

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order : 14.11.2018	Date of Pronouncing order : 05.12.2018
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The Hon'ble Mr.Justice M.Venugopal
and
The Hon'ble Mr.Justice R.Pongiappan

Writ Petition No.19707 of 2018
and
W.M.P.No.23134 of 2018

A.T. Maideen

...Petitioner

Vs.

1. The District Collector,
Nagapattinam District,
Nagapattinam.

2. The Commissioner,
Nagapattinam Municipality,
Nagapattinam.

3. Bha. Saravanan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the respondents 1 and 2 to consider the petitioner's representation dated 03.07.2018 and to direct the respondents 2 and 3 not to hinder to do the patch work in the demolished portion of the petitioner's property at Plot No.4, Bungalow Club Road, (G.S.Pillai Nagar) Kadampadi, Nagapattinam Town, Nagapattinam Taluk and District and also to direct the third respondent to allow the petitioner's persons to do the patchwork in the petitioner's property.

For Petitioner : Mrs.Rita Chandrasekaran
For Respondent-1 : Mr.S.N.Parthasarathy
Government Advocate

For Respondent-2 : Mr.P.Srinivas

For Respondent-3 : Mr.P.Parthiban

O R D E R

R.Pongiappan, J.,

The petitioner has filed this Writ Petition seeking for issuance of mandamus, directing the respondents 1 and 2 to consider his representation dated 03.07.2018 and to direct the respondents 2 and 3 not to cause any hindrance to do the patch work in the demolished portion of the petitioner's property and also to direct the third respondent to allow the petitioner's persons to carryout the patchwork in his property.

2. Heard the learned counsel appearing for the parties and perused the materials placed on record.

3. The case of the petitioner is that he purchased a property, which is a vacant site bearing Plot No.4, situate at Bungalow Club Road, G.S.Pillai Nagar, Kadampadi, Nagapattinam, measuring an extent of 2800 sq.ft, by way of a registered sale deed, dated 16.04.2015 bearing Document No.819 of 2015. Subsequent to the said purchase, he decided to put up a residential building in the said property, for which purpose, obtained necessary permission from the second respondent and constructed a ground and first floor in the said property. In the said circumstances, his neighbour, viz., the third respondent herein, being a retired Deputy Superintendent of Police, gave a representation to the respondents 1 and 2, stating that he has put up the construction without obtaining planning permit and necessary approval, thereby, violating the rules and regulations. Further, the third respondent also filed a Writ Petition before the Hon'ble Division Bench of this Court, viz., W.P.No.16090 of 2017, seeking a direction upon the respondents 1 and 2 to demolish the unauthorized construction put up by the petitioner. The said Writ Petition was disposed of by this Court by order, dated 12.12.2017, and the relevant portion from the said order is extracted hereinbelow:-

" 4. Mr.J.Ferozkhan, learned counsel for the third respondent would submit that the 3rd respondent is confined at the Central Prison, Cudappah, as an Under-Trial Prisoner, in connection with some other case and invited the attention of this Court to the counter affidavit wherein the 3rd respondent would aver that the petitioner himself is guilty of putting up an unauthorised construction and denied the averments that he had put up a superstructure without leaving any set -back space.

5 This Court has considered the rival submissions and perused the materials placed before it.

6 Section 216 of the Tamilnadu District Municipalities Act, 1920, speaks about the demolition or alteration of building work unlawfully commenced, carried on or completed and the second respondent has invoked the said provision and issued notice. The third respondent did not respond to the said notice and therefore, this Court is of the considered view that there is no impediment on the part of the second respondent to proceed further, in terms of Section 339 of the Tamil Nadu District Municipalities Act, 1920.

7 The decision rendered by this Court reported in AIR 1976 Mad 50 : 1975 [2] MLJ 251 [The Commissioner, Pattukottai Municipality Vs. Chandrasekar] also laid down the proposition when the owner neglects the obeying of the order u/s.216[3], there is no further obstruction to the Executive Authority for taking action u/s.339 of the Act. It is further observed that Section 317 relates to the prosecution for failure to comply with the order under Section 216, but that does not in any way affect the right of the Executive Authority to take action under Section 339 [2] of the Act.

