

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on
21.01.2019**

**Delivered on
13.03.2019**

WEB COPY

CORAM:

THE HONOURABLE MR. **JUSTICE K.K. SASIDHARAN**

AND

THE HONOURABLE MR. **JUSTICE P.D. AUDIKESAVALU**

W.P. (MD) No.585 of 2019

M.T.Akitha

... Petitioner

versus

1.The Secretary to Government,
Housing & Urban development (UD-4) Department,
Fort St.George,
Chennai 9.

2.The Director of Town and Country Planning,
Directorate of Town and Country Planning,
4th Floor, No.807, Anna Salai, Chennai 2

3.The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Declaration declaring that the impugned Government Order in G.O.Ms.No.289 dated 16.12.2010 issued by the 1st respondent is not in conformity with the provisions of Section 91-A of the Tamil Nadu Town and Country Planning Act, 1971 and is ultra vires Section 120 of the Tamil Nadu Town and Country Planning Act.

For petitioner : Mr.Mubarak Ahamed

For Respondents : Mr.N.Shanmugaselvan
Additional Government Pleader,
for respondents 1 and 2
Mr.P.Audimoola Pandian,
for 3rd respondent

ORDER

This Writ Petition at the instance of a builder, who was instrumental in constructing a commercial building without obtaining planning permission challenges the Government Order in G.O.Ms.No.289, Housing and Urban Development (UD 4-1) Department, dated 16 December 2010, primarily on the ground that there is no delegation to the Commissioner of Municipality under the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

The background:-

2. The petitioner constructed a commercial building in R.S.No.P2/22-1, P2/22-3, K.P.Road, Nagercoil without obtaining planning permission. The Local Planning Authority initiated action for enforcement. The notice issued by the Local Planning Authority was challenged in W.P.(MD) No.91 of 2019. The notice was withdrawn and consequently, the writ petition was disposed of. Thereafter, the petitioner challenged the constitution of the Local Planning Authority.

3. The Writ Petition filed by the petitioner challenging the constitution of the local planning authority was dismissed by this Court by order dated 21 January 2019 in W.P.MD No.588 of 2019. In the present Writ Petition, the petitioner is challenging the validity of the Government Order in G.O.Ms.No.289, Housing and Urban Development (UD 4-1) Department, dated 16 December 2010 in and by which, the Government was pleased to delegate powers of enforcement action for curtailing unauthorised construction under Sections 56 and 57 of the Tamil Nadu Town and Country Planning (Amendment) Act 2008 to the Commissioners of Corporations/ Municipalities and Executive Officer of Town Panchayats in addition to Member Secretary of the Composite Local Planning Authorities, New Town Development Authorities and Regional Deputy Directors.

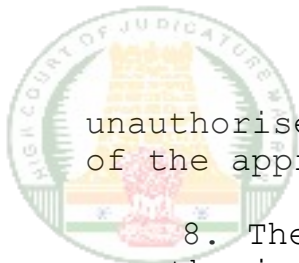
4. It is the contention of the petitioner that power to take enforcement action under Section 56(1) of the Tamil Nadu Town and Country Planning Act is specifically given only to the appropriate planning authority and there is no power for delegation. Similarly, it is the contention of the petitioner that power under Section 57 (1) of the Tamil Nadu Town and Country Planning Act also should be exercised only by the appropriate authority. The petitioner has taken up another contention based on Section 2(3) of the Tamil Nadu Town and Country Planning Act that appropriate planning authority would include only the local planning authority or its officers, who are empowered to take enforcement action.

5. We have heard the respective counsel for the parties.

Discussion :-

6. The Tamil Nadu Town and Country Planning Act is a complete code for providing planning and development and use of rural and urban land in the State of Tamil Nadu and take enforcement action to ensure that unauthorised buildings are not constructed. Section 56 (1)(i) gives power to the appropriate planning authority to take enforcement action including locking and sealing, in case it is made out that the building was constructed without planning permit or in violation of the approved plan. Similarly, power is given under Section 57 of the Act to the appropriate planning authority for discontinuing the illegal development.

7. The Tamil Nadu Town and Country Planning Act empowered the appropriate local planning to take enforcement action against the



unauthorised construction or constructions put up in total violation of the approved planning permit.

