

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.14520 of 2017

Kiran Bai

... Petitioner

vs.

1. The District Collector,
Collectorate Building,
Coimbatore - 641 018.
2. The Commissioner,
Corporation of Coimbatore,
Coimbatore - 641 001.
3. The Member Secretary,
Coimbatore Local Planning Authority,
Sivananda Colony, Tatabad,
Coimbatore - 641 012.
4. G.Vivek Kumar

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a mandamus directing the respondents 1 to 3 herein to take immediate action and remove the illegal/unauthorized construction being put up by the 4th respondent at No.212, T.V.Swamy Road, R.S.Puram, Coimbatore that adjoins this petitioner's residential property located at Door No.217, R.S.Puram, T.V.Samy Road, Coimbatore.

For Petitioner : Mr.S.V.Pravinrathinam

For Respondents 1 & 3 : Mr.A.N.Thambidurai,
Special Government Pleader

For 2nd Respondent : Mr.K.Magesh

For 4th Respondent : Ms.A.Rajeswari Karthikeyan

O R D E R

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

This Writ Petition is filed seeking a direction to respondents 1 to 3 herein to take immediate action and remove the illegal/unauthorized construction being put up by the 4th respondent at No.212, T.V.Swamy Road, R.S.Puram, Coimbatore that adjoins the petitioner's residential property at Door No.217, R.S.Puram, T.V.Samy Road, Coimbatore.

2. According to the petitioner/Kiran Bai, she and her sister viz. Suabai are joint owners of the residential property in question and that there is approximately a 10 feet narrow space in width between her property and a Hotel viz. SMS Hotel, where, the 4th respondent herein, started to build an illegal construction without statutory approval and permission. Since the petitioner's property is being damaged due to the said unlawful construction being up by the 4th respondent, she made a complaint against him before the Inspector of Police, R.S.Puram Police Station on 18.11.2016, which was registered as C.S.R.No.704/2016. In response to the complaint, the 4th respondent, by letter dated 24.12.2016 stated that he has got the required permission for construction and based on the same, the Police closed the complaint. In this regard, the petitioner again preferred a complaint dated 20.03.2017 before the 2nd respondent. Since no action is forthcoming, the petitioner is before this Court.

3. Pursuant to the order of this Court, dated 11.09.2017, a Status Report has been filed by the 2nd respondent, pointing out the violations in respect of the unauthorized construction in question, and the same is tabulated below:

S.No .	Description	As per Approved Plan for single shop	As on Ground condition	Remarks
1	Stilt Floor	84.39 m2	Instead of stilt floor, basement floor constructed which is unauthorized one	Without prior approval from the Corporation Commissioner, constructed for which notice u/s CCMC 296(1) and (2) issued

S.No .	Description	As per Approved Plan for single shop	As on Ground condition	Remarks
2	Ground Floor	84.39 m2	New Construction 315.56 Sq. Mt. Existing structure converted as restaurant for an area of 360 Sq.Mt. Total ground floor area comes to 675.56 Sq. Mt.	Instead of maintaining 84.39 Sq. Mt. for the use of single shop, building owners structure existing for an area of 675.56 sq. Mt. is totally violation
3	Front Open Space	Required 4.5 Mtrs.	Nil in the western part of 23 feet land portion since the existing structure converted as SMS restaurant	DCR 3(3)(7) 100% violation
4	Side Open Space East West	Required 3 Mtrs. Required 3 Mtrs.	Nil	DCR 3(3)(8) 100% violation
5	Rear Open Space	Required 3 Mtrs.	0.6 Mtrs in Eastern portion and 2.4 Mtre in Western portion	80% violation in eastern side and 20% violation in western side.
6	Plot Coverage	Permissible 65%	89.52%	DCR 3(3)(6) violated
7	Floor Space Index	Permissible 1.5	1.42	0.11% FSI only approved for single shop building

S.No .	Description	As per Approved Plan for single shop	As on Ground condition	Remarks
8	Parking space	Required parking 11 Units 137.50 Sq.Mtrs.	No parking space proposed - Existing basement constructed at present cannot be utilized for parking.	100% violation DCR 3(3)(11)(2) violated

4. Denying the averments of the petitioner, the 4th Respondent has filed a counter affidavit, stating that he submitted a Revised Plan following all the Norms and Regulations prescribed under the Tamil Nadu Town and Country Planning Act, but, the 2nd respondent, at the time of inspection of his property, has not considered the same.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is not in dispute that the 4th respondent has constructed a house in violation of the sanctioned Plan. In the counter affidavit, he has admitted that the construction area exceeds 2000 sq. ft. and hence, he has submitted a Revised Plan for approval. According to the official respondents, there cannot be any basement in the construction in question and that the same is an unauthorized one. Moreover, the 4th respondent has proceeded with the construction without proper setback and there is violation of sanctioned plan in all respects, as could be seen from the Tabular column extracted supra.

