

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2020
PRONOUNCED ON : 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.NOS.13874 & 13777 OF 2020
WMP NOS.17239, 17120, 17240 AND 17121 OF 2020

M/s.Mistair Realty's Private Limited,
Rep. By its Director,
Mr.P.Kishore
Having registered office at
Door No.4, Shalomn Apartments,
No.1, Josier Street,
Nungambakkam, Chennai 600 034

...Petitioner in
WP No.13874 of 2020

Mrs.Jansi Kishore

...Petitioner in
WP No.13777 of 2020

Vs.

The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam.

...Respondents in both
Writ petitions

Prayer in WP No.13874 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the Respondent in Na.Ka.No.F2/9123/2019 dated 11.10.2019 and quash the same and consequently, direct the respondent herein to renew the building license in B.L.No.66/2007/F2 (B.ANo.133/2006/F2) dated 21.05.2007, within a time frame fixed by this Court.

Prayer in WP No.13777 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the Respondent in Na.Ka.No.F2/9123/2019 dated 11.10.2019 and quash the same and consequently, direct the respondent herein to renew the building license in B.L.No.173/2014/F1 (B.ANo.336/2013/F1) dated 14.05.2014, within a time frame fixed by this Court.

For Petitioners : Mr.Abudukumar Rajarathinam
in both Wps

For Respondent : Mr.P.Srinivas, Standing Counsel
in both WPs

COMMON ORDER

The issue involved in both these writ petitions are common and hence, they are taken up together and this common order is passed.

2. The petitioners have challenged the proceedings of the respondent dated 11.10.2019 and have sought for a consequential direction to direct the respondent to renew the building license in order to enable the petitioners to complete the construction.

3. The petitioners are the owners of the subject property and the property is classified as 'primary residential zone' as per the master plan for Udhagamandalam municipality. The petitioners applied for building license for construction of a residential building in the subject property. The particulars regarding the application for building license and the period for which it was granted by the respondent municipality, is captured in the following tabular column:-

S.No.	Writ Petition No.	Date on which, the license was issued by the respondent municipality	Period for which the license was issued by the respondent municipality
1.	13777 of 2020	14.05.2014	14.05.2014 to 13.05.2015
2.	13874 of 2020	21.05.2007	21.05.2007 to 21.05.2008

4. The case of the petitioner in WP No.13777 of 2020 is that due to an unforeseen exigency, all the monies that was saved for putting up the construction was spent on some medical emergency and therefore, the petitioner was not even able to commence the construction. Similarly, the case of the petitioner in WP No. 13874 of 2020 is that the construction was not able to be completed within the license period due to some financial constrains.

5. The petitioners thereafter claim that they saved some money and again applied for renewal of the building license before the respondent through application dated 09.09.2019 and this application was rejected by the respondent through the impugned order, on the ground that the petitioners have

approached the respondent with exorbitant delay and that too after the expiry of the license period. Aggrieved by the same, these Writ Petitions have been filed before this Court.

6. Mr. Abudu Kumar Rajarathinam, learned counsel appearing on behalf of the petitioners made the following submissions :-

(a). The lands in question admittedly is classified as "primary residential zone" as per the master plan and therefore, there is absolutely no bar under any of the enactments to put up a residential dwelling house and of course, the construction can be undertaken only after obtaining the license from respondent municipality.

(b). The petitioners have not sought for any change in the type or manner of construction and they only requested for the renewal of the license to enable them to complete the construction.

(c). The respondent failed to consider Section 204 of the Tamil Nadu District Municipalities Act, 1920 in its proper perspective while dealing with the renewal application submitted by the petitioners and the respondent ought to have considered it as a fresh application and granted permission for continuing with the construction.

(d) The learned counsel to substantiate the above submission relied upon the earlier order passed by this Court in WP No. 3946 of 2017, dated 17.04.2017 and also the reported judgment in AIR 1996 Madras 159

(e) The provisions of the act are more regulatory in nature and not prohibitory in nature and therefore, the respondent ought to have considered the application for renewal in a proper perspective without rejecting the same on mere technicalities.

