IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N. SESHASAYEE

W.P.No.31543 of 2019
and
WMP No.31734 of 2019

Faris C.M. .. Petitioner

Vs

1.The District Collector
Uthagamandalam
Nilgiris District.

2.The Assistant Director of Town Panchayat
Uthagamandalam
Nilgiris District.

3.The Executive Officer
Naduvattam (Selection Grade)
Town Panchayat, Nilgiris District.

4.The Executive Engineer
Tamil Nadu Electricity Board
Uthagamandalam
Nilgiris District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the notice dated 23/10/2019 under Section 57 r/w Section 85 of the Town and Country Planning Act, 1971 issued by the respondent and quash the same.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel
for Mr.AL..Ganthimathi

For Respondents: Mr.P.S.Sivashanmugasundaram,
Special Govt. Pleader for R1 & R2
Mr.V.Jayaprakash Narayanan,
Special Govt. Pleader for R3
Mr.S.K.Rameshuwar for R4

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O R D E R

[Order of the Court was made by M.SATHYANARAYANAN, J]

By consent, this writ petition is taken up for final disposal. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader accepts notice on behalf of respondents 1 and 2, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader accepts notice on behalf of respondent No.3 and Mr.S.K.Rameshuwar, learned Standing Counsel accepts notice on behalf of respondent No.4.

2. The petitioner and his two brothers viz., Trl.Abdul Salam and Fiyas had purchased a landed property admeasuring to an extent of 1 acre in R.S.No.464/4 (Correlating to O.S.No.35/33), at Naduvattam Village, the Nilgiris District through a registered sale deed dated 25.07.2016 (Document No.852/2016) registered on the file of the sub-Registrar, Gudalur along with the superstructure having a plinth area of 96 Sqr. mtr. It appears that an additional construction of 1000 sq. ft had also been put up and it is used for commercial purpose viz., running a Restaurant.

3. The third respondent local body had initiated proceedings under the 'Town and County Planning Act, 1971' (hereinafter referred to as 'TCP Act') by issuing a notice dated 23.10.2019 in Letter No.541/2019 for locking & sealing and demolition notice and challenging the legality of the notice, the present writ petition is filed.

4. Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Ms.A.L.Gandhimathi, learned counsel appearing for the petitioner would submit that the petitioner had also invoked the provisions of Section 56 of the TCP Act and submitted an on-line application on 26.10.2019 to the second respondent, seeking regularization of the said unauthorized development and in the interregnum, lock and seal of the premises had also been put up and as of now, no business activity is going on and prays for disposal of the said application.

5. Per contra, Mr.P.Sivashanmugasundaram, learned counsel appearing for respondents 1 and 2 would submit that the authority, who received the on-line application is acting as a single window and necessary clearance have also to be obtained under the Hill Area Conservation Authority (HACA) Regulations and would further add that the application submitted by the petitioner under Section 56 of the TCT Act is in order and it would be considered and disposed of at an early date.

6. It is relevant to extract Section 56 of TCP Act:

'56. Power to require removal of unauthorised

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development-

(1) Where any development of land or building has been carried out-

(a) without permission required under this Act; or

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land or building has been duly revoked; or

(d) in contravention of any permission which has been duly modified, the appropriate planning authority may, within (1 *) serve on the owner, a notice requiring him within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice-

(i) in cases specified in clause (a) or (c) above, to restore the land to its condition before the said development took place;

(ii) in cases specified in clause (b) or (d) above, to secure compliance with the permission or with the conditions of the permission, as the case may be.

(2) In particular, any such notice may, for the purposes aforesaid, require-

(i) the demolition or alteration of any building or works;

(ii) the carrying out on land, of any building or other operations;

(iii) the discontinuance of any use of land or building:

Provided that, in case the notice requires the discontinuance of any use of land or building, the appropriate planning authority shall serve a notice on the occupier also.

1 "(2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under subsection (1), within the time specified therein, the appropriate planning authority if primafacie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under section 49 or appeal under section 79 or any litigation before a court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises.";

(3) Any person aggrieved by such notice may, within

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the period specified in the notice and in the manner prescribed, apply for permission under section 49 for the retention of the land, or any buildings or works or for the continuance of any use of the land or building to which the notice relates.'

7. Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for respondent No.3 would submit that admittedly, the petitioner had put up unauthorized construction without any planning permission and therefore, action has been taken strictly in accordance with law.