7. According to the 4th respondent, he obtained Planning Permission from the 2nd respondent/Corporation vide No.BL/0342/2016/MHI/W on 20.10.2016, and started constructing the building in question, but, however, to increase the built up area, he altered the Plan and constructed the building with some modifications. From the Status Report filed by the 2nd respondent/Corporation, it appears that the 4th respondent, after obtaining building licence from the Corporation for a single shop building, converted the existing structure into a Restaurant and Kitchen and also made new construction in the basement with violations and deviations.

8. In a similar circumstance, the First Bench of this Court in the case of R.Vadivelu vs. P.Devaraji, by an order

dated 23.09.2016 in Contempt Petition No.1769 of 2015, has held as under:

"4. We have also perused the Report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorized construction by issuing stop work notices immediately when such unauthorized construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary court protection is available."

9. With regard to set back, the First Bench of this Court, in W.P.No.18777 of 2014, by an order dated 08.11.2016, has held as under:

"8. ... We may add here that this Court also is not granting interim orders (in such cases) as a matter of routine, because the deviations/violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable of being regularised - if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action."

10. In a similar circumstances, a Division Bench of this Court in the case of Aara Silks vs. The Principal Director, Southern Command, Pune, Maharashtra, by an order dated 29.09.2016, in Writ Petition No.29985 of 2016, has held as under:

"22. In view of the decisions cited supra, this Court is of the view that the violated portions have got to be razed to the ground. In terms of the provisions of the Cantonment Act, the police shall give full protection for the demolition of the building and the petitioner is given a week's time from today, to remove the belongings in the building, otherwise, it will be construed that the belongings have been vacated by the petitioner. This Writ Petition is dismissed with the above direction and observation.

23. Since the petitioner has played fraud with regard to construction of building, by grossly violating the sanction plan, this Court imposes fine of a sum of Rs.50,000/- (Rupees Fifty Thousand only) on the petitioner to be payable by him in favour of Government Higher Secondary School for the Blind, Poonamallee, Chennai - 600056, 044-26272080 within a period of one week from the date of receipt of a copy of this order. Consequently, connected W.M.P.No.25954 of 2016 is closed."

11. This Court is of the view that as the building in question has been constructed in violation of the sanctioned Plan, the entire building has to be razed to the ground. It is made clear that if the 4th respondent herein submits a Revised Plan for approval, the same may be approved by the authorities concerned, if it is in conformity with the norms and the 4th respondent will have to construct the building only in accordance with the Plan so sanctioned.

12. We further observe that as the 4th Respondent has constructed the building in violation of the Plan, the authorities will have to inspect the building that may be constructed by the 4th respondent pursuant to the revised Plan, if sanctioned and the 4th respondent will have to submit a Report as to the Status of the building, so that there will not be any violation in future.

13. It is disheartening to note that many buildings, including individual houses, Apartments, Commercial Complexes, etc. are constructed in violation of the sanctioned Plan, without leaving proper setback and in several cases, knowing well that it is a public road and Park, constructions are made. The fact remains that only the owner of the building is at loss, when a building, which is not constructed in accordance with the Plan, is ordered to be demolished, and the authorities, who issue Completion Certificate to such buildings, make hay while the sun shines. It is in collusion with the officials, these buildings are raised and on complaint, this Court directs them to be razed. This Court is of the view that unless a liability is fixed on the Government Servants, it will be very difficult to curtail encroachments. To safeguard the interest of the public at large, this Court issues the following directions:

(i) After getting the approved Plan, once the basement of the building is constructed, the applicant shall approach the authorities concerned seeking to inspect the site before further progress, to ensure that there is no encroachment on the road and that there is proper setback on all sides, in accordance with the Plan. The authorities concerned shall inspect the site within 15 days from the date of such application and point out the defects, if any;

(ii) Once the structure of the building is completed as per the Plan, the applicant shall apply for Completion Certificate, be it to the Corporation/ CMDA/Municipality/Local Authority, etc., and the authorities concerned shall inspect the building as to whether it is constructed as per the sanctioned Plan, within a period of 15 days from the date of receipt of application;

(iii) If any violations are pointed out by the said authorities, the applicant shall rectify the defects and send the Compliance Report to the authorities, who, on receipt of the same, shall again inspect the building and issue Completion Certificate to the applicant, if the building is in accordance with the sanctioned Plan. Such exercise shall be completed within a period of 15 days from the date of receipt of the Compliance Report from the applicant;

