

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.12.2018

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.34095 of 2017
and WMP Nos.37848 and 37849 of 2017

K. Suresh Kumar

... Petitioner

Vs

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9

2. The Commissioner,
Udhagamandalam Municipality,
Nilgiris District.

3. N. Anuradha

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the Second Respondent in Ka.Vi.No.59/2012/F1 dated 15.12.2017 and quash the same as illegal and consequently directing the 1st and 2nd respondents to dispose of the appeal preferred by the Third Respondent within the time limit that may be stipulated by this Court.

For petitioner :	Mr.M. Padmanaban
For R.1 :	Mr.S.N. Parthasarathy
	Govt. Advocate
For R.2 :	Mr.V. Rajesh Babu
For R.3 :	Notice Served and
	name printed.

ORDER

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

Heard the Learned Counsel for the Petitioner, the learned Government Advocate for the First Respondent and the Learned Standing Counsel for the Second Respondent.

2. In respect of Third Respondent, Court Notice was served as early as on 15.02.2018, however, there is no appearance on her behalf either in person or through Learned Counsel.

3. The Petitioner/Tenant is running a Wax Idol Shop in the name and style of "Wax Planet" at Door No.82/M, Wood Side Road, Udhagamandalam, Nilgiris District. As a matter of fact, the said Shop, comprised in Survey No.C/13/20/2, belongs to Third Respondent. Indeed, the Petitioner claims to have a Lease Agreement dated 01.11.2016 and according to him, the same is continued.

4. It is to be pointed out that the Third Respondent was issued with a 'Building Plan Permission' as per proceedings of the Second Respondent/Commissioner, Udhagamandalam Municipality, Nilgiris District dated 18.03.2013 [Validity period from 18.03.2013 to 17.03.2014]. In the said proceedings, it is clearly mentioned that the extent of Ground Floor is 122.62 sq.ft and the extent of the First Floor is 122.62 sq.ft. The Special Condition imposed in the 'Building Plan Permission' dated 18.03.2013 is that the building will be used for Residential purpose and it cannot be used for a different purpose [other than Residential purpose] and if the building is used for a different purpose than the permitted purpose, then, the same shall be cancelled. Further, the Executive Authority of the Second Respondent/Municipality had issued a Special Notice of Property Tax, New Assessment or Amendment dated 22.09.2015 to the Third Respondent stating that the reason for increase of Property Tax is 'Commercial Use' and that the amount of tax to be paid was Rs.20517/-, which was paid by the Third Respondent to the Municipality as Property Tax for 2015-2016-II.

5. The version of the Petitioner is that on 19.09.2017 the Second Respondent/Commissioner, Udhagamandalam Municipality, Nilgiris District issued a notice to the Third Respondent which came to his knowledge and later the Third Respondent had obtained permission for construction of residential building but now it is used as 'Commercial Building'. Furthermore, there was some deviation in the 'Building Plan Approval' and therefore, the Third Respondent was directed to rectify the defects.

6. The Petitioner caused an Enquiry with the Third Respondent in the subject matter in issue and came to know that an Appeal was preferred before the 1st Respondent by her.

7. As a matter of fact, the notice envisaged under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 is not an empty ritualistic formality. Indeed, a decision is to be arrived at if the condition specified under Section 56(1) of the Act is satisfied and that a notice being issued to the effect that the necessary ingredients of Sections 49, 50, 54, 56 are

satisfied for the violation in question. No wonder, Section 56 of the Act, 1971 confers power on the appropriate Planning Authority to require the removal of an unauthorised development made without permission or in breach of any punishment etc. as the case may be.

8. It is to be remembered that an unauthorised construction/ development is not to be encouraged by a Court of Law, since the same is an illegality and a discretion cannot be exercised to perpetuate an illegality. After all, the 'Orderly Planned Development' Town is the scheme of the Tamil Nadu Town and Country Planning Act, 1971.

9. In reality, Section 56(2-A) of the Tamil Nadu Town and Country Planning Act, 1971 permits the Planning Authority to Lock and Seal the premises in case the owner or occupier failed to comply with the notice issued under Section 56(1) of the Act. The invocation of Section 56 (2-A) of the Act can be pressed into service by a Planning Authority despite the pendency of an application under Section 49 or an Appeal under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971 or any Lis pending before a Court of Law. In fact, Section 56(2-A) of the Act speaks of the owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises. A valid order passed under sub-section (2-A) of Section 56 or sub-section (4) of Section 57 is a mandatory element for the exercise of Revisinoal Power under Section 80-A of the Act. Also that, the Petitioner cannot make use of the property as a Lessee had not discontinued the use of the property in question. A crystalline legal position is that the authorities are empowered to lock and seal the premises irrespective of pendency of any Application under Section 49 or Appeal under Section 79 or any Litigation before a Court as per ingredients of Section 56(2-A) of the Act, 1971.