8. This Court has considered the rival submissions and also perused the materials placed before it.

9. It is relevant to extract the alleged unauthorized construction put up by the petitioner which has been extracted in the impugned notice:

Asst No.	Door No.	Approved as per application Plan No.	Permission granted for	Now used
1	2	3	4	5
2364	25/8A-2	Building Plan not Approved	---	The Building has been used for Commercial purposed such as Hotel.

10. In (2008) 2 MLJ 1025 (DB) [Elephant G. Rajendran Vs. District Collector, the Nilgiris District] a public interest litigation was filed praying for appropriate direction, directing the respondent for taking necessary legal action for demolition of illegal and unauthorized construction in violation of relevant provision and rules framed thereunder and it is relevant to extract the paragraphs 14, 15 and 16 of the said judgment:

"14. We make a detailed reference to above passages in the reported decisions in order to give a thrust to the necessity of implementing and enforcing the provisions contained in Chapter X-A of the Tamil Nadu District Municipalities Act without any deviation or otherwise, any slackness in such enforcement would be highly detrimental to the interest of the society at large. It will not be out of place if we take judicial notice of the house collapse reported in Coonur as published in "The Deccan Chronicle", dated 14.02.2008, which reported that the house situated in a sloped terrain close to

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a road under renovation, where gravel and stones were dumped on the road side obstructing the flow of flood-water from getting into the channels and that the waster seeped its way down the terrain and damaged the mud wall of the house which collapsed in which two persons including a three year old were killed. Apparently, such disasters, natural and man-made are taking place solely due to the extensive damage caused to natural Hillock of the Udhagamandalam stretch by the unmindful and extensive conversion of the natural environment of the Hillock by restoring to man-made structure of very high magnitude out of self interest to make money and thereby put the life of the inhabitants both human as well as animals into great peril. Therefore, time has come for this Court to goad the authorities concerned, namely, the respondents herein to take every effort under law, scrupulously implement the same and thereby restore the glory of the Hillock, if not to its original stature, but at least to maintain status quo ante that was prevailing immediately before the devastating structures.

15. With the above said purport and intent of the legislation in our mind, when we examine the violations pointed out by the petitioner which have been admitted to a large extent by the respondent herein, we feel that the district administration of Udhagamandalam should swing into action and set right the violations by taking appropriate measures so that the future environment of the Udhagamandalam hill area is protected without causing any more destruction on environment aspects.

16. A Cursory glance of the petitioners' affidavit as well as the counter affidavit disclose that there were wide spread violations, in the matter of construction of buildings in the towns of Ooty, Gudalur, Kothagiri and Coonur. It is true that being a hill resort, there would be a large scale craving for tourists not only from this State but also from the neighbouring and other states to throng in large numbers to the above townships as part of their tour programme. However, in the larger public interest, it is the paramount duty of the district administration to scrupulously apply the construction rules as prescribed in Chapter X-A of the Act as well as the relevant rules and eliminate all such unauthorized constructions made in violation of the Rules that alone would ensure proper safety and avert any catastrophe in the hill stations which are very vulnerable to nature disasters like landslide, etc..”

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11. Yesterday, this Court has also entertained a public interest litigation in W.P.No.31438 of 2019, praying for removal of unauthorized construction put up in the entire Nilgiris District.

12. This Court can take judicial notice of the fact that, there is continuous violation of relevant TCP Act, and illegal and unauthorized constructions continue to take place and on account of the lethargic and reluctant attitude of the concerned official respondents, no preventive action or abating the nuisance, taking place. In the light of the above cited judgment in (2008) 2 MLJ 1025 (DB) [Elephant G. Rajendran Vs. District Collector, the Nilgiris District] , the concerned respondents are also under obligation to comply with the said order and it prima facie appears the direction given in the said order are yet to be complied with and in real and technical sense, the concerned officials are also under the pain of contempt.

13. This Court taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner directs the third respondent to entertain the on-line application dated 26.10.2019, if the papers are otherwise in order and give a disposal in accordance with law, as expeditiously as possible.

14. This writ petition stands disposed of accordingly. Consequently, connected miscellaneous petition is also closed. No costs.

15. The respondents 1 and 2 in terms of the directions given in (2008) 2 MLJ 1025 (DB) are directed to file status reports with supporting documents and photographs.

Call on 16.12.2019 along with W.P.No.31438 of 2019.

Sd/-

Assistant Registrar (J)

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Sub Assistant Registrar

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To

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+1cc to Mr.A.L.Gandhimathi, Advocate, S.R.No. 94412

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and WMP No.31734 of 2019

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