

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.238 of 2021
and
W.M.P.Nos.305 & 306 of 2021

B.Saravanan

... Petitioner

Vs.

- 1.The Secretary,
Housing and Development Department,
Secretariat, Chennai.
- 2.The Director,
Town and Country Planning,
Office of the Town and Country Planning,
No.807, Anna Salai, Chennai - 2.
- 3.The Assistant Director,
District Town and Country Planning Office,
Salem District.
- 4.The Commissioner,
Narasingapuram Municipality,
Salem District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for records of 4th respondent in Impugned Notice Na.Ka.No. 1776 / 2020 / A4 dated 30.12.2020 issued under Section 56, 57 of Tamil Nadu Town and Country Planning Act and quash the same as illegal, arbitrary and non-est-in-law and consequently forbear the respondents 2nd to 4th from initiation any coercive action of locking and sealing of petitioner property building measuring in 1520 Sq.ft in Survey No. 461 / 23, Old Survey No. 102 / 1, Door No. 27, Ward No. 4, Narasingapuram, Attur Taluk, Salem District till the disposal of the petitioner appeal filed under Section 80-A of Town and country Planning Act dated 29.12.2020 pending before the 1st respondent.

For Petitioner : Mr.B.Vijay
for Mr.Venkatesh Masethung

For R1 to R3 : Mr.R.Vijayakumar
Additional Government Pleader

For R4 : Mr.L.P.Maurya
Standing Counsel

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)
(Through Video Conferencing)

The father of the petitioner, namely, Mr.V.Balasubramaniam, had settled the land and building situated at Old Survey No.102/1, New Survey No.461/23, Ward No.4, Narasingapuram, Attur Taluk, Salem District, bearing Door No.27, as well as yet another item bearing Door No.43/23, in favour of the petitioner, through a registered Settlement Deed dated 26.03.2012. The petitioner claims to be in occupation and possession of the said properties and they are also subject to statutory levies. The petitioner would state that, originally, Narasingapuram was Panchayat Union and thereafter, got upgraded as Municipality, and the superstructure which is the subject matter of the impugned notice came into being about 20 years back.

2.Learned counsel appearing for the petitioner would submit that, to the shock and surprise of the petitioner, a notice dated 20.11.2020 was issued by the 4th respondent under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, and responding to the same, the petitioner has applied for planning permission to regularise the unauthorised construction put up by him. It is further submitted by the learned counsel appearing for the petitioner that, one Mr.K.Rajendran had filed W.P.No.18953 of 2020 against the official respondents as well as against the petitioner, for issuance of a writ of mandamus directing the respondents 2 and 3 therein to comply with the 3rd respondent's notice, dated 08.10.2020, with further direction to demolish all the unauthorised commercial constructions put up by the 4th respondent/petitioner herein, at Door No.26/19, Salem-Cuddalore Main Road, Narasingapuram, Attur Taluk, Salem District, based on his representations dated 07.09.2020 and 09.10.2020. The writ petition came to be disposed of by this Court, without going into the merits of the claim projected by the petitioner either in his representations or in the writ petition, directing the 3rd respondent therein to proceed further in terms of the notice dated 08.10.2020, subject to legal interdict, and to complete the exercise in accordance with law within a stipulated time. In compliance of the same, the impugned notice, dated 30.12.2020, came to be issued.

3.It is also the submission of the learned counsel appearing for the petitioner that, challenging the notice issued by the 4th respondent, dated 20.11.2020, an appeal/Special Revision has also been filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the Secretary to Housing and Urban Development Department of Government of Tamil Nadu, along with an Interlocutory Application for stay, and it is yet to be entertained. The primordial submission made by the learned counsel appearing for the petitioner is that, since an application has been submitted for regularisation and the premises is primarily residential and there is also a shop, considering the fact that the petitioner, along with his family, is residing in the premises, prays for equity and appropriate orders.

4.Mr.R.Vijayakumar, learned Additional Government Pleader, accepts notice on behalf of the respondents 1 to 3.

5.Mr.L.P.Maurya, learned Standing Counsel, who accepts notice on behalf of the 4th respondent, has drawn the attention of this Court to the order, dated 15.12.2020, made in W.P.No.18953 of 2020, and would submit that, since admittedly, the petitioner has put up wholly unauthorised construction which is also housing a shop, action has been taken strictly in accordance with law, for which, the petitioner cannot make any grievance in this regard.

6.This Court has carefully considered the rival submissions and also perused the materials placed before it.

7.The fact remains that the petitioner has filed a statutory appeal/Special Revision challenging the Lock and Seal Notice issued by the 4th respondent, dated 20.11.2020, before the 1st respondent, along with a petition for stay.

8.A perusal of the materials would prima facie disclose that, only after the issuance of the notice by the 3rd respondent, the petitioner thought it fit to apply for regularisation of the unauthorised construction. It is also very pertinent to point out at this juncture that it is not as if the unauthorised constructions are coming into being all of a sudden, and when constructions are going on, though it is obligatory on the part of the concerned officials to verify and find out the nature of the construction, they normally turn a blind eye to the same, and only when writ petitions are filed and orders are passed, they take action.

9.It is also pointed out by the learned counsel appearing for the petitioner that, in Salem-Cuddalore Main Road, Narasingapuram Village, Attur Taluk, Salem District,

very many unauthorised constructions are there, whereas, the premises of the petitioner alone has been targeted, and responding to the same, the learned Standing Counsel appearing for the 4th respondent would submit that, inspection of the premises located in the said road would be done, after putting the persons concerned on notice, and depending upon the result of the inspection, similar action that has been taken against the petitioner would be taken against them also. The said submission, on instructions, is placed on record.

10. This Court, taking into consideration the facts and circumstances, directs the 1st respondent to entertain the appeal/Special Revision filed by the petitioner along with petition for stay, dated 28.12.2020, if the papers are otherwise in order, and take up the petition for stay at the first instance and give a disposal to the same in accordance with law, within a period of three weeks from the date of receipt of a copy of this order/uploading of this order in the website, and it is also open to the 1st respondent to give a disposal to the main appeal/Special Revision itself in accordance with law, as expeditiously as possible.

This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

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Housing and Development Department,
Secretariat, Chennai.
2. The Director,
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No.807, Anna Salai, Chennai - 2.
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+1cc to the Government Pleader SR.775

W.P.No.238 of 2021

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CB(21/01/2021)



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