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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.06.2021

Pronounced on : 06.07.2021

C O R A M

THE HON'BLE MR.JUSTICE P.N.PRAKASH

AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

W.P.No.3308 of 2020
and WMP No.3831 of 2020

Francis Marit Philomen
Veronique Shanguine
rep. By Power Agent
Francis Arsene Jocelyn.

... Petitioner

-vs-

1. Union Territory of Puducherry,
Rep. By Chief Secretary to Government,
Puducherry.

2. The Member Secretary,
Town and Country Planning Board,
Town and Country Planning Department,
Government of Puducherry,
Jawahar Nagar, Boomianpet,
Puducherry.

3. The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.

4. Mariadassou Philomene Dominique
Marie Anthoinette

... Respondents

[R4 impleaded vide order dated 17.02.2021 made in WMP No.5703 of 2020 in WP.No.3308 of 2020 by MSNJ & AANJ]

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to consider the representation sent to 2nd and 3rd respondents on 27.01.2020 to approve and to consider the constructed Four storeyed residential Flats of the petitioner at Door No.91, Montorsier Street, Puducherry at T.S.No.169, R.S.No.239 pt Old No.55, Ward 126; D, Block No.13 that is in compliance with recently increased 300 FAR/FSI coefficient from 180 FAR/FSI coefficient as per the newly Amended Comprehensive Development Plan for Puducherry 2036 for Ward D as per Public notice vide No.220-



1/PPA/MP/2019 dated 04.11.2019 and G.O.Ms.No.21/19 dated 04.11.2019, since being the construction coverage area of the building is within the permissible area as of now stands higher, as per the newly Amended Comprehensive Development Plan for Puducherry 2036 that been increased to 300 FAR/FSI coefficient under master plan that too only within boulevard limit and petitioner building within the same permissible area.

For Petitioner : Mr.A.V.Arun
For Respondents : Mr.C.T.Ramesh (for R1 to R3)
Additional Government Pleader (Pondy)
Mr.S.P.Sudalaiyandi (for R4)

O R D E R

R.PONGIAPPAN, J.

This writ petition has been filed for the issuance of a writ of mandamus, directing the 2nd and 3rd respondents to consider the representation dated 27.01.2020 given by the petitioner and to approve the four storeyed residential flats owned by the petitioner at Door No.91, Montorsier Street, Puducherry at T.S.No.169, R.S.No.239 pt Old No.55, Ward 126; D, Block No.13, in compliance with the newly Amended Comprehensive Development Plan for Puducherry-2036, for Ward D as per Public notice vide No.220-1/PPA/MP/2019 dated 04.11.2019 and G.O.Ms.No.21/19 dated 04.11.2019.

2. The petitioner herein is the absolute owner of the property situated at Door No.91, Montorsier Street, Puducherry at T.S.No.169, R.S.No.239 pt Old No.55, Ward 126, D, Block No.13. The 4th respondent viz., Mariadassou Philomene Dominique Maria Anthoinette, wife of Jesudoss Arokiasamy, is the petitioner's neighbour. Since there was a deviation, the fourth respondent had given a complaint to the 2nd and 3rd respondents over unauthorised construction made by the petitioner. But, despite his complaint, the 2nd and 3rd respondents, after collecting Rs.8 Lakhs as a compounding fee approved the construction done by the petitioner. Challenging the same, the 4th respondent filed a writ petition before this Court in WP No.31949 of 2017 and the same was allowed. In the said writ petition, this Court had ordered the respondents 1 and 2, to take follow up enforcement action, as envisaged under the Puducherry Town and Country Planning Act, 1969 [Act 13 of 1970] and take the said action to its logical end against the petitioner. Challenging the same, petitioner filed a special leave petition vide SLP No.6583 of 2019 in the Hon'ble Apex Court and the same has been dismissed vide order dated 11.03.2019.



3. Recently, the 1st respondent had amended the Comprehensive Development Plan for Puducherry-2036 for Ward D as above. In the said amendment, the existing coefficient of 180 has been increased to 300 coefficient and the same was without boulevard limit and therefore, the petitioner's building is within the permissible area.

4. In this regard, the petitioner had sent a representation to the respondents 2 and 3, praying to approve the construction made by him with the aid of the amended provision.

5. After receipt of the said representation, the respondents 2 and 3 did not consider the grievance addressed by the petitioner and pass orders. Hence, the petitioner is before this Court, with the present writ petition.

6. Opposing the claim made by the writ petitioner, the 3rd respondent has filed a counter affidavit and the same was adopted by the respondents 1 and 2.

