

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.10820 of 2017
and
W.M.P.No.11756 of 2017

Mr.Sandy William

.. Petitioner

Vs.

1. The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore-641 001.
2. The Executive Engineer (Town Planning),
Coimbatore Municipal Corporation,
Coimbatore-641 001.
3. Dr.V.J.Shiva
4. Mrs.S.Chitra

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to initiate appropriate severe action against the Respondent Nos.3 and 4 and to demolish the illegal constructions made by the Respondent Nos.3 and 4 which are made without obtaining planning permission in Site No.4, Marutha Nagar, Vadavalli, Thondamuthur Main Road, Coimbatore.

For Petitioner : Mr.K.Govindaraj

For Respondents: Mr.K.Magesh for RR-1 and 2
Mr.C.Vediappan for M/s.C.S.Associates for RR-3 & 4

ORDER

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

Heard both sides.

2. The Petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the Respondent

Nos.1 and 2 to initiate appropriate severe action against the Respondent Nos.3 and 4 and to demolish the illegal constructions made by the Respondent Nos.3 and 4 which are made without obtaining planning permission in Site No.4, Marutha Nagar, Vadavalli, Thondamuthur Main Road, Coimbatore.

3. According to the Petitioner, he is a permanent resident of Coimbatore Corporation Area and is a practising Advocate. His plea is that the Coimbatore Municipality was upgraded as Municipal Corporation during the year 1981 and that the Corporation comprises of 100 Wards, and for administrative purpose, the Coimbatore Municipal Corporation is divided into five Zones, namely North, South, East, West and Central.

4. The grievance of the Petitioner is that the Respondents 3 and 4 had constructed a commercial building contrary to the approved building plan in their property in Site No.4, Marutha Nagar, Vadavalli, Thondamuthur Main Road, Coimbatore. Hence, the petitioner made a representation before the Respondents 1 and 2, with a request to take appropriate action against the said illegal and unauthorised construction put up by the Respondents 3 and 4. Since no fruitful steps were taken by the authorities concerned, he is perforced to project the present Writ Petition for the relief stated supra.

5. No counter affidavit is filed by the Respondents 1 and 2. However, on the side of Respondents 3 and 4, the Third Respondent has filed counter affidavit for himself and also on behalf of his wife, i.e. the Fourth Respondent. A perusal of the contents of the counter affidavit indicates that the Third Respondent had applied for permission to demolish and re-construct the building in Plot No.4, Marutha Nagar, Vadavalli, Thondamuthur Main Road, Coimbatore, before the Coimbatore Municipal Corporation and he obtained a sanctioned plan for construction of stilt, ground and first floors through Building Licence, dated 27.06.2016. In fact, he had constructed stilt and first floor and that the plastering was over in stilt and the first floor is to be plastered. At that point of time, the third respondent received a notice, dated 31.03.2017 from the Second Respondent stating that the Third Respondent had constructed in deviation of the sanctioned plan. The Third Respondent stated that the measurement was taken behind his back.

6. The Respondent Nos.3 and 4 in the counter, have taken a clear-cut plea that even according to the Corporation authorities, the deviation is 49.21 Sq.Mtrs., and although it is mentioned in the notice that the construction is a deviated one and it is an additional construction, but, according to the Third Respondent, the construction is not an additional construction and that it is only an extension from the original plan.

7. The Respondent Nos.3 and 4 in the counter in paragraph 4 had emphatically mentioned that the plan was sanctioned for 3966.5 Sq.Ft. (368.5 Sq.Mtrs) for stilt, ground and first floors and 20% of the sanctioned area works out to 793.3 Sq.Ft.

(73.69 Sq.Mtrs) and as per the notice, it works out to 529.6 Sq.Ft. (49.21 Sq.Mtrs) and the same is below 20%, which could be regularised by paying penalty.

8. The Learned Counsel for the Respondent Nos.3 and 4 contends that the Third Respondent had submitted a representation for regularisation of the purported deviation (since it comes within the permissible deviation of 20%) and further that, he had completed the construction and the authorities have visited the premises and assessed the property tax under commercial tariff for the ground and residential tariff for the first floor.

9. The grievance of the Respondent Nos.3 and 4 is that the present Writ Petition has been filed by the Petitioner at the instance of hospital and clinical professionals and further that the Third Respondent had applied for planning permission for residential purpose measuring an extent of 366.73 Sq.Mtrs. (3947 Sq.Ft.) and further that the deviation in question was only below 20% and that there are no illegalities or irregularities, and that the authorities had periodically visited the construction building and at that time, they have not whispered anything about the deviation in question. As such, the Respondents 3 and 4 prayed that the Writ Petition is liable to be dismissed.

10. The Learned Standing Counsel for Respondents 1 and 2 submitted that Respondents 1 and 2 will look into the aspects of the construction put up by the Respondents 3 and 4 in the petition property strictly in accordance with the Rules and Regulations and if any violations are found by the authorities, then they will take necessary follow-up action in the manner known to Law and in accordance with Law.

11. In view of the fact that the Respondent Nos.3 and 4 in their counter, had come out with a specific plea that the planning permission was granted in respect of 366.73 Sq.Mtrs. (3947 Sq.Ft.) for residential purpose and the Third Respondent has constructed only 342.15 Sq.Mtrs. (3683 Sq.Ft.), this Court directs the Second Respondent/Executive Engineer (Town Planning), Coimbatore Municipal Corporation, to inspect the said Site in Plot No.4, Marutha Nagar, Vadavalli, Thondamuthur Main Road, Coimbatore and ascertain as to whether any construction put up therein is an authorised one or unauthorised one, and also find out as to what extent the same is authorised and to what extent it is unauthorised. In case the Respondents 1 and 2 come to a definite conclusion that the Respondents 3 and 4 have violated the Building Regulations, Rules and Laws thereunder, then it is incumbent on their part to take such necessary action to its logical end as deemed fit and proper, based on the facts and circumstances which float on the surface. The violated portion, if any, shall be kept under Lock and Seal by the Respondents 1 and 2. The Petitioner shall not create any encumbrance or create any third party rights over the property, like Mortgage, Othi, etc. It is made quite clear that till the

building is brought in accordance with the Sanctioned Plan, the water supply and electricity supply shall be disconnected in respect of the violated portions and in this regard, the Respondent Nos.1 and 2 are directed to take necessary action and also to inform the Appropriate Authority or the concerned Area Engineer of TANGEDCO/TNEB, as the case may be. Further, the Petitioner is directed to obtain a Building Completion Certificate in all respects from the Competent Authority. Before taking any action against the Respondent Nos.3 and 4, it is open for the Respondents 1 and 2 to provide an opportunity of hearing to them to put forward their views and after ascertaining the same, it is open for them to take recourse to further action in the manner known to Law and in accordance with Law.

12. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore-641 001.
2. The Executive Engineer (Town Planning),
Coimbatore Municipal Corporation,
Coimbatore-641 001.

+lcc to Mr.K.Magesh, Advocate sr.no.80833
+lcc to M/s.C.S.Associates, Advocate sr.no.81266
+lcc to Mr.M.Saravanakumar, Advocate sr.no.82786

W.P.No.10820 of 2017

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