

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.6972 of 2018 and
W.M.P.No.8624 of 2018

N.Ravichandran ... Petitioner

Vs.

1. The Commissioner
Thiruppur Municipal Corporation,
Kumaran Road,
State Highway 169
Noyyal, Tiruppur - 641 604
2. The Assistant Commissioner,
Thiruppur Municipal Corporation,
Kumaran Road,
State Highway 169
Noyyal, Tiruppur - 641 604
3. The Member Secretary
Tiruppur Local Planning Authority,
275, Kamaraj Road,
Tiruppur,
Tiruppur District - 641 604 ..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order dated 22.03.2018 bearing reference in Na.Ka.No.000422/2018/E1/M3 arising consequently out of the notice dated 19.03.2018 bearing reference no.000422/2018/E1/M3 passed by the 1st Respondent and quash the same.

For Petitioner : Mr.M.S.Krishnan
Sr.Counsel for
M/s Ganesh and Ganesh

For Respondents : Mr.S.Silambanan for
Mrs.P.Shanthi for R1 and R2
Mr.A.N.Thambidurai for R3
Special Government Pleader

O R D E R

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

The petitioner has come forward with the aforesaid prayer.

2. The case of the petitioner is that planning permission was accorded by the 3rd Respondent in the year 2013 and that the building was constructed in accordance with plan. According to the petitioner, even though there are slight defects with regard to the set backs, as could be seen from the impugned order dated 22.03.2018, the plan has been approved as early as on 06.11.2013.

3. Learned counsel for the petitioner would submit that in terms of the provisions of the Tamilnadu Town and Country Planning Act, 1971, there is a provision for an Appeal, apart from that, no notice has been given specifying 30 days time to rectify the defects and therefore, the action of the 1st respondent in issuing the impugned notice is illegal.

4. Learned counsel for the petitioner also submitted that there is an appeal provision under the City Municipal Corporation Act, however, even before the expiry of the said period, no action can be taken by the authorities. He also contended that the entire action has been initiated under the City Municipal Corporation Act and not under Tamilnadu Town and Country Planning Act, 1971.

5. Learned counsel for the respondents submitted that action has been initiated under the City Municipal Corporation Act and that the petitioner is a violator, therefore, a notice has already been issued with regard to the violation of construction for which, the petitioner was imposed with a fine of Rs.1,000/- in S.T.C.No.801 of 2015 on 12.09.2015, which has been paid. It is further submitted that lock and seal notice has been issued pursuant to the orders of this Court in W.P.No.5057 of 2018 dated 17.03.2018, hence there is no illegality in the impugned order.

6. Heard all the parties and perused the documents placed on record.

7. It is not in dispute that there is a violation in construction with regard to the building in question. In the present case on hand, the respondents, have taken action under Thiruppur City Municipal Corporation Act, 1981 and the relevant portion of Sections 296 and 447 are extracted below:-

296. Demolition or alteration of building or well-work unlawfully commenced, carried on or completed- (1) If the Commissioner is satisfied -

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

(a) has been commenced without obtaining the permission of the Commissioner or where an appeal or reference has been made to be standing committee, in contravention of any order passed by the standing committee; 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 been 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

(ii) that any alterations required by any notice issued under Section 282 have not been duly made ; or

(iii) that any alternation of, or additions to, any building or any other work made or done for any purpose, in to or upon any building has been commenced or is being carried on or has been completed in breach of Section 295,

he may take a provisional order requiring the owner or the builder or the occupier to demolish the work done, or so much of it, as in the opinion of the Commissioner has been unlawfully executed, or to make such alterations as may, in the opinion of the Commissioner, be necessary to bring the work into conformity with the provisions of the Act, rules, by laws, direction or requisition as aforesaid or with the plans or particulars on which such permission or order was based, and may also direct that until the said order is complied with the owner or builder or the occupier shall refrain from proceeding with the building or well.

(2) The Commissioner shall serve a copy of the provisional order made under sub-section(1) on the owner or the occupier 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 or the occupier fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order with any modifications he may think fit to make and such order shall then be binding on the owner or the occupier."

447. Penalty for unlawful building - If the construction or reconstruction of any building or well -

" (a) is commenced without the permission of the Commissioner ; or

(b) is carried on or completed 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 any breach of provision contained in this Act or in any rule or by-law made under it, or of any direction or requisition lawfully given or made ; or

if any alterations or additions required by any notice issued under Section 282 or Section 295 are not duly made, or

if any person to whom a direction is given by the Commissioner to alter or demolish a building or well under section 296 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 well or hut to one hundred rupees and in the case of any other building to one thousand rupees, and to a further fine which may extend in the case of a well or hut to twenty rupees, and in the case of any other building to two hundred rupees for each day during which the offence is proved to have continued after the first day."