(f) The respondent municipality by rejecting the application filed by the petitioners, has virtually infringed the right to property which also includes right to enjoy the property and which is guaranteed under Article 300A of the Constitution of India.

(g) The Government is now encouraging construction projects and it has gone to the extent of even making rules to regularize unapproved plots and when such progressive thought process has emanated at the level of the Government, the respondent municipality has taken a pedantic view and rejected the renewal applications submitted by the petitioners.

7. Mr. P. Srinivas, learned Standing Counsel appearing on behalf of the respondent municipality submitted that in both the cases, the petitioners had approached the municipality after 6 years and 10 years respectively, after the expiry of the license period and that itself is a ground to reject the application given by the petitioners. The learned counsel further submitted that the petitioners will have to present a new application and the same will be considered by the respondent municipality in accordance with the rules in force. The learned counsel further submitted that Section 321(9-A) of the District Municipalities Act alone will apply in the present case and the petitioners ought to have sought for renewal of license before the expiry of the license period. The learned counsel further submitted that Section 204 of the Act deals with only a fresh application and not renewal of application and the petitioners cannot rely upon the said provision. The learned counsel concluded his arguments by submitting that the judgments relied upon by the learned counsel for the petitioners will not apply to the facts of the present case and in those cases, there was no delay in approaching the authorities seeking for renewal of license. The learned counsel therefore submitted that the Writ Petitions are liable to be dismissed.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The only issue that arises for consideration in these Writ Petitions is as to whether the petitioners are entitled to be granted renewal of building license for completing their construction or the petitioners will have to apply afresh seeking for a fresh license to continue with their construction?

10. There is no dispute with regard to the fact that the land in question is classified as 'primary residential zone' as per the master plan for Udhagamandalam municipality. There is also no dispute with regard to the fact that the petitioners are not seeking for any change in the type or manner of construction and they want to stick on to the original plan and complete the construction. It is true that the petitioners have approached the respondent municipality seeking for renewal of license much after the expiry of the initial period for which the building license was originally granted.

11. The Master Plan 1997 and 2011 and the Development Control Rules will completely govern the usage, construction of buildings, etc., in hill stations. Once the property falls within the category of 'primary residential use zone', the

Development Control Rules will apply. The respondent municipality has considered the earlier application submitted by the petitioners seeking for building license only after taking into consideration the sanction given by the local planning authority of Udhagamandalam municipality.

12. Chapter-X of the Tamil Nadu District Municipalities Act, 1920, deals with building regulations. It will be relevant to extract Section 204 which falls under this chapter hereunder:

204. Lapse of permission. - If the construction or reconstruction of any building is not completed within the period specified, the permission shall lapse and a fresh application shall be made before the work is continued.

13. A plain reading of the above provision shows that where a construction has not been completed within the license period and the permission has lapsed, fresh application should be made before the work is continued. This provision came up for consideration in [M/s Golden Homes Private Ltd. Vs. The Secretary to Government and others] in WP 3946 of 2017, dated 17.04.2017. The relevant portions in the judgment are extracted hereunder:

10. Admittedly in the case on hand, the petitioner has applied within the time. Section 204 of the Tamil Nadu District Municipalities Act, 1920, has to be looked at from his own context. It merely states that a fresh application has to be made before the work is continued. Therefore, the object of this provision is to make sure that there is no construction without permission. There is a difference between a fresh application and a new application. To put it differently, an application seeking renewal is nothing but a fresh application and not a new one. Provisions of a statute have to be read in consonance with each other to avoid any unnecessary conflict. Therefore, Section 204 has to be read with 321 (9a) of the Tamil Nadu District Municipalities Act, 1920.

11. The matter can be looked at from the different perspective as well. The permission is sought for the same project. The petitioner has not changed the permission sought for and obtained earlier. Merely because, the project could not be completed, the

respondent no.3 cannot seek the payment once again. A mere availability of the alternative remedy per se cannot be a ground. This issue sought for lies in a very narrow campus. It is one dealing with the payment of charges.

