

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM :

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

W.P.No. 6222 of 2021
&
WMP.No.6835 and 6836 of 2021

Nilesh Bipinchandra Patel .. Petitioner

Vs.

- 1.The Manager Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.
 - 2.The Chairman,
Puducherry Planning Authority,
Puducherry.
 - 3.The Chief Town Planner,
Town and Country Planning Department,
Puducherry.
 - 4.The Superintending Engineer - III,
Electricity Department,
Puducherry.
 - 5.The Executive Engineer,
Public Health Division (PWD),
Puducherry.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records relating to the first respondent dated 02.03.2021 made in File No.11/PPA/Z (SB/P)/JTP-(MK)/Demolition/2020/1452 and quash the same.

For Petitioner : Mr.M.Devaraj
For Respondents : Mr.D.Ravichander,
Additional Government Pleader
(Pondy)

ORDER

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

By consent, the writ petition is taken up and is disposed of by this order.

2. The petitioner claims to be the owner of the land ad-measuring to an extent of 2000 sq ft comprised in Door No.2, Saint Laurent Bazar Street, Puducherry- 605 001 and it was settled in his favour and his daughter through a settlement deed.

3. The petitioner submitted an application seeking planning permission for construction of three storied building consisting of two dwelling units and one shop and the third respondent vide proceedings dated 23.03.2018 had accorded permission to put up the construction and accordingly, the petitioner has commenced construction and according to the petitioner, he has completed the construction strictly in accordance with the sanctioned plan.

4. Mr.M.Devaraj, learned counsel appearing for the petitioner would submit that to his shock and surprise, the first respondent has issued the deviation-cum-demolition notice dated 13.11.2019 stating among other things that the petitioner is constructing a four storied residential cum commercial building in deviation of the approved plan dated 23.03.2018, and during inspection, it has also been observed that the planning parameters have not been adhered to and hence the building is not in conformity with the norms prescribed in the Puducherry Building Bye Laws and Zoning Regulations, 2012 read with Puducherry Town and Country Planning Act, 1969. It is further stated that the offending construction has to be demolished and therefore called upon the petitioner to do on his own by demolishing the offending construction, within one month from the date of receipt of the notice, failing which, appropriate action will be initiated, and the said notice is also followed by yet another notice 05.02.2021, by invoking sub-section (1) of Section 45 of the Puducherry Town and Country Planning Act, 1969, in the form of stop work notice.

5. The learned counsel appearing for the petitioner would submit that in response to the notice dated 05.02.2021, the petitioner has submitted his reply dated 16.02.2021 which was acknowledged by the Puducherry Planning Authority on 18.02.2021 wherein it has been stated that they have not done anything wrong knowingly and since the site engineer is out of station, they are taking steps and due to the cyclone, some repairs have

to be effected.

6. The Puducherry Planning Authority provided an opportunity of hearing to the petitioner and prior to that also affixed the notice on the site on 13.02.2021 and the first respondent took a decision that action would be initiated as per the provisions contained in Town and Country Planning Act, 1969 and Puducherry Building Bye Laws and Zoning Regulations, 2012 and the decision has been taken not to recommend electricity and water supply connection and also to seal the premises in terms of the provisions contained in clause 20 of the Puducherry Building Bye Laws and Zoning Regulations, 2012. The primordial submission made by the learned counsel appearing for the petitioner by drawing the attention of this Court to the additional typed-set of document as well as photographs dated 15.03.2021 is that since building has been constructed strictly in accordance with the approved plan, the contents of the communication, are not at all served and an opportunity in the form of the re-inspection of the said building in the presence of the petitioner, being done by the first respondent, it will clear the doubt and prays for appropriate orders.

7. Per contra, Mr.D.Ravichander, learned Additional Government Pleader (Pondy) appearing for respondents 1 to 5 would submit that the petitioner did not submit the approved plan and, therefore, rightly a presumption has been drawn that the petitioner did not have any planning permission and that apart, the inspection also reveals that the planning parameters of the building have been violated and since action has been taken strictly in conformity with the provisions of the Puducherry Town and Planning Act, 1969, the petitioner cannot express any grievance and prays for dismissal of the writ petition.