10. Although, in ordinary parlance, as against the orders passed by the Competent Planning Authority in respect of sealing of premises under sub-section (2-A) of Section 56 or under sub-section (4) of Section 57 of the Act, an 'Appeal' is said to be preferred, in Law, only under 'Revisional Power', the examination of records of the Planning Authority takes place for passing necessary orders either to alter/vary, reverse or send back the matter for reconsideration.

11. It is to be pointed out that as per Section 105 of the Transfer of Property Act, 1882, a 'Lease' creates a right or an interest in the enjoyment of the demised property and a Tenant or a sub-tenant is entitled to remain in the possession thereof till the Lease is duly terminated and eviction takes place in accordance with Law. The term 'Lease' in Section 105 of the Transfer of Property Act, includes the lease accompanied with payment of advance rent. Further, the relationship of Lessor and Lessee is contractual in character for the possession and

profits of the property etc. on one part and the recompense by means of 'Rent' or other considerations on others part.

12. The term 'Tenant' refers to a 'Lessee', especially when it is used in contra distinction to 'Landlord/Landlady'. A Tenant holding over after the expiry of the 'Lease' period is a person at sufferance. That apart, a Tenant cannot have a legitimate expectation to continue the occupation of premises in an indefinite manner especially when the portion he occupies in respect of demised property is an unauthorised, and an illegal one. As an Occupier/Tenant/Lessee, the Petitioner is also answerable to the Authorities as to how he can remain in an unauthorised construction/Development made by the Third Respondent/Owner of building.

13. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in M.I.Builders (P) Ltd. V. Radhey Shyam Sahu, AIR 1999 SC 2468 wherein it is observed and held that 'The unauthorised construction, if it is illegal and cannot be compounded, has to be demolished and there is no way out.

14. Admittedly, an 'Appeal' preferred by the Third Respondent/Owner of the Building dated 21.09.2017 against the Impugned Order dated 15.12.2017 is pending on the file of the First Respondent. The First Respondent, on 27.09.2017 had addressed a communication to the Second Respondent, whereby, a Report was sought for, to be submitted to the Government immediately and accordingly, the Second Respondent/Commissioner, Udthagamandalam Municipality had submitted a Report to the Government.

15. In view of the fact that the Third Respondent/Owner of the Building had preferred an Appeal against the Impugned Order dated 15.12.2017 and the same is pending as on date before the First Respondent, this Court is of the considered view that it is for the Third Respondent/Owner of the Building to pursue her remedy in the Appeal preferred by her before the First Respondent. In short, the Petitioner (as a Lessee/Tenant) has no locus standi to file the present writ Petition before this Court by seeking to quash the impugned order dated 15.12.2017 and to pray for issuance of a consequential direction to the Respondents 1 and 2 to dispose of the Appeal preferred by the Third Respondent, because of the reason that it is for the Third Respondent/owner of the building to bring her property in question in conformity with the Sanctioned Plan/Planning Permit as per the Tamil Nadu Town and Country Planning Act, 1971 and the Rules and Regulations made therein and in this regard, this Court is not inclined to exercise its Judicial discretion in favour of the Petitioner, since it will confer premium to encourage and perpetuate an illegality and open an 'Pandora Box' for others to follow suit.

In Law, always it is open to the Petitioner to seek appropriate relief of compensation/damages before the Competent Forum for breach of contract, if any, against the Third Respondent, in case, he is affected by his sudden termination of Lease Agreement, if any or removal/eviction from the demised property or not in a position to occupy the same any longer. Viewed in that perspective, the Petitioner cannot squat as a Tenant any more in an unauthorised construction/ Development made by the Third Respondent.

16. At this juncture, it is brought to the notice of this Court by the Learned Standing Counsel for the Second Respondent/Commissioner, Municipality that the Third Respondent, in her own right, independently, had preferred an Appeal before the First Respondent and the same is pending and she had also assailed the validity of the Impugned Notice dated 15.12.2017 in W.P.No.33646 of 2017 and the same is pending.

17. In the light of detailed discussions and inasmuch as the Third Respondent/Landlady preferred an Appeal in regard to the Impugned Notice dated 15.12.2017 and the same is pending for disposal before the First Respondent, this Court dismisses the present Writ Petition filed by the Petitioner, since the same is not per se maintainable in Law. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

sr
To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9
2. The Commissioner,
Udhagamandalam Municipality,
Nilgiris District.

+1 CC to Mr.G.Thalaimuthurasu, Advocate sr 89403.
+1 CC to Mr.S. Kadarkarai, Advocate sr 88325.

W.P.No.34095/2017

KJ(CO)
SP(01/02/2019)