14. It will also be relevant to take note of the orders passed by this Court in WP Nos. 13696 and 11432 of 2017, dated 07.08.2017. The relevant portions in the order are extracted hereunder:

6. The 1st respondent has filed his counter, wherein at Para 7, he has stated that as per Section 204 of the Tamil Nadu District Municipalities Act, 1920, at the time of ending license, new building permission can only be granted. Further, he has also mentioned that under Section 50 of the Tamil Nadu Town and Country Planning Act, 1971, the respondent had demanded for New Building Planning Permission, vide letter dated 15.05.2017.

7. Mr.P.H.Aravind Pandian, learned Senior counsel appearing for the petitioner submitted that in similar circumstances, this Court in an unreported Judgment dated 17.04.2017 made in W.P.No.3946 of 2017 set aside the impugned order passed by the Municipality and directed the authority to renew the planning permission on payment of requisite scrutiny fee.

8. Mr.P.H.Aravind Pandian, learned Senior counsel appearing for the petitioner also submitted that the petitioner is willing to pay the requisite scrutiny fee on demand being made by the 1st respondent.

9. Mr.S.Diwakar, learned Special Government Pleader appearing for the respondents has also submitted that the issue involved in the present Writ Petition is covered by the Judgment relied upon by the learned Senior Counsel appearing for the petitioner.

10. In view of the submission made by both sides, the impugned orders dated 27.02.2017 and 13.04.2017 passed by the 1st respondent and the impugned order dated 15.05.2017 passed by the 1st respondent in W.P.No.13696 of 2017 passed by the 1st respondent are set aside. The 1st respondent is directed to process

the petitioner's application for renewal of the planning permission, on payment of requisite scrutiny fee and other applicable payments, such as, Building Construction Welfare Fund and Vacant Site Tax.

15. The learned standing counsel appearing on behalf of the respondent municipality placed reliance upon Section 321(9-A) of the Act. It is clear from the above judgment that this Court made a conjoint reading of Section 204 along with Section 321(9-A) of the Act and has given a beneficial constructions by holding that an application seeking for renewal is nothing but a fresh application and it is not a new application more particularly when it is sought for the same project without any change made to the earlier plan which was sanctioned and permission was granted.

16. Once the concerned authority approves the site plan and a building license is granted and the construction is not able to be completed within the license period, on the application seeking for renewal, a fresh permit is given under Section 204 of the Act for the site plan already approved and there is no question of once again going through the entire process afresh once the building has already been approved by the concerned authority. This construction of Section 204 of the Act read in consonance with Section 321(9-A) has been consistently followed and this Court does not find any ground to deviate from this view. In fact, such a construction has been upheld by the Division Bench of this Court in WA No. 719 of 2017 by order dated 13.06.2018.

17. In view of the above, the Respondent municipality ought to have considered the renewal application submitted by the petitioners as a fresh application and dealt with the same under Section 204 of the Act. The application submitted by the petitioners should not have been rejected merely on the ground of delay since the petitioners are not seeking for any change in the earlier plan that was sanctioned and they do not want to deviate from the earlier license given for putting up the construction. That apart, the property continues to be classified as a 'primary residential zone' under the master plan and there is no change in rules in considering an application seeking for building permission. The respondent ought to have considered the application by collecting the requisite scrutiny fee and other applicable payments and granted renewal of building license.

18. The above discussion makes this Court come to an irresistible conclusion that the impugned rejection notice issued by the respondent municipality requires the interference of this Court. Accordingly, the impugned notice dated 11.10.2019 issued by the respondent municipality is hereby quashed. There shall be a consequential direction to the respondent to renew the building license in favour of the petitioners after collecting the requisite scrutiny fee and other applicable payments, within a period of 4 weeks from the date of receipt of copy of this order.

19. In the result, both the Writ Petitions are allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

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To

The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam.

+6ccs to Mr. Rajagopal Vasudevan, Advocate,
SR.No. 37992, 38403, 37993, 38402

सत्यमेव जयते Pre-delivery Order in
W.P.Nos. 13874 & 13777 of 2020
WMP Nos. 17239, 17120, 17240 and 17121 of 2020

AJS (CO)
KKV/14/12/2020

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