



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 23.02.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.1006 of 2018
and
W.M.P. (MD) .No.1049 of 2018

Sukumari

... Petitioner

Vs.

1.The Commissioner,
Vikkramasingapuram Municipality,
Vikkramasingapuram,
Tirunelveli District.

2.The Superintendent,
Pitchalkattalai,
Thiruvavadudurai Aathinam,
Vikkramasingapuram,
Ambasamudram Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice in Na.Ka.No.1366/2017/F1 dated 02.01.2018 passed by the first respondent and served on 11.01.2018 by post and quash the same and consequently, direction to the 1st respondent to consider the petitioner's application dated 08.05.2017 and 14.09.2017 with regard to permission for construction in Survey No.970/1 situated at 10th Ward Papanasam, Main Road, Vikkramasingapuram, Ambasamudram Taluk, Tirunelveli District.

For Petitioner	: Mr.G.Mathavan
For R1	: Mr.H.Arumugam
For R2	: Mis.M.Renu

O R D E R

[Order of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.G.Mathavan, learned counsel appearing for the petitioner and Mr.H.Arumugam, learned counsel appearing for the first respondent and Mis.Renu, learned counsel appearing for the second respondent.

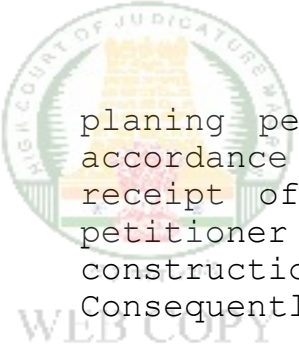


2.The petitioner has challenged the proceedings issued by the first respondent Municipality, dated 02.01.2018, by which, the first respondent has directed the petitioner to demolish and remove the construction put up by him in Survey No.970/1 on the ground that it is an unauthorised construction. The said land is owned by the second respondent Aathinam. It appears that the petitioner was permitted to put up a construction in the land. When the construction was at the basement level, action was initiated by the first respondent Municipality, since one P.M.Palraj, had approached this Court and filed a Writ Petition in W.P.(MD).No.12487 of 2017 stating that there are constructions made without obtaining planning permission and therefore, action should be initiated. Since notice was received by the petitioner from the first respondent Municipality, he appears to have stopped construction. Subsequently, the petitioner approached the first respondent for grant of building plan approval. The proposed construction was for about 2000 Sq.ft., and therefore, the first respondent Municipality stated that the application has to be forwarded to the Deputy Director of Town and Country Planning. Therefore, the petitioner is stated to have reduced the area of proposed construction by about 200 sq.ft., and submitted a revised plan. This planning permission has not been processed, at the same time, the impugned proceedings have been issued. It appears that on 25.01.2018, another proceedings has been issued by the first respondent Municipality referring to an earlier writ petition filed by the writ petitioner in W.P.(MD).No.20061 of 2017, challenging the demolition notice.

3.In our considered view, since the petitioner has stopped the construction work, till date no construction has been done appropriate direction can be issued. Without obtaining permission from the first respondent, the petitioner cannot state that his application is pending for consideration and the first respondent is well within its jurisdiction to consider the petitioner's application for planning permission, since it is stated that the proposed construction is less than 2000 sq.ft.

4.The learned counsel for the first respondent on instructions submitted that the said approval has not been obtained by the petitioner. From the photographs which have been produced before this Court, we find that the entire area is earmarked and we also found that there are several other houses in the said area. Apart from that, the first respondent Municipality has passed a resolution on 09.11.2012 in Resolution No.287, stating that the lands owned by the second respondent Aathinam, are capable of being put to use for construction purpose and they can be assessed to property tax. Therefore, the stand taken by the first respondent appears to be an after thought.

5.Thus for the above reasons, the writ petition is allowed and the impugned proceedings are set aside and the first respondent is directed to consider the petitioner's application for granting



planing permission and pass appropriate orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner has not obtained any planing permission, no further construction should be made on the property in question. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

+1CC to Mr.G.Mathavan, Advocate, SR.No. 50830

+1CC to Mr.H.Arumugam, Advocate, SR.No. 51050

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