8. A reading of the above Sections would make it very clear that opportunity will have to be given to the petitioner for rectifying the defects and if the opportunity has not been utilised, the building has got to be demolished. In this case, the petitioner was put on notice about the violation, for which, a fine has been paid as stated supra. That being the case, even assuming for the sake of argument that Tamilnadu Town and Country Planning Act, 1971 is going to be applicable to the case on hand, the petitioner, though being aware of the violation in construction, has not taken any steps to rectify the same. More than five years have gone by from the date of sanctioning of plan, i.e., 2013 and that three years have gone by from the date of imposition of fine, i.e., 12.09.2015.

9. Moreover, the petitioner has filed an affidavit to the effect that he will rectify the defects and try to bring the building in accordance with the plan, failing which, he will remove the violated portion. If the petitioner prefers an appeal either under the City Municipal Corporation Act, 2008 or under Tamilnadu Town and Country and Planning Act, 1971, if there are no legal impediments, the respondents / Authorities are directed to lift the lock and seal only for the purpose of rectifying

the defects and that the pending Appeal will not be a bar for the Jurisdictional Officer of the State Electricity Board/ TNEB/ TANGEDCO to disconnect electricity to the violated portion.

10. It is made clear that payment of fine would not give any sanctity for the violation committed by the petitioner and that fine is imposed only for violation. Further, till the violated portions are rectified, if the cause of action continues, namely, occupation in the violated portion, it is open to the authorities concerned to take action in accordance with law.

11. It is brought to the attention of this Court that as on date, the violated portion is not under the lock and seal. Since the action has been initiated under the City Municipal Corporation Act, this Court is of the view that the respondents are directed to lock and seal the violated portion and thereafter, within a period of 24 hours, it is open to the authorities to lift the lock and seal of the violated portion to carry out the rectification and it is clear that the violated portion shall not be utilised for the purpose of occupation.

12. In the present case, as the petitioner wanted to bring the building in accordance with the plan, he shall not be permitted to seek regularisation under any of the provisions of the statute.

With the aforesaid observation, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Commissioner
Thiruppur Municipal Corporation,
Kumaran Road,
State Highway 169
Noyyal, Tiruppur - 641 604

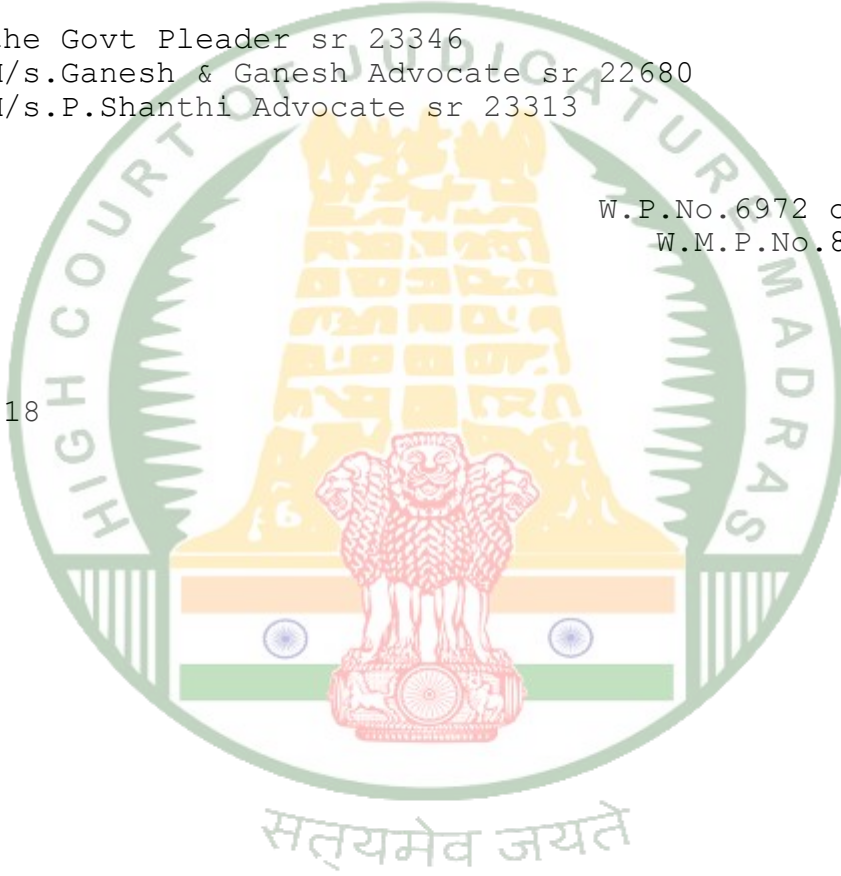
2. The Assistant Commissioner,
Thiruppur Municipal Corporation,
Kumaran Road,
State Highway 169
Noyyal, Tiruppur - 641 604

3. The Member Secretary
Tiruppur Local Planning Authority,
275, Kamaraj Road,
Tiruppur,
Tiruppur District - 641 604

+1 cc to the Govt Pleader sr 23346
+1 cc to M/s.Ganesh & Ganesh Advocate sr 22680
+1 cc to M/s.P.Shanthi Advocate sr 23313

W.P.No.6972 of 2018 and
W.M.P.No.8624 of 2018

ssd(co)
aa24/04/2018



WEB COPY