



WEB COPY

W.P.(MD)No.8972 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.8972 of 2020

and

W.M.P (MD)Nos.8204 and 8263 of 2020

Dr.William Jebes Bensam

... Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 9.

2.The Additional Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 9.

3.The Member Secretary,
Local Planning Authority,
Nagercoil,
Kanyakumari District.

4.The Commissioner,
Nagercoil Corporation,
Nagercoil,
Kanyakumari District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the second respondent in Letter No.12615/UD4-1/2019-3, dated 09.03.2020 and the consequential order of the third respondent in Roc.No.1064/2014 NLPA, dated 07.05.2020 and quash the same as illegal.

For Petitioner : Mr.P.T.Ramesh Raja

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader for R.1 to R.3

Mr.P.Athimoolapandian
Standing Counsel for R.4



ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

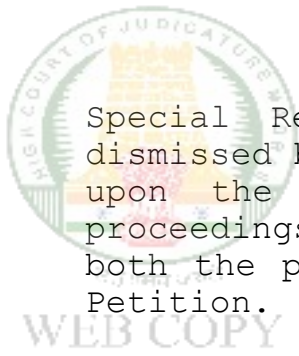
The petitioner claims to be the owner of the landed property in Old Survey No.3043 (Resurvey No.A-1-43/12), M.S. Road, Vadacheri Village, Kanyakumari Taluk and District, ad-measuring an extent of 52 cents along with a well, out of 1.40 acres.

2.The petitioner had earlier filed W.P.(MD) No.19054 of 2017 against the fourth respondent herein as well as the other respondents herein for issuance of Mandamus, directing the respondents not to evict him or demolish his building situated in his patta lands in S.No.A1/43-12, Asirvatham Nagar Colony, Vadasery Village, Nagercoil, Kanyakumari District without acquiring his land as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The said Writ Petition came to be disposed of on 12.10.2017 by directing the second respondent to consider the petitioner's representation dated 07.10.2017 and pass appropriate orders on merits and in accordance with law within 6 weeks from the date of receipt of a copy of this order.

3.In the intregnam, the fourth respondent has issued a notice under Section 216(1) & (2) 317 of the Tamil Nadu District Municipalities Act, stating among other things that the petitioner has put an unauthorised construction. The petitioner challenging the legality of the said notice, once again filed W.P.(MD) No.14778 of 2018 and it was dismissed as withdrawn and liberty was given to file appropriate application for planning permission before the Local Planning Authority, who has already initiated enforcement action against him. Thereafter, the fourth respondent vide order dated 06.06.2019 in Na.Ka.No.17998/2014/F1 issued eviction notice.

4.Against the said notice, the petitioner filed Special Revision Petition by invoking Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the first respondent and subsequently, filed W.P.(MD) No.13811 of 2019 praying for issuance of Writ of Mandamus, directing the first respondent to entertain the revision along with stay application preferred by the petitioner dated 14.06.2019 and pass orders in accordance with law within a time frame. This Court disposed of the said Writ Petition on 12.07.2019, by directing the first respondent to consider the revision and pass orders on merits and in accordance with law within a period of two weeks and till such time restraining the respondents from initiating any coercive steps.

5.The petitioner said to have sought planing permission for the new building constructed in the said Survey Number and accordingly, he had paid necessary fees. In the intergnam, the



Special Revision Petition filed by the petitioner came to be dismissed by the first respondent vide order dated 09.03.2020, based upon the same, the third respondent has issued consequential proceedings in Roc.No.1064/2014NLPA dated 07.05.2020 and challenging both the proceedings the petitioner came forward to file this Writ Petition.

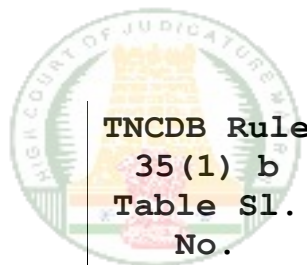
6.The learned counsel appearing for the petitioner would submit that though the petitioner has applied for planning permission, it was not considered. Inclusion of the road in the land possessed by the petitioner is wholly untenable. The land came into his possession by virtue of settlement deed dated 29.04.2004 and since there was some delay in processing the application/ planning permission in the light of the stand of the concerned official respondent that a public road was earmarked for formation in the year 1978 on the land of the petitioner, the petitioner has proceeded with the construction and since there is immediate threat of demolition, he prays for appropriate orders.

7.Mr.Aayiram K.Selvakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3 and Mr.P.Athimoolapandian, learned Standing Counsel accepts notice on behalf of the fourth respondent and would submit that even as per the sworn statement of the petitioner, he did not obtain planning permission and put up wholly unauthorised construction that too for commercial purpose for the hospital. The Writ Petition filed by the appellant/writ petitioner was dismissed by taking into consideration, the materials placed and facts and circumstances of the case. Since the petitioner has put up construction in patent violation of law, this Court may not come to the aid of the petitioner and prays for dismissal of the Writ Petition.

