



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2017
PRONOUNCED ON : 06.06.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8731 of 2011
and
M.P. (MD) .No.1 of 2011

Janani Venkatraman

.. Petitioner

Vs.

The Executive Officer,
Kottaiyur Town Panchayat,
Kottaiyur,
Karaikudi Taluk,
Sivaganga District.

.. Respondent

PRAYER: The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records relating to the impugned notice of the respondent herein dated 22.07.2011 in Na.Ka.No.268/2011 and quash the same.

For petitioner : Mr.A.L.Kannan
for Mr.R.Sundar Srinivasan

For respondent : No appearance

O R D E R

[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

Heard the learned counsel appearing for the petitioner.

2. The petitioner questions the impugned notice bearing Na.Ka.No.268/2011 dated 22.07.2011 issued by the respondent Town Panchayat. The impugned notice reads that the petitioner had put up a building in a place earmarked as "Children's Park". In this regard, the Panchayat had issued notice to the petitioner as well as her vendor. The petitioner had submitted reply dated 29.06.2011. Since the explanation was not found to be acceptable, the impugned communication came to be issued.



3. The learned counsel appearing for the writ petitioner assailed the impugned order on the ground that it proposes initiation of action under Section 182 of the Tamil Nadu District Municipalities Act, 1920. The said provision relates to removal of encroachments in or over any street. In the present case, even according to the respondent Town Panchayat, the petitioner has not encroached any street. He, therefore, called upon this Court to quash the impugned communication.

4. This Court is not impressed by the said submission. Mis-quoting or non-quoting the correct statutory provision is not a ground to interfere with an administrative order. The specific stand of the respondent is that the construction has been put up on an area that was earmarked as "Children's Park". This Court had consistently taken the view that an area earmarked as a park will have to be maintained as a park and that no construction can be allowed to be put up. Therefore, this Court called upon the petitioner to produce the approved lay out plan. The learned counsel appearing for the writ petitioner thereupon submitted that the petitioner had purchased the plot only in an unapproved lay out formed in Survey No.608/4 in Kottaiyur Village. He contended that the construction was put up only after the building plan was approved by the Panchayat. This Court gave an opportunity on more than one occasion to produce the building plan. Since such a plan was not produced, this Court was left with no other option, but to reserve orders on 02.08.2017.

5. The learned counsel appearing for the writ petitioner had filed an additional typeset of papers dated 03.08.2017 in which the approved building plan is enclosed. The petitioner has also enclosed the treatment details of her husband. It appears that the petitioner's husband is suffering from cancer and that he was taking treatment in Adyar Cancer Institute. It appears that the petitioner's husband was an inpatient and had taken chemotherapy treatment in the third and fourth week of July, 2017. It was probably this reason why the petitioner could not produce the relevant records when this Court specifically directed the petitioner's counsel in this regard.

6. Considering the medical grounds cited by the petitioner, this Court is of the view that one more opportunity can be given to the petitioner. The petitioner in her reply dated 29.06.2011 had taken a specific ground that only after getting prior approval of the respondent Panchayat, the building in question was put up. Eventhough, such a plea has been taken in the petitioner's explanation dated 23.05.2011, the same has not been considered or dealt with in the impugned order.

<https://hcservices.ecourts.gov.in/hcservices/> The matter was taken up for hearing and reserved for orders, there was also no appearance for the respondent Panchayat. We are therefore, not in a position to verify the



genuineness of the documents now furnished by the writ petitioner. The writ petitioner has also taken a further plea that her house is not located in an area earmarked as park.

8. In such matters involving consideration of documentary evidence, an enquiry must be held. In this case, the respondent has passed a summary order. It is also rather cryptic. After briefly narrating the antecedent facts, the respondent has cursorily stated that the explanation of the petitioner was not acceptable. The respondent ought to have gone into the plea as to whether the building approval was infact granted and if so, as to how it was given. Without cancellation of the building approval originally given, the respondent could not have proposed to demolish the house.

9. In this view of the matter, the order impugned in this writ petition dated 22.07.2011 in Na.Ka.No.268/2011 is quashed and the matter is remitted to the file of the respondent to proceed in the matter afresh in accordance with law.

10. Granting liberty to the respondent to proceed further according to law, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Executive Officer,
Kottaiyur Town Panchayat,
Kottaiyur,
Karaikudi Taluk,
Sivaganga District.

+ 1 cc TO Mr.R.Sundar Srinivasan , Advocate in SR No. 67011

PJL

AE/SKN RSK/SAR1/21.06.2018/3P/3C

**ORDER MADE
IN**

**W.P(MD)No.8731 of 2011
06.06.2018**