

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

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

W.P.No.21639 of 2017

P.Selvarajan

.. Petitioner

Vs.

1. The Commissioner of Municipal Administration,
Municipal Administration Department,
Ezhilagam Annex, 6th Floor, Chepauk,
Chennai-600 005.

2. The Zonal Director,
Directorate of Town and Country Planning,
Salem Region,
5, Sannathi Street,
Salem District, Tamil Nadu-636 005.

3. The Commissioner,
Attur Municipality,
Municipality Office,
Attur, Salem District.

4.T.Kandhasamy

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the third respondent herein to consider the petitioner's representation dated 05.06.2015, 06.06.2016 and reminder representation dated 02.07.2017 and comply the order dated 25.08.2014 made in Ka.Va.No.17/2005/F1 building permission No.45/2005/F1 passed by the third respondent.

For petitioner : M/s.M.Panimalar for A.Raja Kumar

For respondents: Mr.A.N.Thambidurai, Spl.G.P. for RR-1 to 3
Ms.A.L.Gandhimathi for R-4

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the third respondent herein to consider the petitioner's representation dated 05.06.2015, 06.06.2016 and reminder representation dated 02.07.2017 and comply with the order dated 25.08.2014 made in Ka.Vi.No.17/2005/F1 building permission No.45/2005/F1 passed by the third respondent.

2. It is the case of the petitioner that the fourth respondent was the absolute owner of the five-floor commercial complex building bearing S.No.500/8 (T.S.No.50, Ward-D, Block No.43), which is situated in Attur Town and Taluk, Salem District. The fourth respondent has constructed the commercial complex with five floors without obtaining planning permission from the respondents 1 to 3 and that the fourth respondent has suppressed the total extent of the property and that the planning permission for the said building was granted for ground and first floors only. The planning permission was granted for construction of 8300 Sq.Ft., but the fourth respondent, without obtaining any permission, has constructed 33,300 Sq.Ft. As the entire building is constructed in violation of the plan, a notice was issued for removal of the unauthorised construction within seven days. The petitioner submitted that without any other alternative remedy, he has made representations to the authorities and that the same may be considered.

3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special

Leave Petition, by observing as follows:

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

Pending application stands disposed of."

Thus, in the said order dated 05.01.2018, the Supreme Court directed that the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme, 2017, is pending, to decide the matter in accordance with law within two months.

4. In this case, it is seen that there is no proper set-back left by the fourth respondent while constructing the building. There is also no proper ventilation as required under Rule 14(2) of the Tamil Nadu District Municipalities Building Rules, 1972. The fourth respondent has combined both the buildings as single unit without the permission from the Attur Municipality.

5. It is not in dispute that the building has been constructed by the fourth respondent in violation of the plan. The Supreme Court has repeatedly held that the building has got to be constructed without any violation of the plan. In view of the same, we are of the view that the violated portion(s) will have to be demolished, as it is not in accordance with the sanctioned plan. Any building that is constructed in violation of the plan, and thereafter making an application for regularisation, would amount to putting the cart before the horse.

6. From the report filed by the third respondent-Commissioner of Attur Municipality, it is seen that the fourth respondent-T.Kandhasamy, who is the owner of the building "Sri Raj Krishna Residency", initially constructed a commercial complex building in basement floor, ground floor, first floor, second floor and third floor and submitted a building plan to Attur Municipality on 07.02.2005. The building plan was perused by the Attur Municipality, and a letter was sent to Deputy Director of Town and Country Planning, Salem, to get clarification for giving approval. The Deputy Director of Town

and Country Planning, Salem has given a clarification that since the building is planned with basement floor, the building application proposal should be made to the Deputy Director of Town and Country Planning, Chennai and the matter was intimated to the fourth respondent by the Attur Municipality on 28.04.2005. Further, after getting the intimation letter, the fourth respondent/building owner has changed his earlier proposal and gave a building application to Attur Municipality for construction of commercial building in the ground and first floor only on 29.04.2005 and the building plan was perused and the approval was given by the Attur Municipality in Building Licence No.45/2005/F1, dated 25.05.2005.