8 In the light of the ratio laid down in the above cited decision, the second respondent shall proceed further in terms of section 204[3] read with 339 of the Tamilnadu District Municipalities Act, 1920, as a follow-up action in pursuant to the notice dated 05.07.2016 and take appropriate action within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken ,to the petitioner as well as the third respondent herein.

9 The writ petition is disposed of, with the above direction. No costs."

4. After obtaining the above said order, the respondents 2 and 3 issued a notice, dated 07.06.2018, informing the petitioner to keep the property vacant so as to carry out the demolition work and thereafter, on 20.06.2018 to 23.06.2018, the Officials of the second respondent came to the petitioner's property and demolished certain portions, which according to

them were unauthorized construction. The said demolition work carried out by the respondents requires some patch work, and when the petitioner took steps to do the same, the third respondent by using his power and influence, not only causing hindrance but also threatening the persons engaged for the said work with dire consequences. Hence, the petitioner is not in a position to set right the demolished portion of his building. Though all these facts have been brought to the knowledge of the respondents 1 and 2 by way of representation, dated 03.07.2018, due to their collusion with the third respondent, no action pursuant to such representation has been taken. Hence, he is constrained to file this Writ Petition seeking for the aforesaid relief.

5. The second respondent has filed a counter affidavit, stating that only as per the order passed by the Hon'ble Division Bench of this Court in W.P.No.16090 of 2017, dated 12.12.2017, the unauthorized construction put up by the petitioner was removed. In the counter affidavit, it is specifically stated that the petitioner is in no manner, prevented from safeguarding approved parts of the building and the patch work and plastering are all not necessary to be permitted by any order of the Municipality. Further, it is stated that there is no necessity to obtain permission from the Municipality in case of construction of a building or reconstruction of the building, which involves taking down of more than 50% of the cubic volume of a building, and only in case of repair work, patch work, and renovation of the building, permission under Tamil Nadu District Municipalities Act is necessary. Even though the said averments of the second respondent is in favour of the petitioner, the averments set out in the counter affidavit filed by the third respondent is very clear that he has no objection for carrying out the patch work, now required by the petitioner. So, it is necessary for the petitioner to get some authentication for completing the work now required for safeguarding his property.

6. In the light of the fact that the Petitioner in his representation dated 03.07.2018 had prayed for permission to carry out patch work in the demolished portion of his property at Plot No.4, Bungalow Club Road, (G.S.Pillai Nagar) Kadampadi, Nagapattinam Town, Nagapattinam Taluk and District and this Court, by keeping in mind the stand taken on behalf of the second respondent/Commissioner, Nagapattinam Municipality, Nagapattinam that the Petitioner is not in any manner preventing from safeguarding the approved parts of the building and the work of patch work and plastering are not at all necessarily to be permitted by any order of the Municipality and furthermore, in works such as repairs, patch work and even renovation of the buildings, there is no necessity for the issue of permission under the Tamil Nadu District Municipalities Act, 1920, this

Court directs the Petitioner only to carry out the patch works strictly, through his persons/agents/representatives as the case may be, in the subject matter of the property, as sought for by him in his representation dated 03.07.2018. Further, the Petitioner, under the guise of carrying out patch work, shall not raise any construction/additional construction in the subject property. In this connection, the second respondent/Commissioner, Nagapattinam Municipality, Nagapattinam can depute any responsible Officials of the Municipality to oversee, by carrying out necessary inspection and to ascertain as to whether the Petitioner is carrying out the patch work only based on the orders passed by this Court in the present Writ Petition. If the 2nd Respondent/Municipality comes to the conclusion that the Petitioner is deviating or violating or has violated the orders passed by this Court in the present Writ Petition in letter and spirit, then, it is open to the Municipality to take such action as it deems fit and proper against the Petitioner, of course, in accordance with Rules, Regulations and Law. If the 3rd Respondent causes any hindrance to the Petitioner or his men, agents or representatives in carrying out the patch work in respect of the Petitioner's subject property, then, it is open to the Petitioner to take necessary action against the latter by taking recourse to Law for redressal of his grievances, if he so desires/advised.

7. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Nagapattinam District,
Nagapattinam.
2. The Commissioner,
Nagapattinam Municipality,
Nagapattinam.

+1 CC to Mr.D.Suresh, Advocate sr 83404.

Writ Petition No.19707 of 2018

SP(07/12/2018)