

W.M.P. No.6351 of 2018
in
W.P. No.24295 of 2017

M. SATHYANARAYANAN, J.
and
N. SESHASAYEE, J.

(Order of the Court was made by M.SATHYANARAYANAN, J.)

Mr.V.Jayaraman has filed the writ petition in W.P.No.24295 of 2017 for issuance of a writ of mandamus directing the respondents 1 to 3 to initiate necessary action to demolish the unauthorized and illegal construction put up by the 4th respondent in T.S.Nos.H/8/5, H/8/51, H/8/50 in Survey Nos.H-11/1, 90, 93, 94, 95 and Old Survey Nos.291 and 292, situated at Fern Hill Salai, Kunda House, Manjanakorai, Udagamandalam Town, Nilgiris District, by considering his representation dated 10.12.2016.

2.This Court, on 11.09.2017, has disposed of the writ petition in W.P.No.24295 of 2017 with a direction as extracted hereunder :

"5.Though the petitioner prays for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the same, directs the 3rd respondent to put the 4th respondent on notice and thereafter, consider and dispose of the petitioner's representation in the form of Lawyer's Notice dated 01.08.2017 on merits and in accordance with law and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the 4th respondent herein.

*6.The respondents 1 to 3 shall also take cognizance of the order reported in **2008 [2] MLJ 1025 [Elephant G.Rajendran Vs. The District Collector, Nilgiris District and others]** and act in accordance with law."*

The writ petition was also directed to be listed on 04.10.2017 for reporting compliance. Accordingly, the writ petition was listed on 13.02.2018. This Court, on 13.02.2018, has taken note of the fact that the 3rd respondent did not appear either in person or through counsel and did not file the compliance report and has directed the respondents 1 to 3 to remain present before this Court on 02.03.2018 at 10.30 a.m., without fail.

3.The matter was again called on 02.03.2018. On that day, the 2nd and 3rd respondents in the writ petition were present before this Court, however, the District Collector, Nilgiris District, did not appear and an affidavit was filed, seeking further time. Recording the same, this Court dispensed with the presence of the 1st respondent for that day and the respondents 2 and 3 in the writ petition and directed the matter to be listed on 07.03.2018 for filing 'Action taken Report'.

4.On behalf of the 4th respondent in the writ petition, his son, namely, Mr.Ashwin Sivaraj, has filed this miscellaneous petition in W.M.P. No.6351 of 2018 in W.P. No.24295 of 2017, praying to recall the order dated 11.06.2017

passed in W.P.No.24295 of 2017, stating among other things that, the 4th respondent was issued with two Locking & Sealing and Demolition Notices dated 07.12.2016 from the Udthagamandalam Local Planning Authorities and in compliance with the order, two zinc sheds and an old building, existing for nearly 120 years, which also forms a part in the recitals of the documents right from the sale deed of the year 1906 till the partition deed dated 12.08.2015, came to be demolished.

5.It is pointed out by learned counsel appearing for the petitioner that, though, while disposing of the writ petition, this Court has directed the official respondents to put the 4th respondent on notice, without putting him on notice, they have indulged in illegal demolition. Therefore, the 4th respondent in the writ petition is constrained to file the present petition to recall the order dated 11.09.2017 made in the writ petition.

6.The 2nd respondent in this petition has filed a counter affidavit and has taken a stand that the whole building is an illegal construction and the 4th respondent has no proper planning and building approval to the disputed building and the map said to have been issued to the 4th respondent does not correspond with the original Town Survey Map available with the Municipality.

Due to inadvertence, a wrong map would have been issued and has also taken a stand that, it may also be an unauthenticated copy of the map. The 2nd respondent further took a stand that, on 24.02.2018, the illegal structure put up by the 4th respondent, admeasuring an extent of 37 feet by 11 feet, which was put up at the back portion of the existing structure, was demolished with the help of workers of the Municipality and prays for dismissal of this petition.

7.This Court has heard the rival submissions and has also perused the materials placed before it.

