

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM :

The Hon'ble Dr.VINEET KOTHARI, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P. No.17883 of 2019
and W.M.P.No.17291 of 2019

Sheik Ibrahim ... Petitioner

-vs-

- 1.Puducherry Planning Authority,
Rep. by its Member Secretary,
Jawahar Nagar, Boomianpet,
Puducherry.
 - 2.The Director,
M/s.SCM Clothes (P) Ltd.,
Tiruppur.
 - 3.The Member Secretary,
Govt. of Puducherry, Town and Country
Planning Department, Puducherry.
 - 4.The Secretary to Government,
(Pondicherry Planning Authority),
Govt. of Puducherry, Secretariat,
Puducherry.
- .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the 4th respondent to consider the statutory Application dated 14.12.2018 under Rule 21 of Rules of Business of Government of Pondicherry 1963 on merits and to pass necessary orders thereon within a time to be stipulated by this Court.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.J.Kumaran,
Addl.G.P. (Pondy), for RR 1, 3 & 4
: Mr.Sathish Parasaran, Sr. Counsel
for Mr.R.Parthasarathy for R-2
* * * * *

O R D E R

(Order of the Court was made by
The Hon'ble Acting Chief Justice)

The petitioner, Mr.Sheik Ibrahim, S/o.Mr.Sheik Mohideen, residing at Orleanpet, Pondicherry, has filed this petition in this Court seeking a direction to the concerned authorities of the respondent Pondicherry Planning Authority, to take action against respondent no.2, M/s.SCM Clothes (P) Ltd., who, according to the petitioner, was raising a construction illegally without due approval and permissions from the competent authorities. In support of the affidavit filed by the petitioner, the petitioner even claimed title over the land in question, namely, R.S.No.152/3pt, T.S. 3, 4, 5, 6 and 7, Ward No.I and Block-2, Marimalai Adigal Salai, Nellithopu, Pudupalayam Revenue Village, Puducherry.

2.Mr.L.Chandrakumar, the learned counsel for the petitioner also urged before the Court that the petitioner had a civil Court decree in his favour about the title over the property and therefore, he wanted to ensure that no construction is raised by respondent no.2 over the said land, that too illegally without even due approval from the competent authorities.

3.On the other hand, Mr.Sathish Parasaran, learned Senior Counsel, appearing on behalf of respondent no.2, submitted that due approvals have been obtained from the concerned authorities, which were later on modified from Ground plus Six floors to Ground plus Three floors. However, their application for regularisation of the construction already raised is pending approval with the concerned authorities.

4.In the Affidavit filed by the concerned authority of the first respondent, Puducherry Planning, Mr.M.Kandar Selvan, working as Member Secretary, Puducherry Planning Authority, has stated as under in paragraphs 15 to 18:-

"15.I further submit that the revised proposal was placed before the special meeting of the Puducherry Planning Authority committee in its meeting

held on 29.05.2019 for taking a decision. The committee after detailed deliberation decided to consider the case under the special building category, i.e., restricting the FAR to 180, Coverage to 70% & building height to 15mts. Further, the request of the applicant for carrying out construction in the north east corner of the building could not be considered since, the height of the building shall be restricted to 15mts for permitting the building under special building category. As per the opinion of the Anna University, Chennai, the overall stability of the structure depends on the confinement provided by the elements in the outer boundary also. It was decided to direct the application to remove/ dismantle the 4th, 5th and 6th floor of the existing structure in order to ensure the stability/safety of the structure. It was further decided that building plan approval may be issued after ensuring the removal/ dismantling of the 4th, 5th and 6th floor of the existing structure and restricting the FAR to 180 and after compounding the set back violations/ deviated construction as per the provisions of the Puducherry Building Bye Laws and Zoning Regulations, 2012. The same was communicated to the 2nd respondent on 7.6.2019 for its compliance and as on date the 2nd respondent has not yet complied with the directions of the 1st respondent.

16. I submit to state that the 2nd respondent continued the construction work at site without complying the directions of the Puducherry Planning Authority communicated by the 1st respondent. Therefore, the 1st respondent requested the Electricity Department and Public Health Division, PWD not to extend power/water connections to the said deviated construction on 22.07.2019. Further, the Commissioner, Puducherry Municipality was also requested to insist for occupancy certificate before issuance of any trade license to the 2nd respondent building as per clause 17 of the Puducherry Building Bye Laws and Zoning Regulations, 2012.

17. I further submit to state that regarding the representation of the petitioner, that as per clause 12 of the Puducherry Building Bye Laws and Zoning Regulations, 2012, revocation of permit - The Member Secretary of Planning Authority may revoke any permit issued under the provisions of these bye-laws, wherever there has been any deviation from the approved plan or where a permit has been obtained by any false statement or misrepresentation of any material facts in the application on which the permit was based. In this case the 2nd respondent has

furnished a registered sale deed in his favour for considering the building plan approval and based on the same the 1st respondent has granted building plan approval to the 2nd respondent M/s.SCM Clothes (P) Ltd.

18.I further submit that the 1st respondent has granted building plan approval for the 2nd respondent vide dated 8.06.2018 well before the representation of the petitioner and the revised proposal of the 2nd respondent is also yet to be disposed off by the 1st respondent. Further, the petitioner has not furnished any prohibitory order from the competent Court of Law along with the representation dated 14.12.2018."

5.Having heard the learned counsels, we are, therefore, of the opinion that the present case seems to be a motivated litigation by the petitioner, not only claiming a title without establishing the same before the concerned Respondent Authority, but seems to be out on a spree of complaints against the said respondent no.2. The learned counsel for respondent no.2 contended that they hold a valid title of sale deeds and obtained permission for construction also. But, the petitioner wanted to ensure somehow that further construction does not go on.

6.As far as the excess or deviated construction on the site in question is concerned, it is a matter to be considered by the Competent Authority only, since the matter is said to be pending for consideration by the said Competent Authority and the learned Senior Counsel for respondent no.2 also fairly admitted that the application for regularisation was filed way back on 25.07.2019, but the same has not been decided finally so far. We leave it free for the Competent Authority to decide the same in accordance with law expeditiously and thereafter, proceed in the matter according to law.

7.But, we do not find any reason to interfere in the matter at the instance of the present petitioner at this stage, who claims a conflicting title over the land in question itself. It is for the petitioner to establish his title with relevant evidence, documents or even a decree by seeking its execution, as the case may be. But for that matter, the writ proceeding cannot be converted into a proceeding for execution of the so-called Decree in favour of the petitioner.

8. Therefore, we dismiss this writ petition leaving it free for the respondents - Competent Authority to proceed further in the matter after taking a final decision in the application seeking for regularisation of construction in question. No costs. Consequently, W.M.P.No.17291 of 2019 is also dismissed.

-s/d-

Assistant Registrar(Insp Cell)

True Copy

Sub-Assistant Registrar

sra

To

1. The Member Secretary
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.
2. The Member Secretary,
Govt. of Puducherry, Town and Country
Planning Department, Puducherry.
3. The Secretary to Government,
(Pondicherry Planning Authority),
Govt. of Puducherry, Secretariat,
Puducherry.

+1 cc to Mr.L.Chandrakumar Advocate sr82579
+1 cc to the government Pleader sr82659

W.P.No.17883 of 2019

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