7. Thus, it is manifestly clear that, clandestinely, after obtaining permission only to the ground and first floor, the fourth respondent constructed basement, second and third floors in violation of the plan. It is further seen that the deviation notice was issued by the Attur Municipality under Section 205(1) (2) of the Tamil Nadu District Municipalities Act, 1920 on 02.08.2005 and also the notice under Section 205(3) on 02.09.2005, and after receiving the notices, the building owner did not respond to the same. Thereafter, the Municipality filed the charge sheet on 07.10.2005 before the Judicial Magistrate, Attur, for the offence of illegal construction made by the building owner and the Judicial Magistrate, Attur, prosecuted the building owner by imposing fine amount of Rs.300/- in S.T.C.No.180 of 2006, by order dated 24.3.2006. After prosecution, the notice was issued to the building owner under Sections 317(c) and 319 of the Tamil Nadu District Municipalities Act, 1920, for the offence committed by the building owner. On receipt of the notice, the building owner/fourth respondent submitted a building plan as per the construction which was going on, to the Attur Municipality on 23.09.2005, and the building plan was refused on 07.10.2005 by the Municipality.

8. Since the building constructed comes within the purview of the Deputy Director of Town and Country Planning, Chennai and beyond the limit of the Municipality, again, the Municipality issued the deviation notices under Sections 205(1)(2) and 205(3) of the Tamil Nadu District Municipalities Act, 1920, on 14.08.2014 and 25.08.2014 respectively, and the fact was intimated to the Deputy Director of Town and Country Planning, Salem in R.O.C.No.3930/2014/F1, dated 13.11.2014. After receipt of the letter, the Deputy Director of Town and Country Planning, Salem, did not agree with the request of the fourth respondent and issued Lock and Seal Notice under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 to the fourth respondent on 17.11.2014. Now, the building owner/fourth respondent submitted an application under the Unauthorised

Building Regularisation Scheme, 2017 on 11.07.2017, under G.O. (Ms).No.110, Housing and Urban Development Department, dated 22.07.2017 to the Deputy Director of Town and Country Planning, Salem, through the Attur Municipality. The above building regularisation application was forwarded to Deputy Director of Town and Country Planning, Salem on 21.08.2017. Further, a letter was written from Attur Municipality to the Deputy Director of Town and Country Planning, Salem on 05.09.2017 requesting to take immediate action of locking and sealing the illegally constructed building, as per the notice already served by the Deputy Director of Town and Country Planning, Salem on 13.11.2014 as earlier as possible.

9. From the above facts, it is clear that the fourth respondent is a violator with utter disobedience to the provisions of law.

10. This Court, in W.P.No.29985 of 2016 (M/s.Aara Silk Vs. The Principal Director, Southern Command, IDES Guest House, Cross Road, Pune, Maharashtra State), by order dated 29.09.2016, has followed the following decisions of the Supreme Court:

(i) In Priyanka Estates International Pvt. Ltd. Vs. 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 construction of buildings in violation of the Rules, in the case of Shanti Sports Club Vs. 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."

11. Further, in the decision of the Supreme Court reported in 2016 (3) SCALE 206 = AIR 2016 SC 1460 (Babita Badasaria and others Vs. Patna Municipal Corporation and others), the issue relating to unauthorised construction by compounding of the illegal construction by paying compounding fee, came up for consideration and the Supreme Court had taken note of the fact that there was enormous deviation from the sanctioned plan in construction of multi-storeyed building and found no reason to

change their mind and allow to keep the illegal construction which is contrary to law.

12. Moreover, the Apex Court time and again observed that the time of regularisation cannot be periodically extended. Since there is an observation made in this regard with regard to the fourth respondent's building, and that as stated supra, the Apex Court, by order dated 05.01.2018, has permitted the authorities to consider the application for regularisation of the building of the fourth respondent in terms of the DTCP Building Regularisation Scheme 2017, it is open for the authority concerned to consider the same by taking note of the above decisions of the Apex Court, more particularly with regard to the set back maintenance, proper ventilation, parking space, Open Space Reserve (OSR), etc., by following the provisions of the Tamil Nadu District Municipalities Act/Rules thereunder and the Tamil Nadu Town and Country Planning Act/Rules thereunder.

