by the petitioner. The said writ petition was disposed of vide order dated 28.04.2017 by directing the respondents 2 to 3 to take action in accordance with law, after serving notice to all concerned and therefore, fourth respondent had issued three notices dated 28.04.2017 under Section 296(3) of the Tamil Nadu Town and Country Planning Act, 1971, which is followed by yet another notice dated 20.06.2017, in and by which the fourth respondent threatened the petitioner to demolish the construction within 30 days. The petitioner, in this regard, has also filed a Special Revision Petition before the first respondent dated 17.07.2017 under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 and it is still pending.

4. The learned counsel appearing for the petitioner would submit that despite pendency of the revision petition before the first respondent, the respondents 2 to 4 are taking emergent steps to demolish the superstructure put up by her and therefore, prays for appropriate orders.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the first respondent would submit that orders have been reserved by the first respondent in the Special Revision Petition filed by the petitioner and it is likely to be pronounced within a period of two weeks or as expeditiously as possible.

6. Mr.J.Sathyanarayanaprasad, learned counsel appearing for the second respondent would submit that in compliance of the order passed by this Court dated 09.08.2017, the second respondent has filed a Status Report as well as the counter affidavit and would further submit that totally 367 unauthorized constructions/superstructures exist and since the above constructions were completed prior to 1980, they were exempted from obtaining planning permission as per G.O.(Ms)No.11, Municipal Administration and Water Supply (MA1) Department dated 19.01.2006 and subsequently, as per G.O.(Ms).No.59, Municipal Administration and Water Supply (MA1) Department dated 25.07.2006, some of them had applied for regularization of their respective sites and obtained the same and they are also subjected to statutory levies.

7. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the first respondent to pass orders on the Special Revision Petition filed by the petitioner dated 17.07.2017 on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till such time, the respondents 2 to 4 shall defer further decision with regard to demolition of the offending construction put up by the petitioner. It is made clear that the petitioner, till the disposal of the revision petition by the first respondent, shall not create any third party rights in respect of the land and superstructure in question and shall not alter it's physical features also.

8. It is unfortunate to note that many unauthorized constructions were put up without obtaining any planning permission and de hors the same, the respondents 2 to 4 shall cause periodical inspection as to whether any additional construction has been put up without any approval/permission and if it is so, shall take necessary action in accordance with law against the said offending constructions, as expeditiously as possible.

9. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary to Governmet,
The State of Tamilnadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
 - 2.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore-641 001.
 - 3.The Assistant Commissioner,
Coimbatore City Municipal Corporation,
South Zone, Kuniamuthur,
Coimbatore-641 008.
 - 4.The Executive Engineer (Planning),
Town Planning,
Coimbatore City Municipal Corporation,
Big Bazaar Street, Coimbatore-641 001.
- +1 cc to M/s.N.Manoharan Advocate sr 24412
+1 cc to M/s.C.Veeraraghavan Advocate sr 24415
+1 cc to M/s.J.Sathyanarayana Prasad Advocate sr 24359
+1 cc to the Govt pleader sr 24608

W.P.No.21288 of 2017

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