



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.19022 of 2018

and

W.M.P(MD)No.16860 of 2018

N.Ashok Kumar

... Petitioner

Vs.

- 1.The State represented by
The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai - 9.
 - 2.The Member Secretary,
Local Planning Authority,
Thanjavur.
 - 3.The Commissioner,
Thanjavur City Municipal Corporation,
Thanjavur.
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records in connection with the impugned orders passed by the second respondent vide his proceedings in Ref.No.ROC.No.1174/2016/TLPA, dated 27.11.2017 and his consequential communication vide his proceedings in Ref.No.ROC.No.1174/2016/TLPA-2, dated 09.08.2018 and quash the same.

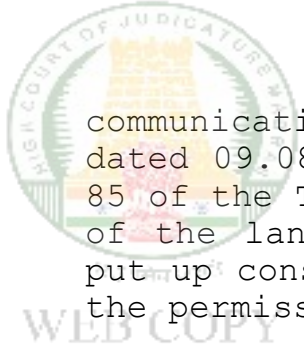
For Petitioner : Mr.Niranjana S.Kumar

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader for R.1 & R.2
Mr.N.Dilip Kumar for R.3

* * * * *

ORDER

This writ petition is directed against the proceedings issued by the Member Secretary, Local Planning Authority, Thanjavur - Second respondent herein, in his proceedings in Ref.No.ROC.No.1174/2016/TLPA, dated 27.11.2017 and his consequential



communication vide proceedings in Ref.No.ROC.No.1174/2016/TLPA-2, dated 09.08.2018, issued under Sections 56 and 57 read with Section 85 of the Town and Country Planning Act, 1971, requiring restoration of the land to its original condition, because the petitioner has put up construction without permission and also in contravention to the permission granted.

2. By consent, the writ petition is taken up for final disposal.

3. Heard the learned Counsel for the parties.

4. Learned Counsel for the petitioner, assailing the impugned notices, submitted that the petitioner, being the owner of a plot measuring an extent of 4,000 sq. ft., in Court Road (Kalaingar Karunanidhi Salai), Thanjavur, in the year 1996, has put up a construction with a plinth area of 3,235.74 sq. ft., in the ground floor and the same area in the first and second floors also. Since the plot is in a low lying area, the basement floor was also constructed for commercial purpose. When the petitioner submitted a building plan for approval before the then Municipality, it was returned indicating that there were certain violations of building rules and hence, the petitioner applied for exemption before the Government. When the petitioner was expecting clearance from the Government to submit his revised plan for approval, the third respondent - Commissioner, Thanjavur City Municipal Corporation, issued a notice dated 21.11.2014 informing the petitioner that the building operations which are in deviation of the approved plan and building rules should be demolished within 30 days as per Sections 56 and 57 of the Town and Country Planning Act, 1971, failing which, the said notice also informed the petitioner that suitable action will be taken for locking and sealing of the premises as per Section 56(2A) of the Act. Aggrieved by the said notice dated 21.11.2014, the petitioner filed W.P(MD)No.13364 of 2015 before this Court and obtained an order of interim stay of operation of the proceedings dated 21.11.2014, on 29.07.2015. Finally, the said writ petition was taken up for final hearing on 20.06.2016 and taking note of the fact that the petitioner had to approach the appellate authority and accepting his statement that he would file an appeal, this Court, while granting the order of status quo to be maintained till July 2016, disposed of the writ petition, directing the petitioner to file an appeal and accordingly, the appeal was also filed in July 2016 before the first respondent.

5. The learned Counsel for the petitioner drawing the attention of this Court to the Letter No.13101/UD4-(1)/2016-2, dated 26.10.2016 and Letter No.13101/UD4-(1)/2016-4, dated 04.11.2016, submitted that the appeal filed by the petitioner was posted for hearing on 04.11.2016 and again on 16.11.2016 at 12.30 p.m., in the chamber at III Floor, Nammakkal Kavingnar Maligai, Secretariat, Chennai - 9 and the petitioner appeared before the first respondent and the matter was adjourned periodically.



6. He further produced a copy of the communication vide Letter No.13101/UD4(1)/2016-6, dated 13.08.2018, from the office of the first respondent and submitted that the matter is posted on 11.10.2018 at 11.00 a.m. In the meanwhile, when the appeal filed by the petitioner and seized of by the first respondent, is pending, the second respondent should not have issued the present impugned notices, more particularly, when the petitioner has been remitting the tax to the Municipality from 2000-2001.

7. Learned Special Government Pleader appearing for the respondents 1 and 2, taking note of the communication dated 13.08.2018 issued by the office of the first respondent posting the appeal filed by the petitioner on 11.10.2018 at 11.00 a.m., submitted that the petitioner has been raising his construction, although the appeal is pending and awaiting final orders from the first respondent.

8. However, the said statement made by the learned Special Government Pleader appearing for the respondents 1 and 2 is denied by the learned Counsel for the petitioner and produced a photograph of old constructions of the building in question.

9. Be that as it may, when the appeal filed by the petitioner in July 2016 is pending and posted for further hearing on 11.10.2018 at 11.00 a.m., and further, the first respondent also granted interim order of stay of locking and sealing of the building in question till the disposal of the appeal, vide Letter No.13101/UD4-(1)/2016-2, dated 26.10.2016, the impugned order passed by the second respondent in Ref.No.ROC.No.1174/2016/TLPA, dated 27.11.2017, is liable to be set aside and accordingly, the same is set aside. However, the consequential proceedings of the second respondent in Ref.No.ROC.No.1174/2016/TLPA-2, dated 09.08.2018, is kept in abeyance subject to the result of pending appeal. Further, the first respondent is directed to take up the appeal filed by the petitioner and pass final orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

10. Accordingly, this writ petition stands disposed of as above. No costs. Consequently, the connected writ miscellaneous petition is closed.

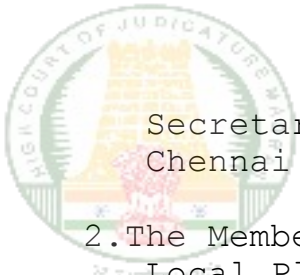
Sd/
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar(CS-I)

To

1.The Secretary to Government,
<https://hcservices.ecourts.gov.in/hoservices/>
State of Tamil Nadu,
Housing and Urban Development Department,



Secretariat,
Chennai - 9.

2.The Member Secretary,
Local Planning Authority,
Thanjavur.

3.The Commissioner,
Thanjavur City Municipal Corporation,Thanjavur.

+1cc to Mr.NIRANJAN S.KUMAR, Advocate, SR.No. 82046

+1cc to Mr.N.DILIPKUMAR, Advocate, SR.No. 82176

W.P (MD) No.19022 of 2018
and
W.M.P (MD) No.16860 of 2018
03.09.2018

RSB
KK/SKN/SAR-1/24.09.2018/4P-6C