

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 746 of 2007

Rajan Naren Rajan

...Petitioner

Vs

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore-641 012.
2. The Local Planning Authority,
Dr.Nanjappan Road,
Coimbatore-641 018.
3. The Director of Town and Country
Planning,
No.807, Anna Salai,
Chennai-600 002.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to order of the 1st respondent in SR.No.22/06/H1/E, dt. Nil and 23/06/H1/E, dt. Nil and quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents : Mr.R.Sivakumar for R1
Mrs.K.Bhuvaneswari

Addl. Government Pleader
for R2 and R3

O R D E R

This Writ Petition has been filed challenging the impugned order of 1st respondent dated nil and quash the same.

2. The case of the petitioner is that the the petitioner is the owner of the property at Door No.652-662, Avanashi Road, Coimbatore-641 018. The petitioner has constructed the building at the above address consist of ground, 1st, 2nd and 3rd floors.

The ground floor was constructed in the year 1957. The building and 1st, 2nd and 3rd were constructed during the year 1996 based on the plan submitted to the 1st respondent on 13.09.1996. Thereafter, a notice was issued on some misconceived material facts and the original plan was sanctioned on 13.09.1996 for 3 additional floors constructed in the year 1957. Since there were certain minor changes in set-backs, an appeal cum revised plan was submitted. The petitioner has provided for parking on 5 grounds of vacant land belonging to the petitioner behind the building. The petitioner has further averred that the 1st respondent has also accepted the appeal cum revised plan submitted by the petitioner after collecting revised fee. Thereafter, the 1st respondent has also informed the petitioner to remit a sum of Rs.1000/- on 23.10.1996 and also forwarded the appeal cum revised plan to the 3rd respondent vide his letter dated 28.10.1996. However, the 3rd respondent has not passed any order. Thereafter, the 1st respondent has inspected the building in the year 1998 verified the measurements and fixed the property tax at the rate of Rs.86,473/- per half year from 1998-99. Immediately, thereafter, the said amount was paid without any default or arrears. While being so, the 1st respondent has issued a stop work notices under Sec.296(1) of the Coimbatore City Municipal Corporation Act, 1981 and other notice under Sec.296 (2) of the Coimbatore City Municipal Corporation Act, 1987. Thereafter, the petitioner has sent a detailed reply against the stop work notice and against the said stop work notice, the present Writ Petition has been filed.

3. Mr. R.Parthiban, learned counsel appearing for the petitioner would submit that the petitioner has constructed the building initially in the year 1957 and thereafter, he has constructed three floors in the year 1997. Though the planning permission was originally returned, thereafter, he has submitted an appeal cum revised plan for appropriate consideration and the 1st respondent also forwarded the appeal cum revised plan to the Town and Country Planning Authority for its consideration. While the appeal cum revised plan is pending before the authority, the stop work notice was issued by the 1st respondent, which is unsustainable one and accordingly, he prayed to pass appropriate orders.

3. The learned counsel appearing for the 1st respondent would submit that the petitioner has constructed the building without the approved plan and the construction itself is an unauthorised one and on perusal of the status report, the 1st respondent found that the petitioner has illegally encroached the layout portion and constructed unauthorised building. Therefore, the stop work notice was issued, which is legally sustainable one and for the satisfaction of the 1st respondent, the production of records before this court is also sustainable

one. The learned counsel would further submit that as per Sec.48(A) of the Town and Country Planning Act, an appeal is pending before the appellate authority, however, earlier, there is no provision for filing appeal and as per the new Act, there is a provision available for filing the appeal before the Government. In the present case, an appeal with regard to the revised plan was forwarded by the 1st respondent, however, the petitioner has not pursued the matter before the Government. Without pursuing the appeal remedy, filing of Writ Petition is unsustainable one. Hence, he prayed to pass appropriate orders.

4. The issue involved in this case is that whether the petitioner has constructed the building with approved plan or not. Admittedly, without approved plan, he has constructed the building and he has submitted belated appeal for regularisation of construction before the 1st respondent and the same was forwarded to the 3rd respondent. However, the regularisation power is vested only with the Government, but without approaching the Government, there is no provision available for the 3rd respondent to regularise the unauthorised building. Hence, without approved plan, constructing the building is illegal and against the provisions of the Act. Hence, I am not inclined to interfere with the stop work notice issued by the 1st respondent. Accordingly, the present Writ Petition stands dismissed. However, the liberty is granted to the petitioner to pursue the appeal remedy before the Government for regularisation of the unauthorised construction. Further, this Court makes it clear that if the petitioner encroached the public property, the liberty is granted to the authority to demolish the building after following the procedures. No costs.

Sd/-
Assistant Registrar

//True Copy//

rpp

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore-641 012.
2. The Local Planning Authority,
Dr.Nanjappan Road,
Coimbatore-641 018.

3. The Director of Town and Country
Planning,
No.807, Anna Salai,
Chennai-600 002.

+1 cc to M/s.R.Parthiban, Advocate, S.R.No.54324

+1 cc to M/s.R.Sivakumar, Advocate, S.R.No.55057

+1 cc to the Government Pleader, S.R.No.54485

W.P. 746 of 2007

PPA (CO)
SSM(31/07/2019)



WEB COPY