7. In the counter affidavit, the respondents had conceded the previous litigations i.e. filing of writ petition by the 4th respondent and about the orders passed by this Court. In respect to the present writ petition, in the counter affidavit, in paragraph No.17, the respondents had averred as follows:

"17. I further submit to state that the actual Coverage and Floor Area Ratio (FAR) of the existing four storeyed building works out to 93.50% (Coverage) & 336.56 (FAR), the same was ascertained based on the actual plan submitted by the petitioner while issuance of revised building plan approval by the 3rd respondent, which exceeds the present permissible limit i.e. 75% (Coverage) & 300 (FAR) adopted by the 3rd respondent after the notification of the Comprehensive Development Plan for Puducherry Planning Area - 2036 and also exceeds the compoundable limit of 10% prescribed in the Puducherry Building Bye Laws and Zoning Regulations, 2012. Therefore, the Puducherry Planning Authority and the Town and Country Planning Board cannot compound the offence beyond the prescribed limits of the Puducherry Building Bye Laws & Zoning Regulations, 2012. Therefore, the claim of the petitioner is untenable and not maintainable."

8. On the other hand, disputing the averments found in the counter affidavit, the writ petitioner has filed a reply affidavit and states as follows:

".... that on 21 November 2017, after receiving the penalty, the 2nd respondent approved for existing building, citing wrong measurement, as calculation; 93.5% (Coverage) & 336.56 (FAR) for 180 (FAR) coefficient. But actual calculation is 93.32% and



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301.33 (FAR), currently with the latest increase of 300 from 180 coefficient, and the coverage area being the base permissible of 75% is now can be increased by paying compounding fee to a limit of excess 10%, hence maximum 82.5% coverage area is allowed as per Puducherry Building Bye Laws and Zoning Regulations, 2012, the respondents can consider the FAR limit upto 330, being 10% is added ($300 + 30 = 330$), and moreover the petitioner coverage limit of 82.50% will not be applied, since already been issued a Gazette saying that the setback area should not be consider within the boulevard limit that is of petitioner and as per petitioner FAR limit is only 301.33 and considering the same the excess is 1.33 only, as since 10% increase is allowed in FAR by collecting compounding fee the petitioner is within the bracket of the same. "

9. According to the petitioner, the 4th respondent who filed the writ petition against him, is also a violator. The Government Order has been issued with authority of law and it is ultra vires the provisions of the Puducherry Government, to demolish the petitioner's building which is in compliance with the latest Comprehensive Development Plan and the demolition of petitioner's building will lead to demolition of thousands of such buildings and shall result in wasteful expenditure causing hardship to the general public and such demolition may invite litigation from the public besides involving huge expenditure from the State exchequer. Accordingly, he prayed to allow this writ petition.

10. The learned counsel appearing for the writ petitioner would contend that though the petition-mentioned building is constructed in violation of the existing norms, now, the amendment made by the respondents 1 and 2, is very clear that the building under dispute is within the permissible limit viz., 75% coverage and 300 FAR. Therefore, there is no difficulty for the respondents 1 to 3, in approving the building constructed by the writ petitioner.

11. The learned Additional Government Pleader (Puducherry) reiterated the averments found in the counter affidavit and made submissions as the building under dispute is not within the extended coverage and FAR. Therefore, the grievance addressed by the petitioner cannot be entertained.

12. Now, on considering the either side submissions with relevant records, it seems that on 12.05.2010 itself, the petitioner got approval for the four storeyed residential flats [7 units]. Thereafter, in the same year, respondent No.4 herein has given complaint to the 2nd and 3rd respondents that the flats constructed by the petitioner is not within the norms stipulated in the Comprehensive Development Plan. However, prior to said



complaint, on 25.10.2017 itself, the 2nd respondent had given approval, after collecting the compounding fee from the petitioner. In view of the same, on 21.11.2017, the 3rd respondent had granted permission for construction and for remitting the compounding fee of Rs.8 lakhs. Challenging the same, the 4th respondent filed a writ petition in WP No.31949 of 2017 and the same was allowed on 11.01.2019. In the said order, this Court, after elaborate discussion, had passed the following order.