13. In the said decision, the Apex Court has not directed for regularisation of the violation, but it had only directed the authority concerned to consider the application for regularisation of the fourth respondent herein, who was the petitioner before the Supreme Court. Hence, the authority(ies) are directed to consider the pending regularisation application of the fourth respondent and pass appropriate orders and take a decision in terms of the above orders of the Apex Court, after hearing the petitioner herein, the fourth respondent herein and the complainant, if any. This Court makes it clear that we are not inclined to restore the electricity connection to the violated portion, as it has been already rejected by this Court, which has been confirmed by the Apex Court in the said decision stated supra.

14. Hence, in view of the above discussion, we are of the opinion that the construction of the building in question by the fourth respondent has got to be razed to the ground, as he failed to follow the law. In this context, it is worthwhile to quote a decision of the Supreme Court reported in 2002 (2) SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma), in which the Apex Court held as follows:

"15. An employer who does not make an application under Section 33(2) (b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law....."

(emphasis supplied)

Though the said verdict of the Supreme Court is one under the Industrial Disputes Act, the principle laid down by the Apex Court is that every citizen should be law abiding person and no one shall violate the law. It is very unfortunate that the fourth respondent failed to adhere the law. If the violators of law are permitted to violate, certainly, it will be a bad example to the law abiding citizens, as has been held by the Supreme Court in the above cited decision reported in 2002 (2) SCC 244.

15. With the above observations and directions, the Writ Petition is disposed of. No costs.

16. Before parting with the case, it is worthwhile to notice a decision of the Supreme Court reported in AIR 1987 SC 1960 = 1987 (4) SCC 99 = 1987 SCR (3) 728 (Krishna District Co-operative Marketing Society Ltd. Vija Vs. N.V.Purnachandra and others), wherein the Apex Court has suggested for amendment of the Statute, and the relevant portion of the same reads as follows:

"We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by enacting Section 41 providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual workman. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes

(Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feel that the Central Act passed forty years ago needs a second look and requires a comprehensive amendment."

17. The above said decision of the Apex Court is a case where the Supreme Court suggested that Legislature should make an amendment to the provisions of the Industrial Disputes Act so that there is speedy justice. The above extracted suggestion made by the Supreme Court, was in the interest of the welfare of the litigants and the law abiding citizens. Similarly, we are of the view that in the Tamil Nadu Town and Country Planning Act, the District Municipalities Act, the Tamil Nadu Panchayats Act, the Tamil Nadu Land Encroachment Act, etc., periodical amendments are being made, more particularly in the Tamil Nadu Town and Country Planning Act, and the building Regulations including that of the Chennai Metropolitan Development Authority (CMDA), instead of curtailing the illegal construction/unauthorised occupation and removing the encroachments, etc., regulates the illegal construction/unauthorised occupation/encroachments. Hence, we are of the earnest opinion that there shall be an amendment to the provisions of the said Enactments in such a way that illegalities are not regularised and amendment of the provisions of the said Enactments should be incorporated in such a way that illegal constructions/unauthorised construction/encroachments, without any sanctioned plan, shall

not be regularised in any manner. This is the only way of eradicating the illegal constructions/unauthorised construction/encroachments, which of late, has become a trend of menace and a source of public nuisance for the homosapiens, authorities, etc.

18. Further, it is to be remembered that alternative remedy is not a bar to entertain the Writ petition for removal of encroachments, if a person encroaches the public road, Open Space Reserve, lake, park, etc; so also, the alternative remedy is not a bar to seek for demolition of building if constructed in violation of the plan or there is no plan at all. At the risk of repetition, it is to be noted that the District Municipalities Act, The Tamil Nadu Town and Country Planning Act, The Tamil Nadu Panchayats Act and the Tamil Nadu Land Encroachment Act, are all not dynamic in nature. Instead of evicting the illegal persons, it gives room for the violators to continue by approaching this Court and stall the entire proceedings. These Enactments try to regulate the illegalities, rather than curtailing it. Otherwise, the law abiding citizens who follow the legal procedures, become a mockery before the violators.

