

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.09.2018

Coram:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.23118 of 2018
and
W.M.P.No.26999 of 2018

Masjid-e-Ihlas Sunnath Jamath
Masjid and Madarasa,
rep.by its Muthavalli
Sheik Ameer
Petitioner

vs.

1. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development,
Fort St.George,
Chennai-600 009
2. The Commissioner,
Tiruppur Municipal Corporation,
Kumaran Road,
State Highway 169,
Novyal, Tiruppur.
3. The Collector,
O/o.The Collectorate,
Tiruppur District,
Tiruppur.

Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the 1st Respondent to consider and pass orders on the Representation dated 03.08.2018 by extending the Stay of Lock and Seal Notice granted by Order dated 18.06.2018.

For Petitioner : Mr.K.Nithyashree

For Respondents : Mr.J.Pothiraj, Spl.G.P.

For R1 & R3

Mr.S.Silambanan, Sr.counsel

for Mrs.P.Shanthi for R2

ORDER

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

Heard the Learned Counsel for the Petitioner, the Learned Senior Counsel for the Second Respondent and the Learned Special Government Pleader for R1 and R3.

2.No counter is filed on behalf of the Respondents.

3.According to the Petitioner, originally the Masjid vacant land belonging to one Mrs.Dhanalakshmi and three others, was purchased by one R.Syed Fakrudeen, as per Sale Deed dated 25.05.2011. The said R.Syed Fakrudeen has put up an RCC Construction in the premises. Later, through a Settlement Deed dated 16.4.2012, the said property along with the building was transferred to the Petitioner for being utilised for Muslim Community. The Masjid and Madarasa is registered with the Tamil Nadu Wakf Board, Coimbatore, vide Registration No.272/2012. Subsequently, the said Syed Fakrudeen had executed a Settlement Deed dated 27.01.2004 in the name of the Petitioner.

4.The Learned Counsel for the Petitioner submits that from the year 2012 onwards, the said property is used as a Prayer Hall and the Members of the Muslim Community have been peacefully conducting prayers. There is no traffic congestion or any form of disturbance to any of the members in the vicinity. Both the Hindu and Muslim Communities have been peacefully and unitedly living in the area. Almost 100 Muslim families conduct prayers in the Prayer Hall. To accommodate the Muslim crowd, construction of a superstructure was initiated. However, by means of Notice dated 21.05.2014, the Masjid was directed to stop the construction in the front and rear side of the Mosque. The Petitioner preferred a Revision Petition before the First Respondent/the Secretary, Government of Tamil Nadu, Housing and Urban Development, Fort St.George, Chennai-9, under the Tamil Nadu Town and Country Planning Act, 1971.

5.At this juncture, the Learned Counsel for the Petitioner brings it to the notice of this Court that one Venkateswara and Mahalakshmi Nagar Residents Welfare Association filed a Writ Petition in W.P.No.15613 of 2014, seeking a direction to consider its Representation dated 23.09.2013, wherein they sought the relief of stopping the construction. The Writ petition was closed stating that the issue will be decided in the Revision Petition filed by the Petitioner. Subsequently, the Revision Petition was disposed of on 06.10.2016, stating that the building is not in accordance with Development Control Rules.

6. Thereafter, the Second Respondent issued Demolition Notice dated 18.07.2016 (which was served on the Petitioner on 26.07.2016), alleging that there are violations in the construction of the building. Immediately, the Petitioner had applied for Planning Permission for the said building on the same day and it was rejected on the same day based on the reason that 'No Objection Certificate' from the District Collector was not produced. Apart from that, the Second Respondent had issued 'Lock and Seal Notice' dated 26.07.2016. Thereafter, the Petitioner filed a Special Revision to the First Respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. Also the Petitioner filed W.P.No.26715 of 2016 before this Court seeking to dispose of the pending Revision. By means of an Order dated 10.11.2016, the aforesaid Writ Petition was disposed of directing the First Respondent/The Secretary, Government of Tamil Nadu, Housing and Urban Development, Fort St. George, Chennai-9, to pass Orders on the Special Revision filed by the Petitioner, within a period of three months. Eventually, the Revision came to be disposed of by the First Respondent on 28.09.2017, pointing out the set back violations in the building and also a direction was issued to the Petitioner to rectify the violations and apply and obtain Planning Permission. The First Respondent fixed 31.12.2017 as the cut-off date for obtaining Planning Permission and allowed the Petitioner to use the premises till then. The Petitioner had approached the Chartered Civil Engineer to plan for necessary rectification in the existing building and submitted the same to the Second Respondent/The Commissioner, Tiruppur Municipal Corporation, Tiruppur, for approval, on 08.12.2017. As there was no response, the Petitioner sought for extension of time and the same was allowed till 31.03.2018 to use the premises for the purpose for which it is being used now. Since the Second Respondent had not passed any Orders on the Application of the Petitioner, the Petitioner was perforced to project W.P.No.366 of 2018, seeking a direction to dispose of his Application for Planning Permission. By means of an Order dated 09.1.2018, the said Writ Petition was disposed of directing the Respondent concerned to dispose of the Application of the Petitioner within 15 days.

