



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)Nos.12921 and 12922 of 2016

and

Crl.M.P. (MD)Nos.6071, 6072, 6073 and 6074 of 2016

B.Russel Raj ... Petitioner in both petitions
-vs-

The Commissioner
Nagercoil Municipality,
Kanyakumari District. ... Respondent in both Petitions

PRAYER in Crl.O.P. (MD)No.12921 of 2016: Petition filed under Section 482 of the Criminal Procedure Code to call for the records in respect of the complaint in S.T.C.No.414 of 2010 pending on the file of the Judicial Magistrate Court No.II, Nagercoil, Kanyakumari District and quash the same.

PRAYER in Crl.O.P. (MD)No.12922 of 2016: Petition filed under Section 482 of the Criminal Procedure Code to call for the records in respect of the complaint in S.T.C.No.415 of 2010 pending on the file of the Judicial Magistrate Court No.II, Nagercoil, Kanyakumari District and quash the same.

For Petitioner: Mr.K.Samidurai
For R1 : Mr.P.Athimoolapandian
(in both cases)

COMMON ORDER

The petitioner is figuring as an accused in S.T.C.No.414 and 415 of 2010 on the file of the learned Judicial Magistrate No.2, Nagercoil. It is a private complaint instituted by the Commissioner of Nagercoil Municipalities, for the offences under Section 317 of the Tamil Nadu District Municipalities Act, 1920 (herein after referred to as the 'Act').

2. The case of the complainant is that the petitioner had put up two buildings, one of which is totally without approval while the other one is in deviation of the approved plan. In other words, while, the petitioner was permitted to put up two floors, he had put up four storeyed building. That led the filing of these two complaints. To quash the same, these Criminal Original Petitions



have been filed.

3.The learned counsel for the petitioner wanted this Court to quash these proceedings by following a decision of the Madras High Court reported in **2000(1) MLJ Cr1 771** in the case of **V.Kanagaraj Vs The Commissioner, Udagamandalam Municipality**. The contention of the learned counsel for the petitioner is that the complainant was required to show that he had issued notice under Section 205 of the Act and also passed a preliminary order under Section 216 of the Act. Only if it can be shown that the building owner had not complied with the said direction, the prosecution can be launched and not otherwise.

4.It is true that in the aforesaid decision, it has been held as follows:

"5.A plain reading of the above section would contemplate notice under Sec.205 of Sec.215 of the Act and in spite of such notice made and direction given to alter or demolish a portion of the building for non-compliance further order under Sec.216 has to be made in spite of such an order passed if the petitioner fails to obey such direction, only then the question of launching prosecution in proof of which punishment as contemplated under Sec.317 of the Act would arise. A cursory glance at the impugned order would show that the respondent by issuing the same altogether under all the said three sections contemplating punishment under Sec.317 of the Act has denied the opportunity to explain and rectify the deviations as independently contemplated under Secs.205 and 216 respectively which is nothing short of an act done in violation of the principles of natural justice and is bad in law. Consequently, the impugned order only becomes liable to be quashed. Hence, the combined order made together under all the above three sections of the Act by the respondent in the impugned order is quite meaningless and improper and the same only becomes liable to be quashed."

5.I am unable to accept the contention of the learned counsel for the petitioner nor am I able to follow the aforesaid decision on which reliance is placed. Section 317 of the Act reads as follows:

"317.Penalty for unlawful building

If the construction or re-construction of any building or well--

(a) is commenced without the permission of the executive authority, or

(b) is carried on or completed otherwise than in accordance with the particulars on which such permission was



(c) is carried on or completed in contravention of any lawful order or in breach of any provision contained in this Act or in any rule or by-law made hereunder or of any direction or requisition lawfully given or made, or

if any alterations or additions required by any notice issued under section 205 or section 215 are not duly made, or

if any person to whom a direction is given by the executive authority to alter or demolish a building or well under section 216 fails to obey such direction,

the owner of the building or well or the said person, as the case may be, shall be liable on conviction to a fine which may extend in the case of a building to five hundred rupees and in the case of a well or hut to fifty rupees, and to a further fine which may extend in the case of the building to one hundred rupees, and in the case of a well or hut to ten rupees, for each day during which the offence is proved to have continued after the first day."

6. As rightly pointed out by the learned standing counsel for the respondent, the legislation has consciously employed the expression 'or'. If the learned counsel for the petitioner's contention is to be accepted, this Court would be substituting the expression 'and' in the place of 'or' occurring after class (c) of Section 317 of the Act. It is not open to Court to read 'or' as 'and', more so, when the statutory context does not justify the same. Section 199 of the Act contains a blanket prohibition against commencement of work without permission from the Executive authorities.

7. In this case, the petitioner had put up a building without getting any prior planning approval. He had also put up two more extra floors in respect of the other building. Therefore, I do not find any prima facie ground to quash the impugned proceedings. No other ground and contentions were canvassed.

8. Accordingly, both the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

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Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate Court No.II, Nagercoil,
Kanyakumari District.

2.The Commissioner, Nagercoil Municipality, Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.K.SAMIDURAI, Advocate (SR-7495 & 7496)

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SMA/01/06/2020/4P/6C