



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .No.2822 of 2018
and
W.M.P. (MD) No.2971 of 2018

T.V.Aanand ... Petitioner
Vs.

1.Member Secretary/Assistant Director/
Tiruchirappalli Local Planning Authority,
Tiruchirappalli 620001.

2.The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli 620001.

3.A.Amal Antony ... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records culminated in the proceedings in the impugned order in Re.NO.206/2018 (TLPA-2) dated 06.02.2018 on the file of the first respondent and quash the same as illegal, unenforceable, ultravires without authority, without jurisdiction.

For Petitioner : Mr.Shangar Murali
For Respondent No.1 : Mr.V.R.Shanmuganathan
Special Government Pleader
For Respondent No.2 : Mr.N.S.Karthikeyan
Standing counsel

O R D E R

(Order of this Court was made by T.S.SIVAGNANAM, J)

Heard Mr.Shangar Murali, learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the first respondent and Mr.N.S.Karthikeyan, learned Standing Counsel for the second respondent.



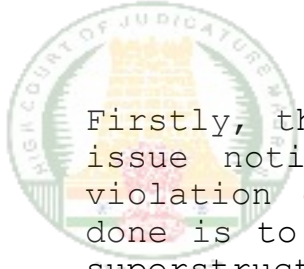
2. In the light of the glaring error, which is apparent on the face of the impugned order, we are inclined to dispose of the writ petition, without giving notice to the third respondent.

3. The petitioner has filed this writ petition challenging the notice issued by the second respondent dated 06.02.2018, calling upon the petitioner to show cause within a period of 30 days as to why action should not be taken against the construction put up by him in violation of the approved plan. The impugned proceedings was triggered on account of a writ petition filed by the third respondent in W.P.(MD)No.332 of 2018, wherein, he prayed for a direction to forbear the seventh respondent therein, who is the petitioner herein, from constructing new apartment complex and to cancel the approval granted to the petitioner. The said writ petition was disposed of without notice to the petitioner/7th respondent, by order dated 09.02.2018. However, the Division Bench protected the interest of the petitioner herein and was not inclined to issue any positive direction. At this stage, it would be beneficial to refer to the operative portion of the order dated 09.01.2018, which reads as follows:

"8. Though, the petitioner prays for a larger relief, this Court, in the light of the aforesaid facts and circumstances of the case and without going into the merits of the claim projected by him either in his representation or in this writ petition, directs either the second respondent or the delegated official, along with the fifth respondent, shall put on notice to the seventh respondent and cause inspection of the superstructure being put up, as per photograph No.1, available at page No.9 of the typed-set of documents, within a period of four weeks from the date of receipt of copy of this order and depending upon the result of the same, shall take appropriate action in accordance with law, within a further period of ten weeks, thereafter and inform the decision taken to the petitioner as well as to the seventh respondent.

9. The writ petition stands disposed of accordingly. Consequently, connected miscellaneous petition is closed. No Costs."

4. Reading of the above order clearly shows that the Division Bench, without going into the merits of the claim projected by the petitioner therein either in his representation or in the writ petition directed the second respondent herein to put on notice the petitioner and cause an inspection of the superstructure being put up within a period of four weeks from the date of receipt of copy of this order and depending upon the result of the same, shall take appropriate action in accordance with law within a further period of ten weeks thereafter and inform the decision taken to the petitioner herein/seventh respondent. Unfortunately, the second respondent failed to understand his purport and scope of the direction issued.



Firstly, there is no positive direction to the second respondent to issue notice to the petitioner herein alleging that there is a violation of the approved building plan. What was required to be done is to put the petitioner on notice, cause an inspection of the superstructure and then to proceed further. The second respondent has passed a non-speaking order and in violation of the directions issued by the Division Bench, in fact except referring to the order passed by the Division Bench, there appears to be non-application of mind on the part of the second respondent.

5.The learned counsel for the petitioner pointed out that in the representation given by the third respondent, which was the basis for filing the earlier writ petition, there is no allegation against the petitioner. This could be seen on a perusal of the representation dated 30.04.2017 wherein certain allegations have been made against 10 apartment complexes and we find that the name of the petitioner, is not one among the 10 names, against whom the allegations have been made. In any event, if there is a violation of the approved plan building, then, the local authority should follow the procedure under the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as the Act) and cannot take action in a high-handed manner.

6.The learned counsel for the petitioner would submit that in respect of certain violations which are existing, the petitioner has already submitted a revised plan on 06.02.2018 is the same date on which, the impugned notice was issued. If revised plan had been submitted in proper form and accepted by the respondent, notice under Section 56(4) of the Act, shall not take effect pending final orders on the revised plan.

7.In the light of the above, we are fully convinced that the impugned proceedings is in total violation of the principles of natural justice and has been issued without following the specific direction issued by the Honourable Division Bench in W.P.(MD)No.332 of 2018 dated 09.01.2018.

8.In the light of the above, this writ petition is allowed and the impugned order is set aside and the second respondent is directed to proceed in accordance with law by taking note of the specific directions issued in W.P.(MD)No.332 of 2018 dated 09.01.2018. Since the petitioner has filed a revised plan on 06.02.2018, the second respondent is directed to consider the same within a period of eight weeks from the date of receipt of copy of this order. Before any action is initiated against the petitioner, it goes without saying that the second respondent being the Plan Approval Authority, is required to not only cause inspection of the petitioner's building, but also inspect other apartment complexes and buildings having multiple floors in the area to ascertain as to whether there is any violation. If the respondents 1 and 2 fail to do so, it would amount to discrimination.



9. With the above direction, this writ petition is disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Member Secretary/Assistant Director/
Tiruchirappalli Local Planning Authority,
Tiruchirappalli 620001.
2. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli 620001.

+1cc to Special Government Pleader, SR.No. 48920
+1cc to M/S.N.S.Karthikeyan, Advocate SR.No. 48016
+1cc to M/S.Shangar Murali, Advocate SR.No. 47995

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mrn/ns
JM/SKN RSK/SAR 1/20.02.2018/4P/6C