7. It transpires that by an Order dated 16.2.2018, the Second Respondent informed that 'No Objection Certificate' was not produced along with the Application. Immediately thereafter, the Petitioner had approached the 3rd Respondent/The Collector, Tiruppur District, Tiruppur, seeking 'No Objection Certificate'. The 3rd Respondent, by Order dated 30.03.2018, had informed that 'No Objection Certificate' will be issued only if the Second Respondent and the Assistant Director/Member

Secretary, Tiruppur Local Planning Commission, sanction 'Planning Permission'.

8.The Learned Counsel for the Petitioner contends that the 3rd Respondent had failed to note that as per Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, it is a pre-requisite to obtain site approval from the 3rd Respondent in order to plan and construct any building for 'Public Worship' or for 'Religious purpose' and not vice versa. In the meanwhile, the Sub-Collector, Tiruppur District, at the behest of Venkateswara and Mahalakshmi Nagar Residents Welfare Association, had directed the 2nd Respondent to take necessary action to implement the Order in W.P.No.15613 of 2014. The Second Respondent issued the 'Lock and Seal Notice', dated 02.04.2018, to the Petitioner under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971. Hence, the Petitioner filed W.P.No.8329 of 2018, assailing the Notice dated 02.04.2018 and the said Writ Petition was dismissed. Thereafter, the Petitioner filed Review Petition No.87 of 2018 against the Order passed in the Writ Petition.

9.The Principal stand taken on behalf of the Petitioner is that it is unjustifiable to 'Lock and Seal' the premises for the delay on the part of the 3rd Respondent in issuing 'No Objection Certificate'. As such, the Petitioner had projected a Representation dated 03.08.2018 seeking to extent the Stay of 'Lock and Seal', granted by an Order dated 18.06.2018, until the disposal of the Petitioner's Representation dated 25.04.2018 and reminder dated 27.06.2018 to the 3rd Respondent/District Collector, Tiruppur District, Tiruppur, seeking 'No Objection Certificate', in compliance of the Order dated 19.07.2018 in Review Petition No.87 of 2018. Till date there has been no positive response. Hence, the Petitioner has filed the present Writ Petition praying for passing of an Order by this Court in directing the First Respondent/Secretary, Government of Tamil Nadu, Housing and Urban Development, Fort St.George, Chennai-09, to consider and pass Orders on its Representation dated 03.08.2018, by extending the Stay of 'Lock and Seal Notice', granted by Order dated 18.06.2018.

10.In response, the Learned Special Government Pleader for R1 and R3 points out that as per Letter No.7486/UD4(1)/2018-1, dated 18.06.2018 of the Additional Secretary (Technical) of Housing and Urban Development Department, Secretariat, Chennai-9, the request of the Petitioner to extent the Stay period was rejected and thereafter, the Petitioner has addressed a Communication dated 27.06.2018 to the District Collector, Tiruppur District, Tiruppur.

11.Be that as it may, in view of the fact that the First Respondent/, in the aforesaid Communication dated

18.06.2018 had not acceded to the request of the Petitioner in extending the Stay period, this Court is of the considered view that the present Writ Petition filed by the Petitioner is an Otiose one. Viewed in that perspective, the present Writ Petition fails.

In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. Connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

msk

To

1.The Secretary,
Government of Tamil Nadu,
Housing and Urban Development,
Fort St.George,
Chennai-600 009

2.The Commissioner,
Tiruppur Municipal Corporation,
Kumaran Road,
State Highway 169,
Novyal, Tiruppur.

3.The Collector,
O/o.The Collectorate,
Tiruppur District,
Tiruppur.

+1 CC to M/s.L.n. Nithya Shree, Advocate sr 63214.
+1 CC to Govt. Pleader sr 62668.

SP(24/09/2018)

W.P.No.23118 of 2018

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