

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4325 of 2019
and C.M.P.No.27622 of 2019

Mrs.Jeyameena ... Appellant/Petitioner

-vs-

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 600009.
2. The District Collector,
Cuddalore District,
Cuddalore.
3. The Executive Officer,
Office of Town Panchayat,
Thittakudi, Cuddalore District. .. Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 01.10.2019 passed in W.P.No.21799 of 2019.

WP.No.21799 of 2019:filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to Call for the entire records relating to impugned Proceedings in Moo.Mu.No.253/2018 A1 dated 05/07/2019.

For Appellant : Mr.N.Nithianadam

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader for
R1 to R3

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant.

2. The appeal questions the correctness of the impugned judgment dated 01.10.2019 whereunder, a challenge raised to the order passed by the respondent has failed on the ground that the appellant had violated the sanction plan and in view of the unauthorized constructions, admittedly having been made, no interference was required by the Writ Court with the impugned order of cancellation of the plan.

3. However, the learned Single Judge mentioned that it is open to the appellant to demolish the unauthorized portion and then to seek revival of the building plan that was approved.

4. We, for the reasons hereinafter recorded find that the learned Single Judge has not appreciated the scope and extent of the powers as conferred under Section 205 of the Tamil Nadu Municipalities Act, 1920 on the concerned authority. Since Section 205 is already extracted in the impugned judgment, we do not deem it necessary to reproduce it again.

5. A perusal of the power granted to the Executive Officer is confined to the extent of the contravention alleged. The consequences are also provided namely in the event of contravention is established, after hearing the owner of the premises, then the authority can direct carrying out such alterations as may be specified in the notice with the object of bringing the work in conformity with the sanctioned plan or the provisions or to show cause as to why such alterations be not carried out. The owner is compelled to carry out the alterations in the absence of any show cause by the owner, and in the event the cause is shown to the satisfaction of the authority, the notice can be struck down or otherwise be confirmed, subject to such modifications as the authority may think fit.

6. In the instant case, the show cause notice issued to the appellant dated 14.06.2019, categorically indicates that one Mr.Subramanian had submitted a petition to the Chief Minister that the building in question might collapse, as it has been constructed contrary to the sanction of the plan, namely, that the permission was granted only to construct the first and

second floor whereas the appellant had proceeded to construct the third floor of the building. The notice is extracted as hereunder :-

"It is noticed that vide ref(1) one Mr.Subramanian had submitted a Petition to the Chief Minister, Special Cell that the building situated within the time limits of Thittakudi Town Panchayat at Door No.166, South Street, is about to collapse due to overweight, and the same has been numbered as Online Petition No.68068/2019 dated 12.06.2019. As a result, it is hereby requested to submit your explanation within 7 days of receiving this letter to the effect that though you have been granted permission only to construct First and Second Floor, as to the construction of Third Floor without permission, why the provisions of Sec.205(i) (ii) and (iii) of the Tamil Nadu Municipalities Act, 1920 shall not be invoked to cancel the Building License already granted to you. Further, if you fail to submit any explanation, based on the available records appropriate action would be initiated against you."

On the explanation submitted, the appellant did not deny the construction of the third floor contrary to the plan where after the impugned order dated 05.07.2019 came to be passed by the Executive Officer cancelling the building permission to the petitioner.

The impugned order is extracted herein under :-

"For property in Survey No.64/1a2b1 standing in the name of Jeyameena wife of Murugesan a Building License No.159/2016 dated 26.07.2016 was granted to construct Ground Floor and 2 Floors. However, in violation to the license granted you have constructed Third Floor, hence, as per the provisions of Sec.205(i) (ii) and (iii) of the Tamil Nadu Municipalities Act, the Building Permission granted to you is hereby cancelled."

7. We find from a perusal of both these documents that the power was sought to be invoked in terms of Section 205 of the Act.

8. Learned State Government Pleader voluntarily pleaded that the proceedings appear to be one, as would be envisaged under Section 216 where the authority has the power to proceed to demolish the unwanted and unauthorized construction and realize any costs as well as take further action. We are amazed at this argument in as much as neither the notice nor the order even remotely indicates the exercise of any such power. To the contrary, the complaint, the notice and the impugned order read

together is only about the objectionable raising of the third floor construction in violation of the permission granted. The question of applying Section 216, therefore, does not arise at all at this stage. The counter affidavit filed before the learned Single Judge also does not disclose any such stand taken and rather supports the notice having been validly issued under Section 205 of the Act. This argument is therefore patently misconceived and deserves rejection.

9. The contention raised by the learned counsel for the appellant is that the authority has proceeded to cancel the entire building permission, and even the learned Single Judge has erroneously observed that after demolishing the unauthorized part, the appellant can seek revival of the building plan. This approach is erroneous in as much as neither Section 205 nor any of the provisions relating thereto empower the Executive Officer to cancel the whole building permission. It is in order to set right what has been contravened by calling upon the owner to carry out the alterations that is in contravention of the permission granted, is envisaged in the Section. Section 205 nowhere contemplates or empowers the authority to seek a revival or fresh permission after carrying out demolition of the unauthorized portion. The cancellation of the building permission for the entire constructions therefore, under Section 205 is not contemplated.

10. We therefore, find force in the arguments of the learned counsel for the appellant. The learned Single Judge even though has extracted Section 205, failed to notice the aforesaid distinction between the existence of a power and its exercise under the Statute. The terminology of the Statute being unambiguous and there being no scope for an interpretation otherwise, we find that the power to cancel the entire building plan is not existent. The conclusion therefore, undoubtedly is that there exists no such power for the Executive Authority to cancel the building permission while exercising powers under Section 205 and consequently, the order dated 05.07.2019 cancelling the entire building permission cannot be sustained.

11. It may be noted here that along with affidavit filed in support of the stay application, the appellant herself has given an undertaking that she will remove the unauthorized construction voluntarily. In this view of the matter, there is no occasion to call upon the appellant to seek a fresh permission for revival of the building plan already approved. We therefore, allow the appeal, set aside the impugned judgment dated 01.10.2019 as well as the order dated 05.07.2019 to the extent it cancels the building

permission.

12. The appellant shall remove the unauthorized construction within three months from today and shall report to the authority accordingly. In the event the unauthorized constructions are not removed, it will be open to the Executive Officer to take fresh action that may be permissible in law.

13. The writ appeal is allowed subject to above. The connected civil miscellaneous petition is closed.

-s/d-
Assistant Registrar

True copy

Sub-Assistant Registrar

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To

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2. The District Collector,
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3. The Executive Officer,
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Thittakudi, Cuddalore District.

+1 cc to Mr.N.Nithianandan Advocate sr7421

+1 cc to M/s.Government pleader sr7665

+1 cc to M/s.Government pleader sr7663

W.A.No.4325 of 2019

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