(iv) After obtaining Completion Certificate, if any construction is made in violation of the Approved Plan, such violated construction shall not be regularized at all;

(v) Thereafter, it is open to the applicant to apply for Electricity service connection/Water and Sewerage connection to the authorities concerned. The authorities of Tamil Nadu Electricity Board/Tamil Nadu Water and Sewerage Board shall effect the respective service connection to the applicant, only on receipt of a copy of the Building Completion Certificate issued by the Corporation/Municipality/local authority concerned;

(vi) The Officials concerned shall visit the site at every stage of completion of the building as may be identified or intimated to the authorities and that the second floor and floors above, shall be inspected at the stage of completion by CMDA/Corporation/local authority under whose jurisdiction, it falls, to avoid construction of buildings with violations;

(vii) The conditions applicable to multi-storied and special buildings shall also be equally applicable to the buildings that are constructed as per the Plan sanctioned by the Corporation / CMDA/ Municipality/local authority;

(viii) The authority, who issues Completion Certificate to the applicant, shall furnish a copy of his Aadhar Card/Government Identity Card/Employment Card/PAN Card/Passport, if any, with the Completion Certificate, so that he cannot escape from the clutches of law, in case, if he had issued Completion Certificate to a building constructed in violation of the sanctioned Plan;

(ix) If there is any complaint from the applicant with regard to the non-issuance of Completion Certificate on the ground that officials have demanded bribe, such complaint will have to be investigated and in case, it is established by means of an enquiry, major penalty under various provisions of law/Service Regulations, shall be imposed on the officials demanding bribe and the same shall be entered into their service records.

(x) Details of the authorities, who sanction the Building Plan/inspects the Building/issues Completion Certificate, need to be uploaded in the internet together with

their Employment Card, so that the applicant can have access to the same and in case of violation of the building Plan, the officials can be brought to book.

14. It is made clear that no interim order or final order shall be passed by the Courts below in any petition for effecting electricity supply, without ascertaining the fact from the Corporation/Municipality/CMDA or any local authority. It is further made clear that till Rules/Regulations are framed for inspection of site at every stage, the directions stipulated supra have to be followed by the authorities. The conditions mentioned in this order will apply even to the on-going constructions.

15. Registry is directed to mark a copy of this order to (i) the Commissioner of Land Administration, Chennai (ii) the Secretary to Government, Housing and Urban Development Department, Chennai (iii) the Secretary, Revenue Department, Secretariat, Chennai, (iv) the Director of Town and Country Planning Department, Chennai, (v) the District Collector, Chennai, (vi) the Chief Secretary to Government, Secretariat, Pondicherry and (vii) the District Collector, Pondicherry, who shall forward the same to all the Departments working under them, to enable them follow the directions issued in this order, in letter and spirit.

16. The Registrar-Judicial (i/c) of this Court is directed to place this order before the Hon'ble The Chief Justice for marking a copy to all the Subordinate Courts in Tamil Nadu and the Union Territory of Pondicherry.

In fine, the Writ Petition is allowed with the above directions and observations. No costs.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

WEB COPY

To:

1. THE DISTRICT COLLECTOR,
COLLECTORATE BUILDING,
COIMBATORE - 641 018.
2. THE COMMISSIONER,
CORPORATION OF COIMBATORE,
COIMBATORE - 641 001.
3. THE MEMBER SECRETARY,
COIMBATORE LOCAL PLANNING AUTHORITY,
SIVANANDA COLONY, TATABAD,
COIMBATORE - 641 012.
4. THE REGISTRAR JUDICIAL (I/C)
HIGH COURT MADRAS.
5. THE COMMISSIONER, LAND ADMINISTRATION, CHENNAI.
6. THE SECRETARY TO GOVT. HOUSING AND URBAN DEVELOPMENT DEPT.
CHENNAI 9
7. THE SECRETARY TO GOVT. REVENUE DEPARTMENT,
SECRETARIAT, CHENNAI 9
8. THE DISTRICT COLLECTOR, CHENNAI.
9. THE CHIEF SECRETARY TO GOVT. SECRETARIATE, PONDICHERRY.
10. THE DISTRICT COLLECTOR, PONDICHERRY.

+1cc to Mr.A.RAJESWARI KARTHIKEYAN Advocate, S.R.No.1638

+1cc to Mr.K.MAGESH, Advocate, S.R.No. 1989

+2cc to Mr.S.V.PRAVIN RATHINAM, Advocate, S.R.No. 1733

Order in
W.P.No.14520 of 2017

TR(06/02/2018)

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