

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 10287 of 2019

And

W.M.P.Nos. 10838 & 10839 of 2019

Akila Begum

... Petitioner

Vs.

1. The Additional Secretary (Technical)
Housing and Urban Development
3rd Floor, Secretariate
Fort St. George
Chennai 600 009.
2. The Commissioner
Director of Town and Country Planning
801, Anna Salai
Chennai 600 002.
3. The Deputy Director
Town and Country Planning
83, Pidamanari Road
Appavu Nagar
Dharmapuri.
4. The District Collector
Krishnagiri
Krishnagiri District.
5. The President
Soolagiri Village Panchayat
Krishnagiri
6. The Block Development Officer
Shoolagiri Panchayat
Shoolagiri - 636 117
Krishnagiri

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order in Letter No. 2947/UD4/2019 dated 18.03.2019 and quash the same and consequently direct the first respondent to consider the application filed by the petitioner for extension of time on 29.03.2019.

For Appellant : Mr. M.D.Thirunavukkarasu

For Respondent : Mr. Kamalesh Kannan
Government Advocate

J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J)

The petitioner Akila Begum, wife of Mohaboob Jaun, has filed this Writ Petition under Article 226 of the Constitution of India aggrieved by the Lock and Sealing order passed by the competent authority of Housing and Urban Development Department, Chennai, under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971 on the ground that the Assessee failed to obtain proper plan approval for the construction of the building at Krishnagiri. The said provision permits the authorities to Lock and Seal the premises in question constructed without plans being approved and finally demolish the same also.

2. The relevant portion of the impugned order is quoted below for ready reference:-

"2. The appeal was examined in detail. It was ascertained from the appellant that 32 shops were functioning in the premises and the shop owners/tenants were not given sufficient time to shift their belongings and move to a new place. This includes a medical shop and a clinic a well.

3. The Government after careful examination of the Special Revision Application filed by Tmt. Akila Begum, under Section 80(A) Tamil Nadu Town and Country Planning Act, 1971 finally directs to deseal the premises for a period of only two weeks in order to enable the occupier/tenants to shift their belongings. The appellant is directed

to file and obtain planning permission for the building. On production of planning permission, the premises will be desealed once again.

4. The Commissioner of Town and Country Planning is requested to take necessary action accordingly."

3. The learned counsel for the petitioner Mr.M.D.Thirunavukkarasu urged before us that the petitioner has filed the application for approval of plan just last week, but this fact is disputed by Mr.Kamalesh Kannan, learned Government Advocate appearing for the respondents, who submits that application though submitted was not accompanied with the requisite plans and documents and therefore, the same was returned back for proper representation. He further submitted that the petitioner had unauthorisedly undertaken the construction of about 15,000 sq.ft., without approval of the plan and in normal case, if the petitioner had applied in time for approval of such plan for construction of a building of 15,000 sq.ft., the fees for processing such application would be approximately Rs.2.6 lakhs. However, since the application has not yet been filed in proper form, the respondent/Department is unable to process such application.

4. On the other hand, the learned counsel for the petitioner submitted that the petitioner will deposit adequate security deposit with the respondent / Department and will also file the application for approval with appropriate documents and plans, which could not be filed hitherto on account of overriding reasons and therefore the petitioner may be permitted to make such security deposit and file such proper application with documents and plans. The respondent authorities may consider the same subject to security deposit being paid and the premises in question may be desealed because there are other tenants in the said premises whose businesses are bound to be adversely affected in case the entire premises are sealed by the competent authorities of the Department.