8. The State over a point of time witnessed mushroom growth of unauthorised buildings. The appropriate local planning authorities have been taking enforcement action against such buildings. The planning authorities could not mobilize men and materials for curtailing the unauthorised construction across the State.

9. The Commissioner of Tamil Nadu Town and Country Planning Act made a request to the Government to delegate the enforcement powers for curtailing unauthorised construction under Sections 56 and 57 of the Tamil Nadu Town and Country Planning (Amendment) Act, 2008, to the Commissioners of Corporations/ Municipalities and Executive Officer of Town Panchayats in addition to Member Secretary of Composite Local Planning Authorities, New Town Development Authorities and Regional Deputy Directors.

10. The Government, in larger public interest, accepted the proposal made by the Director of Town and Country Planning and delegated the power under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act to the Commissioners of Corporations/ Municipalities and Executive Officer of Town Panchayats. The Government called upon the Director of Town and Country Planning to ensure the issuance of an order by the respective planning authorities themselves under Section 91-A of the Act for delegation of enforcement powers.

11. The challenge in this Writ Petition is to the decision taken by the Government for delegation of powers to the Commissioners of Corporations/ Municipalities and Executive Officer of Town Panchayats. Even in the absence of delegation by the Government under Government Order in G.O.Ms.No.289, Housing and Urban Development (UD 4-1) Department, dated 16 December 2010, the local planning authority is having the power of delegation under Section 91-A of the Act.

12. Section 91-A provides for Delegation of powers by appropriate planning authority. The provision reads thus:-

"91-A. Delegation of powers by appropriate planning authority.-

(1) The appropriate planning authority may, subject to such conditions as may be prescribed, authorise by order, any committee or officer specified in such order to exercise any of the powers vested in such appropriate planning authority by this Act and may cancel such order.

(2) The exercise of any power delegated under sub-section (1) shall be subject to such restrictions and conditions as may be specified in the order and also to control and revision by the appropriate planning authority."



13. The petitioner has earlier taken a contention in W.P.(MD) No.588 of 2019 that the delegation could be made only to a member of the planning authority. We have rejected the said contention and confirmed the decision of the appropriate planning authority.

14. Paragraph nos.7 and 8 of the order dated 21 January 2019 in W.P.(MD) No.588 of 2019 reads thus:-

7. Section 91-A of the Act very clearly provides for delegation of powers by the appropriate planning authority to any committee or officer specified in such order. There is absolutely no indication in the provision to the effect that the officer should be a member of the Planning Authority or the Committee should be a Committee functioning under the Planning Authority. The delegation is wide enough to cover even a Committee or an officer outside the composition of the appropriate planning authority.

8. The constitution of the local planning authority at Nagercoil was made in accordance with Section 91-A of the Act. The Local Planning Authority being the delegatee is the appropriate planning authority empowered to discharge all the functions provided under the provisions of the Act.

15. The substantial challenge was to the Government Order dated 30 November 2018 issued by the local planning authority, Nagercoil. The said order was made in exercise of the power under Section 91-A of the Tamil Nadu Town and Country Planning Act. The delegation is made only under the said provision. The Government Order in G.O.Ms.No.289 dated 16 December 2010 is only for the purpose of enabling the local planning authority to exercise the power under Section 91-A. There is no merit in the contention that the appropriate planning authority has no power of delegation to an officer who is not part of the said Department.

16. The petitioner has been filing Writ Petitions one after another to protect her illegal construction. In fact, she has been challenging the various provisions of the Tamil Nadu Town and Country Planning Act in a piecemeal manner and trying her level best to protect her illegal structure. In any case, there is absolutely no merit in the contention taken by the petitioner.

17. In the upshot, we dismiss the Writ Petition. No costs. Consequently, W.M.P.(MD) Nos.500 and 501 of 2019 are closed.

Sd/-

Assistant Registrar(P&A)

// True Copy //



To

1.The Secretary to Government,
Housing & Urban development (UD-4) Department,
Fort St.George,
Chennai 9.

2.The Director of Town and Country Planning,
Directorate of Town and Country Planning,
4th Floor, No.807, Anna Salai,
Chennai 2

3.The Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District

+1 CC to M/s.D.SELVANAYAGAM, Advocate in SR-54401

W.P. (MD) No.585 of 2019

tar

PK/26.04.2019 : 5P/5C

13.03.2019

E/ /SAR- (08.02.2019) P CC