

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.3132 of 2015

and

MP.Nos.1 & 2 of 2015

Aroon Rashid

..Petitioner

Vs.

1.The Principal Secretary to Government,
Municipal Administration and Water
Supply(MA) Department,
Chennai 600 009

2.The Commissioner,
Udhagamandalam Municipality,
Ooty

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 217 (L) of the Tamil Nadu District Municipalities Act r/w Article 227 of the Constitution of India praying to set aside the proceedings in Government Letter (Pa)No.504/Na.Ne.1/2014 dated 11.12.2014 on the file of Municipal Administration and Water Supply (MA1 Department).

For Petitioner : Mr.R.Subramanian

For Respondents

For R1 : Mr.S.Jaganathan,
Government Advocate(CS)

For R2 : Mr.S.Kadarkarai

ORDER

The civil revision petition is directed as against the Government Letter (Pa)No.504/Na.Ne.1/2014 dated 11.12.2014 on the file of Municipal Administration and Water Supply (MA1 Department).

2. The learned counsel for the petitioner would submit that the petitioner submitted plan on 23.11.1995 to the second respondent and it was not considered and passed orders within a period of thirty days as mandated under Section 202(2) of Tamil Nadu District Municipalities Act. The second respondent ought to have submitted a suitable proposal with regards to regularisation of building to the first respondent herein. Without considering the said report, now the impugned order has been passed. He further submitted that in the writ petition filed before this Court in WP.No.32747 of 2007, wherein the Secretary of Housing and Urban Development Department filed status report stating that the Government have to take policy decision on the

unauthorised construction in the Udagamandalam Municipality taking into consideration the need to discourage further unauthorised construction in the hill area and the social and economic impact. The Hill Area Conservation Authority formed a sub committee to consider relevant aspects. The sub committee will submit its report on the regularisation proposal after analysing relevant aspects. On receipt of the report of the Hill Area Conservation Authority, the Government will take policy decision on this issue. Therefore, the learned counsel for the petitioner submitted that the first respondent may be directed to reconsider the petitioner's request as per the decision taken by the Government.

3. The learned counsel for the second respondent submitted that the writ petition cited by the counsel for the petitioner was already disposed of by this Court on 15.10.2014. Thereafter, the petitioner was called for enquiry by the show cause notice dated 30.10.2014 thereby called upon the petitioner to appear on 10.11.2014. Accordingly, he appeared on receipt of the same. The petitioner issued letter dated 10.11.2014 stating that there is no second floor except a small portion

constructed for better elevation. Therefore, admittedly there is a construction in the second floor and as such they are liable to be removed. Thereafter on 11.12.2014, the first respondent passed the impugned order. In civil revision petition, the height of the building was directed to be reduced to 7 meters and directed the petitioner to rectify the same accordingly as per the fresh plan. Therefore, the violation is categorically admitted by the petitioner and no further consideration is required.

4. Heard Mr.R.Subramanian, the learned counsel for the petitioner, Mr.S.Jaganathan, Government Advocate(CS), appearing for the first respondent and Mr.S.Kadarkarai, the learned counsel for the second respondent.

5. The petitioner was issued show cause notice dated 30.10.2014 and directed the petitioner to attend the personal hearing to be held on 10.11.2014 to decide the review petition filed by the petitioner. The show cause indicated the violations committed by the petitioner while constructing his residential building in RS.No.584/Part, D.No.169/A1 Mount Pleasant Road, Udthagamandalam to an extent of

basement floor 1764 sq.ft., ground floor 2699 sq.ft., first floor 2699 sq.ft without approval of Municipality in multi use zone as per master plan. In fact, the petitioner issued letter dated 10.11.2014 praying for approval of his building plan, in which he stated that there is no second floor except small portion constructed for better elevation. In the impugned order revealed that the constructed area declared as multi use zone and the petitioner's building is constructed in the permissible area. In respect of other violations are rectified and the only violation to be rectified is that the height of the building has to be reduced into 7 meters. The petitioners was also given three months time to rectify the same. The only ground raised by the petitioner is that now the writ petition filed before this Court. In the writ petition status report was filed by the first respondent herein as follows:

"It is submitted that as per direction of the Hon'ble High Court of Madras, as indicated in para 3 above, the Government have to take a policy decision on the unauthorized construction in the Udhagamandalam Municipality taking into consideration the need to discourage further unauthorised constructions in the Hill Area and the social and economic impact. Therefore, the relaxation proposal has been submitted for the recommendation of the Hill Area Conservation Authority. The Hill Area Conservation Authority also considering the nature of the case, formed a sub-committee separately to

consider all the relevant aspects. The sub-committee will submit its report on the regularisation proposal as indicated in para 10 above, after analysing all the relevant aspects. On receipt of the recommendations of the Hill Area Conservation Authority, the Government will take a policy decision on this issue shortly and dispose the review petitions based on the recommendation of the Hill Area Conservation Authority."

6. The learned counsel for the second respondent submitted that after main writ petition was disposed of on 15.10.2014 and only thereafter show cause notice was issued thereby directed the petitioner to attend enquiry on 10.11.2014. Therefore, the report was submitted by the sub committee and as per the policy decision taken by the Government, the show cause notice was issued and order has been passed. Therefore, this Court finds no merits in this civil revision petition.

7. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

04.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok

To

The Commissioner,
Udhagamandalam Municipality,
Ooty



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G.K.ILANTHIRAIYAN,J.

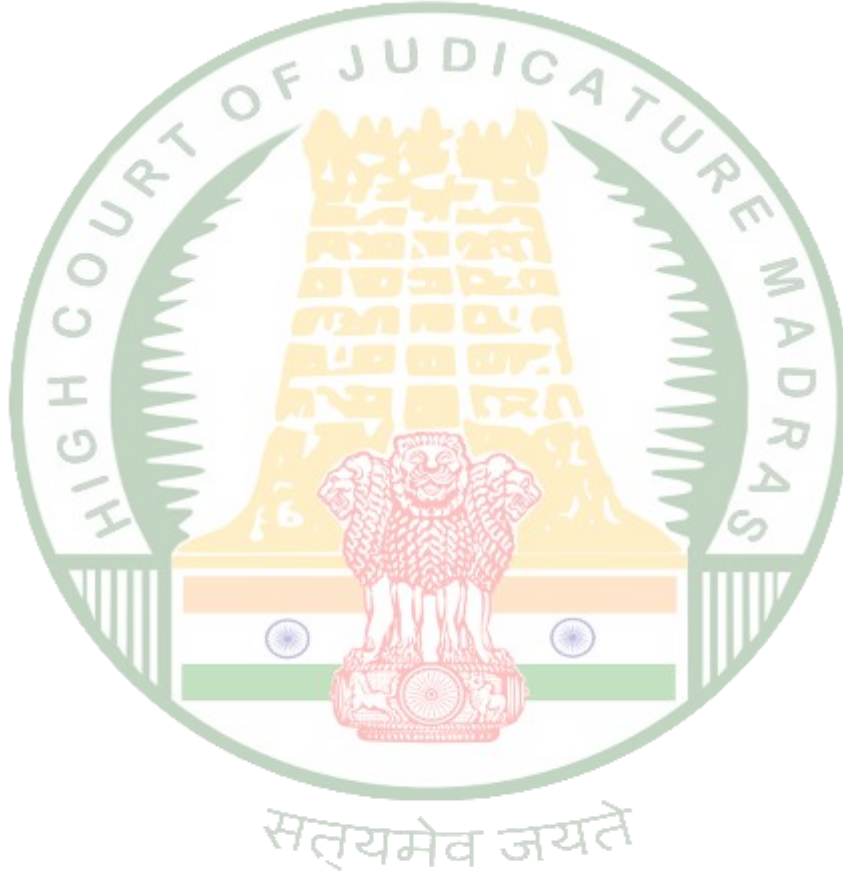
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