



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 13227 of 2013
and
M.P. No. 1 of 2013 and
W.M.P. No.2757 of 2020

Dr.V.J.Shiva

...Petitioner

-vs-

1.The Commissioner,
Town and Country Planning Development,
807, Anna Salai,
Chennai - 600 002.

2.The Member-Secretary,
Local Planning Authority,
Coimbatore, Coimbatore District.

3.The Commissioner,
Corporation of Coimbatore,
Coimbatore, Coimbatore District.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents from affixing seal or taking any action in Door No.43-B, New No.27, Cowly Brown Road, R.S.Puram, Coimbatore - 2 till the disposal of the regularization application pending with the respondents.

For Petitioner :Mr.P.Ganesan
For M/S.C.S.Associates

For Respondents :Mrs.Akila Rajendran
Government Advocate for R1 and R2
Mr.K.Magesh
Standing Counsel for R3



O R D E R

The prayer sought for herein is for Writ of Mandamus forbearing the respondents from affixing seal or taking any action in Door No.43-B, New No.27, Cowly Brown Road, R.S.Puram, Coimbatore - 2 till the disposal of the regularization application pending with the respondents.

2. The petitioner is having a property at 43B, New No.27, Cowly Brown Road (East), R.S.Puram, Coimbatore - 2, which is a corner plot. In order to develop a multi speciality hospital, he applied for sanction of plan to the second respondent through the third respondent. The plan was also sanctioned for constructing the ground plus three floors, with stilt floor for parking. The plan was sanctioned by the second respondent on 03.06.2010 in Building Licence No.188/2010 and by the third respondent on 22.09.2010 in Building Licence No.159/10/H1(West). The petitioner also borrowed more than two Crores from the Repco Bank for the said construction.

3. After completing the construction, when the petitioner approached the third respondent for paying the property tax, then only he came to know that, since there are some minor deviation the Corporation pointed out and therefore, when he enquired about the alleged deviation from the Engineer concerned, it is explained that, some deviations are there in the corner plot as per the specification.

4. Therefore, in order to regularize the deviation, when the petitioner made an application to the second respondent, the second respondent by proceedings dated 24.01.2013 returned the same with a further direction that, the petitioner after having rectified the deviation can make an appeal to the first respondent. Pursuant to the said communication dated 24.01.2013 by the second respondent, an appeal was filed before the first respondent on 25.03.2013 and the said appeal is still pending with the first respondent.

5. However, in view of the minor deviation, according to the petitioner, which were pointed out by the respondents, since the petitioner was apprehending or facing some threat of demolition of such alleged violation or deviation, he approached this Court by filing this mandamus wherein the petitioner was able to get an interim order with regard to the status quo of the building in question is concerned.



6. All along, the Writ Petition has been pending and till date, the said appeal filed by the petitioner dated 25.03.2013 is not decided by the respondents, especially the first respondent and therefore, the learned counsel appearing for the petitioner would submit that, if a direction is given to the first respondent to consider and decide the appeal filed by the petitioner against the order of the second respondent within a time frame on merits, the petitioner would be satisfied.

7. On the other hand, Mrs.Akila Rajendran, learned Government Advocate appearing for the first and second respondents on instructions, would submit that, if at all, there has been a deviation, that has to be regularized, it is possible for such regularization only by the Government, for which, the petitioner can make an appeal or application only to the Government under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, the present appeal cannot be decided by the first respondent.

8. Heard Mr.K.Magesh, learned Standing counsel appearing for the third respondent, who would submit that, insofar as the power vested with the Government under Section 113-C of the Act is concerned, it is a different one and insofar as deviation to be regularized, if it is minor one, appeal can be filed before the first respondent / Commissioner as directed by the second respondent, therefore if at all any such appeal is filed by the petitioner to the first respondent, the same can also be directed to be considered by the first respondent on merits within a time frame.

9. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. The prayer sought for in this Writ Petition is very innocuous in nature, where the petitioner's appeal preferred before the first respondent against the order of the second respondent dated 24.01.2013 is still pending before the first respondent, therefore, the said appeal dated 25.03.2013 can be directed to be disposed of by the first respondent on merits within a time frame. Since the second respondent himself has stated that, the appeal can be preferred to the first respondent against his order, accordingly, the said appeal has been filed on 25.03.2013 by the petitioner, therefore, such appeal can very well be disposed of by the first respondent with a time frame.



11. In that view of the matter, there shall be a direction to the first respondent to decide the appeal of the petitioner dated 25.03.2013 as against the order passed by the second respondent dated 24.01.2013 on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. Till such appeal is disposed of as indicated above, the status quo with regard to the building in question of the petitioner as on today shall be maintained.

12. Accordingly, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vji / sp
To

- 1.The Commissioner,
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Chennai - 600 002.
 - 2.The Member-Secretary,
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Coimbatore, Coimbatore District.
 - 3.The Commissioner,
Corporation of Coimbatore,
Coimbatore, Coimbatore District.
- +1 CC to Mr.K.Magesh, Advocate sr 60407
+1 CC to Mr.P.Ganesan, Advocate sr 60227.

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GPL (CO)
SP (09/02/2022)