"58.... In other words, the Composition / Compounding of an Offence under the Puducherry Town and Country Planning Act, 1969 will restrain a person from being prosecuted, since he had paid the necessary charges. But, in the present case, as regards an Unauthorised Development / Building Violation made or committed by the 3rd Respondent, this Court keeping in mind of the dictum laid down by the Hon'ble Supreme Court between M.I.Builders (P) Ltd., V. Radhey Shayam Sahu in 1999 (6) Supreme Court Cases at Page 464 = AIR 1999 SC 2468, the unauthorised construction in the subject matter in issue being an illegal one cannot be compounded by any means whatsoever. Even the Puducherry ByeLaw Zoning Regulations, 2012 issued under Section 47 of the Puducherry Town and Country Planning Act, 1969 cannot come to rescue of the Respondents 1 and 2 as well as the 3rd Respondent. If an unauthorised construction/development made by the 3rd Respondent is given the seal of approval by the Respondents 1 and 2 in passing the Impugned Order dated 25.10.2017 and the consequential order 21.11.2017 respectively, then, the same will result in encouraging an illegality or perpetuating illegality and the Court of Law cannot encourage the same in a Democratic Polity, based on the 'Principle of Rule of Law'. Looking at from any angle, the Impugned Order dated 25.10.2017 and the consequential order dated 21.11.2017 do not stand scrutiny in the eye of Law, since they are per se illegal. Viewed in that perspective, the Writ succeeds."

13. Thereafter, the said findings of this Court were affirmed by our Hon'ble Apex Court by the judgment rendered in SLP No.6583 of 2019. Subsequent to that after a long battle, the 4th respondent filed a contempt petition against the 2nd and 3rd respondents for complying with the order referred to above. Only in the said circumstances, the petitioner has filed this writ petition and prayed to consider his representation.



14. Though the petitioner's grievance may appear to be reasonable as per the averments found in the affidavit filed in support of the writ petition, yet the averments found in paragraph No.17 of the counter affidavit, filed by the 3rd respondent is very clear that the building under dispute does not come under the purview of extended coverage made in the proposed amendment made in Comprehensive Development Plan for Puducherry-2036.

15. The respondents 2 and 3 are very particular that the building under construction exceeds the present permissible limit adopted by the 3rd respondent. Therefore, the contention raised by the petitioner's counsel that the building under dispute is within the permissible limit, is not found correct. Therefore, the newly Amended Comprehensive Development Plan for Puducherry-2036, also is not in aid of the petitioner. That apart the Amended Comprehensive Development Plan for Puducherry-2036 is not a scheme for regularisation of illegal constructions. It is a plan which is to operate prospectively. Only in the said circumstances, the petitioner filed this writ petition for issuance of a writ of mandamus.

16. In the judgment of Arunachalam Chettiayar Vs. Kaleeswarar Mills reported in AIR 1957 Mad 309, in respect of the issuance of a writ of mandamus, a Division Bench of this Court has held as follows:

"It is not a writ of right and is not issued as a matter of course. Some of the conditions precedent to the issue of writ of mandamus appear to be:

(1) the applicant for a writ of mandamus must show that there resides in him legal right to the performance of a legal duty by the party against whom the mandamus is sought;

(2) the Court will not Interfere to enforce the law of the land by the extraordinary remedy of a writ of mandamus in cases where an action at law will lie for complete satisfaction; in order, therefore, a mandamus may issue to compel something to be done, it must be shown that the statute imposes a legal duty;

(3) the writ is only granted to compel the performance of the duties of a public nature; and

(4) the Court will, as a general rule and in the exercise of its discretion, refuse a writ of mandamus when there is an alternative specific remedy at law, which is not less convenient, beneficial and effective."

17. Now, applying the ratio laid in the judgment referred to above, herein it is a case, as per the submission made by the learned counsel for the respondents 1 to 3, the petitioner herein is not having any legal right to the performance of a legal duty by the party against whom the mandamus is sought.



18. Already, at the time of disposing of the writ petition filed by the 4th respondent, this Court has clearly analysed all aspects which relate to the construction made by the writ petitioner and then only directed the respondents 2 and 3 to remove the portions constructed in violation of the rules. In the said circumstances, according to the 2nd and 3rd respondents, the newly Amended Comprehensive Development Plan for Puducherry-2036 for Ward D as per Public notice vide No.220-1/PPA/MP/2019 dated 04.11.2019 and G.O.Ms.No.21/19 dated 04.11.2019, are also not in favour of the petitioner.

19. Therefore, in view of the above discussion, this Court is not inclined to uphold the contentions put forth by the learned counsel for the petitioner and accordingly, this writ petition stands dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary to Government,
Union Territory of Puducherry,
Puducherry.

2. The Member Secretary,
Town and Country Planning Board,
Town and Country Planning Department,
Government of Puducherry,
Jawahar Nagar, Boomianpet,
Puducherry.

3. The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.

+1cc to Mr.A.V.Arun, Advocate SR.No. 31284
+1 cc to Government Pleader Sr.No. 32097

W.P.No.3308 of 2020

CNR (CO)
A.SK(04.08.2021)