5. Having heard the learned counsels for the parties and upon perusal of the materials available on record. We are of the opinion that firstly the petitioner ought not to have raised the construction at all without the plans being approved by the competent authority. But the construction in question is said to have raised way back in the year 2011 and it is only after coercive measures like Lock and Seal were undertaken that the petitioner Akila Begum awoke from slumber and filed such application for approval of plans, however without proper documents and proper fees being paid in this regard. Therefore,

the petitioner is not entitled to any sympathetic consideration at the hands of this Court in equity jurisdiction under Article 226 of the Constitution of India. However, in the facts and circumstances of the case, to avoid unnecessary prejudice to the tenants of the said property in question who may be bona fide tenants and may not be aware of the said illegality of non approval of building plans obtained by the petitioner, owner of the building, we direct that if the petitioner Akila Begum, wife of Mohaboob Jaun, the owner of the building deposits a sum of Rs.10/- lakhs within a period of one week from today with the third respondent, namely, The Deputy Director, Town and Country Planning, 83, Pidamanari Road, Appavu Nagar, Dharmapuri. Then upon such deposit of the said amount and on filing of the proper application along with all the relevant documents within a period of one week from today, the premises in question may be desealed. We further direct that the petitioner shall file the appropriate application for an approval with all relevant documents and maps etc., within one week which the respondent authorities will consider in accordance with law and pass appropriate orders within the next period of three weeks from today. Therefore, the entire exercise of considering the case of the petitioner for approval of the building plan in question or otherwise should be completed within a period of four weeks from today. The security deposit of Rs.10 lakhs and further sealing of premises will abide by the order of the competent authority.

6. In case, the respondent authority passes any adverse order against the petitioner, the same shall be passed after giving due opportunity to the petitioner and if the petitioner is aggrieved by any such adverse order, she can take recourse to the legal remedies open to her.

7. With these observations, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Additional Secretary (Technical)
Housing and Urban Development
3rd Floor, Secretariate
Fort St. George, Chennai 600 009.

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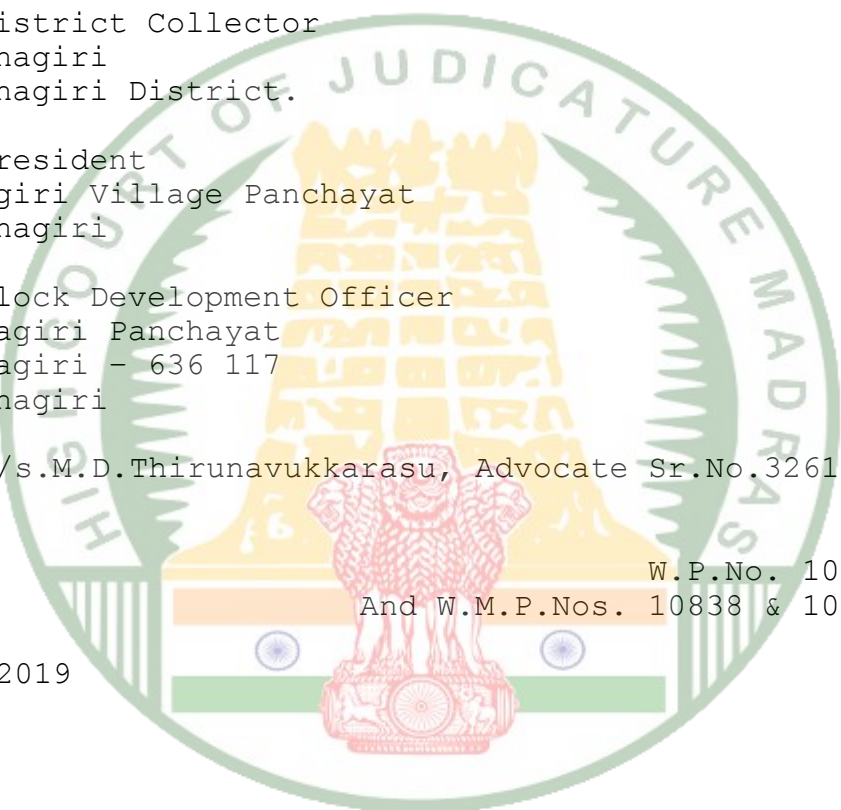
6. The Block Development Officer
Shoolagiri Panchayat
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Krishnagiri

+1 cc to M/s.M.D.Thirunavukkarasu, Advocate Sr.No.32617

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RRS (CO)
CSL/05.04.2019

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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