

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.2.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.15738 of 2018
and
W.M.P.Nos.18696 & 18697 of 2018

P.Selvarajan ... Petitioner

Versus

- 1 The Commissioner
Directorate of Town and Country Planning
Chengalvarayan Building 4th Floor
807 Anna Salai Chennai-600 002.
- 2 The Deputy Director
Directorate of Town and Country Planning
Salem Region 6 Sannathi Street
Subramania Nagar Sooramangalam
Salem-636 005.
- 3 The Commissioner
Attur Municipality Municipality office
Attur Salem District-636 102.
- 4 Executive Engineer
(Operation & Maintenance) TANGEDO
Attur Town Salem District-636 102.
- 5 Mrs.K.Rajeswari Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 3rd respondent to demolish the illegal structures put up by the 5th respondent in the premises at Rajkrishna Lodge New Door No.1007, 1009, 1011, 1013, Old Door No.390, 391, 392, 393, Salem-Ulundurpet, NH 68 Road Udayarpalayam, Attur Town, Salem District- 636 102 and restore the building to its Original Building plan granted by the 3rd respondent.

For petitioner : Mr.K.Rajasekaran
For RR1 and 2 : Mr.J.Pothiraj,
Special Government Pleader
For R3 : Mr.A.S.Thambuswamy,
Standing Counsel
For R4 : Mr.S.K.Rameshwar
For R5 : Mr.AR.L.Sundaresan,
Senior Counsel for
Mrs.AL.Gandhimathi

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

Petitioner P.Selvarajan, raised a grievance of illegal construction being raised at the address given in the PIL writ petition by Respondent No.5 Mrs.K.Rajeswari.

2. Upon issuance of notice, the respondents have put in appearance. Respondent No.3, Attur Municipality and Respondent No.5, Mrs.K.Rajeswari have filed counter to the writ petition.

3. The facts with regard to the alleged illegal and unauthorised construction as narrated in the writ petition are seriously disputed by Respondent No.5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for Respondent No.5 also submitted before us that the petitioner is trying to settle the scores with Respondent No.5. He would further submit that the same petitioner had already filed a PIL writ petition in W.P.No.21639 of 2017 (P.Selvarajan v. Commissioner of Municipal Administration, Chennai and others), arraying the husband of the present 5th respondent viz., Mr.T.Kandhasamy as Respondent No.4, and it was disposed on 13.2.2018, wherein also in order to test the bona fide of the petitioner, a Joint Inspection was ordered to be conducted in respect of petitioner's own property. He would further submit that in the present PIL writ petition also a coordinate Bench of this court again directed such inspection of the petitioner's own property because there were allegations of encroachment by the petitioner himself and violation of approved plan in construction of his house situated at Door No.39/19, Muniyan Street, Pudupettai Post, Attur, Salem District. The said Joint Inspection is now said to have been carried out by the Attur Municipality and the Report dated 31.1.2019 is filed before the court today.

4. A perusal of the second Joint Inspection Report, prima facie, reveals that the petitioner has been found to have committed violation of the approved plan and raised unauthorised construction to the extent of 138.25 sq.mts as against 100 sq.mts on the ground floor of his aforesaid property. First floor is said to have been constructed to the extent of 104.18 sq.mts as against 100 sq.mts. Therefore, prima facie, it appears that the petitioner himself has not come to the court with clean hands and twice over, the inspection of his property has been carried out by the Officials concerned as per the directions of this court and various violations have been found to have been committed by him.

5. Having heard the learned counsel appearing for the parties and upon perusal of the entire materials before us, we are of the considered opinion that this type of case, is the least appropriate case in PIL jurisdiction. It is nothing but, sheer abuse of process of law under Article 226 of the Constitution of India. The very concept of relaxation of locus standi in the PIL jurisdiction, which was evolved by judicial activism is given a go-bye in the present case, by a private slugfest of the private rights of the property of the petitioner as against Respondent No.5.

6. The relief claimed and the canvass of dispute in the present PIL jurisdiction essentially relates to the question as to what extent the violations and deviations have been made in the construction by the private parties. To say a least, the exercise of jurisdiction under Article 226 of the Constitution of India is sought to be invoked to go into the factual aspects and issues without any proof or basis or evidence if that were led and proved in civil court under the provisions of Code of Civil Procedure and the Evidence Act.

7. Moreover, this is not the first round of litigation. The petitioner had already filed a similar PIL writ petition against the husband of the Respondent No.5 in respect of other property of the husband of Respondent No.5, as stated by the learned Senior Counsel appearing for Respondent No.5, which fact is not disputed by the learned counsel for the petitioner and it is also evident by the order passed by a co-ordinate Bench of this court on 13.2.2018 in W.P.No.2163 of 2017.

8. We are, therefore, constrained to observe that the petitioner is not credible at all. His own construction has been found by the authorities concerned to be unauthorised.

9. Therefore, we are of the view that the petitioner, who has approached this court under Article 226 of the Constitution of India, has to come with absolute clean hands and not with the soiled hands at all. Even if the petitioner had come with clean hands and sought for the same relief, considering the nature of the questions like the ones raised before us, we would to have refused to exercise the jurisdiction in such cases because, they are nothing but disputed questions of facts not entitling the parties to invoke the extra ordinary writ jurisdiction of this court under Article 226 of the Constitution of India.

10. We would have dismissed this petition with exemplary costs, but, taking a lenient view, we dismiss the writ petition, without imposing any cost. The connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To:

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+lcc to Mrs.A.L.Ganthimathi, Advocate Sr.10311

W.P.No.15738 of 2018

sj[co]
srg 11/03/2019



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