8.It appears that, though, this Court had directed the 3rd respondent in the writ petition, viz., the Town and Country Planning Officer, Udagamandalam, to put the petitioner herein on notice and thereafter, dispose of the representation of the writ petitioner in the form of Lawyer's Notice dated 01.08.2017, it has not been done. Prior to that, the petitioner herein was issued with demolition notices and the same have not been put to challenge under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. The 2nd respondent in this miscellaneous petition has also disputed the veracity of the Town and Survey Map said to have been issued in favour of the petitioner herein and has also taken a specific stand that there was an illegal structure to an extent of 37 x 11

feet put up by the 4th respondent and the same was demolished on 24.02.2018.

9.In the light of the above facts and circumstances, this Court is of the considered view that the original order made in the writ petition cannot be recalled and that apart, since the stand taken by the 2nd respondent in the counter affidavit to this miscellaneous petition, as to whether the old structure that was demolished was an additional construction put up by the 4th respondent, is a disputed question of fact, this Court is not in a position to adjudicate the complicated question of fact in this petition.

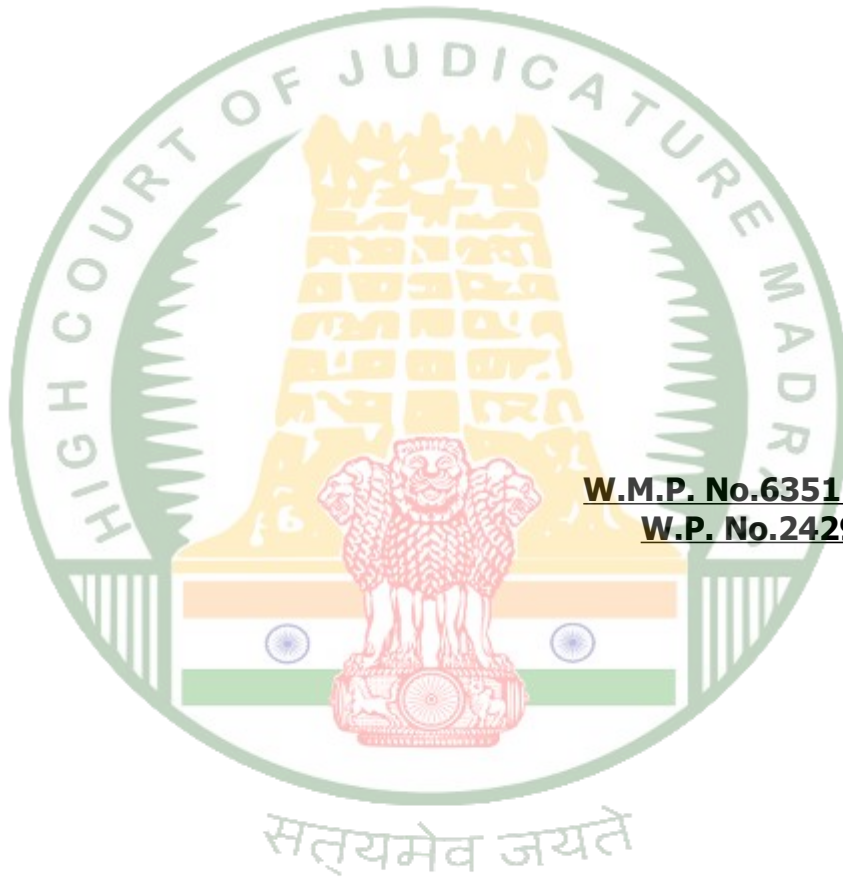
10.However, the petitioner/4th respondent in the writ petition, if so advised, is always at liberty to challenge the order made in the writ petition, in accordance with law. Accordingly, this writ miscellaneous petition in W.M.P. No.6351 of 2018 is dismissed, subject to the above observations. In the light of the aforesaid order made in this miscellaneous petition, no further orders are necessary in the writ petition.

(M.S.N., J.) (N.S.S., J.)
30.10.2019

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and
N. SESHASAYEE, J.

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