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

9.Admittedly, the petitioner has put up unauthorised construction without obtaining any planning permission and the details of the unauthorised construction put up by him has been extracted in paragraph Nos.2 and 7 of the first impugned order dated 09.03.2020 and it is relevant to extract the same:

S.No.	Description	Area Constructed	Usage
1.	Block I	13.00 x 10.1 m and 6.70 x 2.6 m	GF Commercial building
2.	Block II	48.00 x 10.10 m and 20.00 x 2.40 m	GF Commercial building
3.	Block II	15.20 x 10.20 m	GF Commercial building



TNCDB Rule 35(1) b Table Sl. No.	Parameter	Required	Available	Satisfied /Shortage	Remarks
A	Road Width	9.00m	21.50m	Satisfied	---
B	Max Height	18.30m	3.60m (less than 7.0m)	Satisfied	---
C	Max FSI	2.00m	0.38	Satisfied	---
D(i)	Front Setback	4.50m	3.30m	1.20m Shortage	26.6 Violation
(ii)	Side Setback Left Side	1.00m	Nil	1.00m Shortage	However portion of road to be recommended for demolition 100% Violation
	Right Side	1.00m	2.00	---	---
(iii)	Rear side Setback	1.00m	1.00m	Satisfied	---
	Parking	Not shown			Space available

10. In paragraph No.9 of the said order, the admission on the part of the appellant/petitioner that he did not have approval for the building constructed in the above premises has also been taken note of. If the very story of the petitioner that there is no public road exists in the land given to him by way of registered settlement deed dated 29.04.2004, it is always open to him establish the same in the manner known to law before the competent forum, and instead he deliberately went further to put up unauthorised superstructure.

11. In (2017) 7 MLJ 397 [A.Marimuthu v. Secretary], the Division Bench of this Court dealt with the issue of demolition of unauthorised construction and after taking note of the decisions in

(i) **Dipak Kumar Mukherjee v. Kolkata Municipal Corporation** reported in (2012) 8 MLJ 107 (SC);

(ii) **Friends Colony Development Committee v. State of Orissa** reported in LNIND 2004 SC 1111;

(iii) **M.C.Mehta v. Union of India** reported in LNIND 2004 SC 1527;

(iv) **Priyanka Estates International Private Limited v. State of Assam** reported in (2010) 1 MLJ 1005 (SC);

<https://hcservices.ecourts.gov.in/hcservices/>



(v) **R.K.Mittal v. State of Uttar Pradesh** reported in (2012) 1 MLJ 1142 (SC);

(vi) **S.Prakash Chand Jain v. State of Tamil Nadu rep., by its Secretary, Housing and Urban Development Department, Fort St. George, Chennai** reported in (2014) 2 MLJ 551;

(vii) **Shanti Sports Club v. Union of India** reported in (2009) 7 MLJ 258 (SC).

and found that the Writ Petition filed by the petitioner, seeking sanction of unauthorised construction deserves dismissal and accordingly, dismissed the Writ Petition.

12. In 2019 (14) SCALE 378 [**Municipal Corporation of Greater Mumbai v. Sunbeam High Tech Development Private Ltd.,**], the Municipal Corporation of Greater Mumbai has demolished a structure without following due process of law and the Bombay High Court has allowed the petition filed for re-construction of the demolished construction and it was put to challenge before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India held that though without following due process of law the unauthorised construction has been removed, his remedy is to get compensation and not re-erection of the superstructure and it is relevant to extract the following paragraphs from the said decision:

"14. That brings us to the main issue before us. Is the writ court justified in issuing a direction that since the building has been demolished without following the procedure prescribed by law, the petitioners before the High Court (Respondents before us) be permitted to reconstruct the structure albeit using the same material, and of the same dimensions, as existed earlier? The second direction given is that before commencing of work of reconstruction, the petitioner shall serve a notice to the designated officer. It has further been observed by the High Court that the reconstruction of the structure on the basis of its order will confer no authenticity on the structure. The third important direction of the High Court provides that if the original structures were constructed without obtaining development permission, the structures reconstructed pursuant to the orders of the Court will also be construed to be constructed without proper development permission. Hence the Corporation can initiate action of demolition of the structures, after following the law laid down in Sopan's case (supra). We have been told that this is the regular practice followed in the Bombay High Court, throughout the State of Maharashtra.