8. This Court has considered the rival submissions made and perused the materials placed before this Court.

9. A perusal of the additional typed-set of documents dated 15.03.2021 would disclose among other things that the petitioner has been granted planning permission by the first respondent vide communication dated 23.03.2018 in No. PPA/423/2169/Z(SB-Puducherry)2017-18 subject to conditions. A comparison of the planning permission with the photographs would prima facie disclose that there appears to be no floor violation.

10. This Court taking into consideration the above facts and circumstances and the rival submissions, is of the view that in the light of the availability of the planning permission, a fresh opportunity is to be afforded to the petitioner to explain his stand. As already pointed out, the photographs made

available in page No.4 of the typed-set of documents would prima facie disclose that what has been constructed is ground plus two floors.

11. Thus, taking into consideration the above facts and circumstances and the rival submissions, this Court directs the respondents to withdraw the impugned notice and thereafter cause re-inspection of the premises with the aid of the sanctioned plan and conditions in the presence of the petitioner or his authorized representative and the result of the inspection reveals any infractions or violations, the respondents are at liberty to initiate appropriate proceedings, in accordance with law, and complete the exercise as expeditiously as possible and communicate the decision taken, to the petitioner.

W.P.No. 6222 of 2021 stands disposed of accordingly. No costs. Consequently, connected W.M.P.Nos. 6835 and 6836 of 2021 are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ssm

To:

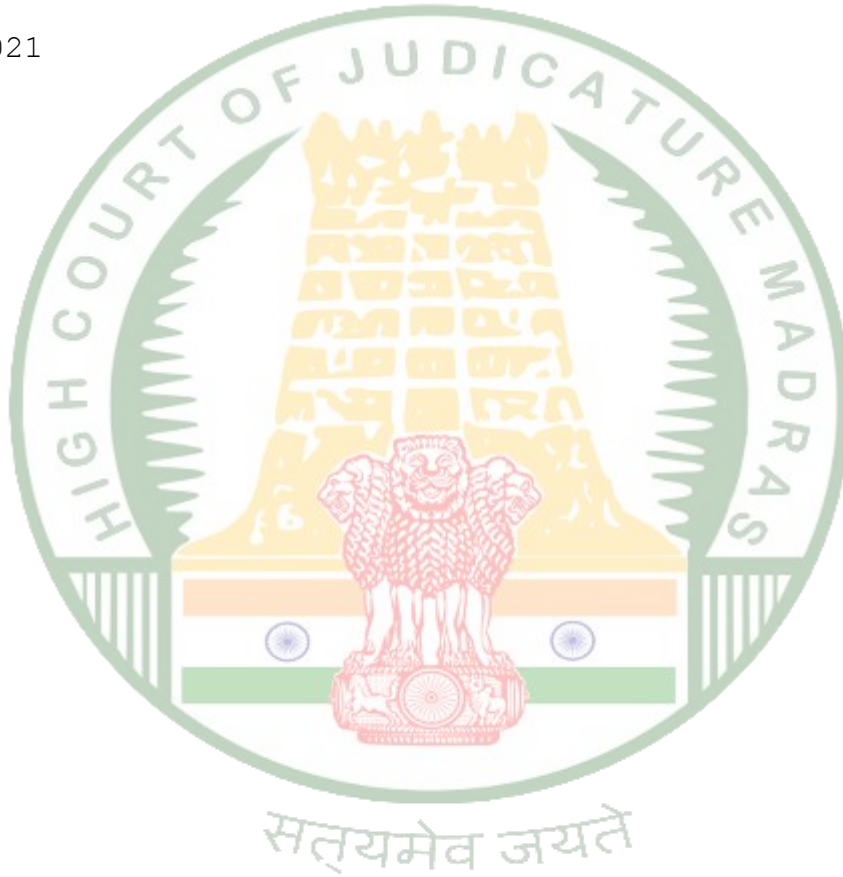
- 1.The Manager Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.
- 2.The Chairman,
Puducherry Planning Authority,
Puducherry.
- 3.The Chief Town Planner,
Town and Country Planning Department,
Puducherry.
- 4.The Superintending Engineer - III,
Electricity Department,
Puducherry.

5.The Executive Engineer,
Public Health Division (PWD),
Puducherry.

+1 cc to Mr.M.Devaraj Advocate sr17253

W.P.No. 6222 of 2021

gpl(co)
aa09/04/2021



WEB COPY