19. The Courts cannot Legislate the laws. But however, suggestions can be made by the Courts, as done by the Apex Court in the said decision of Krishna District Co-operative Marketing Society Ltd., extracted above. It is left to the discretion of the law making authorities (Executive/Legislature) to enact the law or include necessary provisions/amendment in the Enactments to avoid further illegal construction/unauthorised occupation/encroachments. This will ensure that no building construction can be made without the sanctioned plan.

20. It is needless to mention that the authorities must take note of the above decisions of the Supreme Court before granting any regularisation of the construction of the building/for building planning permission, etc.

Sd/-

Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner of Municipal Administration,
Municipal Administration Department,
Ezhilagam Annex, 6th Floor, Chepauk,
Chennai-600 005.

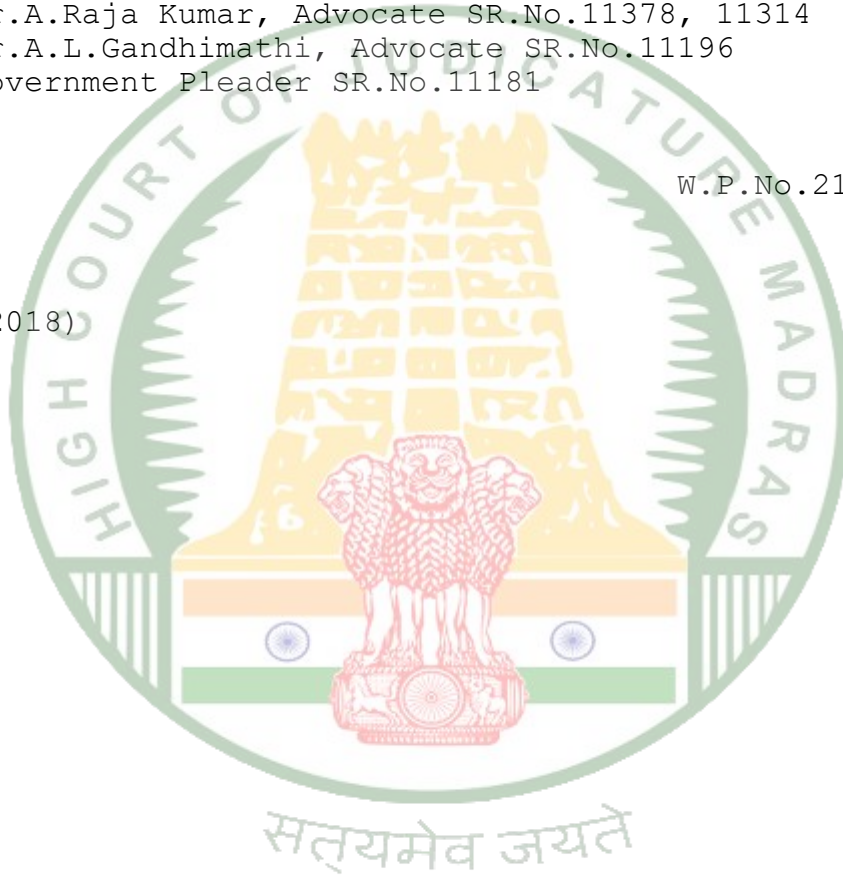
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3. The Commissioner,
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Municipality Office,
Attur, Salem District.

+4cc to Mr.A.Raja Kumar, Advocate SR.No.11378, 11314
+1cc to Mr.A.L.Gandhimathi, Advocate SR.No.11196
+1cc to Government Pleader SR.No.11181

W.P.No.21639 of 2017

GN(16/03/2018)



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