15. We are constrained to observe that we cannot approve of such directions. The High Court is aware that some of these structures may



have been constructed without permission. If that be so, even if the demolition was carried out without giving the second notice, why should the party who has violated the law by raising the construction without obtaining permission be permitted to raise another illegal structure which only has to be razed to the ground, after following the procedure prescribed by law? Why should the Nation's wealth be misutilised and misused for raising an illegal construction which eventually has to be demolished?

16. We make it clear that we do not approve the action of the Municipal Corporation or its officials in demolishing the structures without following the procedure prescribed by law, but the relief which has to be given must be in accordance with law and not violative of the law. If a structure is an illegal structure, even though it has been demolished illegally, such a structure should not be permitted to come up again. If the Municipal Corporation violates the procedure while demolishing the building but the structure is totally illegal, some compensation can be awarded and, in all cases where such compensation is awarded the same should invariably be recovered from the officers who have acted in violation of law. However, we again reiterate that the illegal structure cannot be permitted to be re-erected.

17. Assuming that the structure is not illegal then also the Court will first have to come to a finding that the structure was constructed legally. It must come to a clear-cut finding as to the dimensions of the structure, what area it was covering and which part of the plot it was covering. In those cases the High Court, once it comes to the conclusion that the structure which has been demolished was not an illegal structure, may be justified in permitting reconstruction of the structure, but while doing so the Court must clearly indicate the structure it has permitted to be constructed; what will be the length of the structure; what will be its width; what will be its height; which side will the doors and windows face; how many number of storeys are permitted etc. We feel that in most cases the writ court may be unable to answer all these questions. Therefore, it would be prudent to permit the structure to be built in accordance with the existing by-laws. Directions can be issued to the authorities to issue requisite permission for construction of a legal structure within a time bound period of about 60 days. This may



vary from case to case depending upon the nature of the structure and the area where it is being built.

18. Blanket orders permitting re-erection will lead to unplanned and haphazard construction. This will cause problems to the general public. Even if the rights of private individuals have been violated in as much as sufficient notice for demolition was not given, in such cases structures erected in violation of the laws cannot be permitted to be re-erected. We must also remember that in all these cases, the High Court has not found that the structures were legal. It has passed the orders only on the ground that the demolition was carried out without due notice. As already indicated above, compensation for demolished structure or even the cost of the new structure to be raised, if any, can be imposed upon the municipal authorities which should be recovered from the erring officials, but in no eventuality should an unplanned structure be permitted to be raised.

21. There is no difficulty to find a solution to this problem if the State is inclined to do so. Till the State frames any laws in this regard, we direct that before any construction/reconstruction, or repair not being a tenantable repair is carried out, the owner/occupier/builder/ contractor/architect, in fact all of them should be required to furnish a plan of the structure as it exists. This map can be taken on record and, thereafter, the construction can be permitted. In such an eventuality even if the demolition is illegal it will be easy to know what were the dimensions of the building. This information should not only be in paper form in the nature of a plan, but should also be in the form of 3D visual information, in the nature of photographs, videos etc.

22. All over the country we find that when people raise illegal constructions it is claimed that the said construction has been existing for long. The answer is to get Geomapping done. The relevant technology is Geographic Information System (GIS). If on Google Maps one can get a road view, we see no reason as to why this technology cannot be used by the municipal corporations. At the first stage we direct that all the cities in Maharashtra where the population is 50 lakhs or more the municipal authorities will get Geomapping done not only of the municipal areas but also of areas 10 Kms. from the outer boundary. This can be done by satellite, drones



or vehicles. Once one has the whole city geomapped it would be easy to control illegal constructions. We further direct the State of Maharashtra to ensure that sufficient funds are made available to the municipal corporations concerned and this exercise should be completed within a period of one year from the date of this order."

13.It is also to be noted at this juncture that if the concerned authorities/local bodies are vigilant enough to prevent the unauthorised construction, there may not be any illegal constructions. However, for the "reasons best known to them" the concerned authorities/local bodies are not taking any action to prevent irrelevant or deviation of construction and it is high time that the concerned authorities should take a call and issue necessary guidelines in this regard.

14.In the light of the facts and circumstances of the case and the reasons assigned above, this Court is of the considered view that there is no error apparent or infirmity in the impugned order, which is the subject matter of challenge, especially, for the reason that the petitioner has violated the relevant planning law and put up a wholly unauthorised construction. Therefore, he has to bear the cost for doing such illegal act. Writ Appeal lacks merits and the same is accordingly, dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. However, in the circumstances of the case, there shall be no order as to the costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 9.

2.The Additional Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 9.

3.The Member Secretary,
Local Planning Authority,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.GP (SR-14110[F] dated 14/08/2020)

W.P. (MD)No.8972 of 2020

and

W.M.P(MD)Nos.8204 and 8263 of 2020

12.08.2020

AP(25/08/2020) 9P 5C