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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.23572 of 2021

N.Santhakumar

..Petitioner

-Vs-

The Commissioner  
Dharapuram Municipality,  
No.207-A, Park Road,  
Dharapuram - 688 656,  
Tiruppur District.

...Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the Order in Na.Ka.No.5025/2021/F1, dated 27.09.2021 issued by the respondent and quash the same and consequently direct the respondent to renew the building permission granted in proceedings Ref.No.157/2000/G1, dated 29.09.2000 for constructing the building for commercial use in T.S.No.20/12, Block No.8, Ward No.7, Bye Pass Road, Dharapuram, Erode District.

For Petitioner : Mr.V.B.R.Menon

For Respondent : Mrs.Akila Rajendran  
Government Advocate

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus, to call for the records of the Order in Na.Ka.No.5025/2021/F1, dated 27.09.2021 issued by the respondent and quash the same and consequently direct the respondent to renew the building permission granted in proceedings Ref.No.157/2000/G1, dated 29.09.2000 for constructing the building for commercial use in T.S.No.20/12, Block No.8, Ward No.7, Bye Pass Road, Dharapuram, Erode District.

2. The petitioner's father, one Natarajan was the owner of the land in T.S.No.20/12, Block No.8, Ward No.7, Bye Pass Road, Dharapuram, Erode District, in short "the premises". It was



already classified under commercial zone category as per the development plan of Dharapuram Municipality.

3. The petitioner's father had applied and obtained planning permission from the respondent to construct a commercial building in the said premises on 29.09.2000, which was valid for three years. Since within the three years period, the petitioner did not commence the construction, on expiry of three years, on application further made, the petitioner's permission was renewed further or extended further period of three years up to 28.09.2006.

4. Due to various reasons, the petitioner's father thereafter could not undertake the construction within the extended time also, then the petitioner's father settled the said premises, i.e., the property in question to his son, that is the petitioner and the grand children by the registered settlement deed, dated 22.11.2018.

5. Thereafter the petitioner submitted a request to the respondent for renewal of the building permission, vide his request dated 08.09.2021. The same has been refused to consider by the respondent, which culminated in the impugned communication, dated 27.09.2021, where the respondent has stated that, if at all the petitioner wants to get any building permission from the respondent / municipality, he has to make the said application in the website through the UTIS-software, then only it can be considered. Felt aggrieved over the said stand taken by the respondent municipality in compelling the petitioner to make an application through the UTIS software, which is otherwise called as new application through a cumbersome procedure ofcourse through the website of the respondent, he has filed the present writ petition with the aforesaid prayer.

6. Heard Mr.V.B.R.Menon, learned counsel appearing for the petitioner who would submit that, though the building permission was given initially in the year 2000 and subsequently extended or renewed in the year 2003, at the request of the father of the petitioner, subsequently, the father of the petitioner could not initiate or complete the construction, thereafter, the property itself was settled in favour of the petitioner, therefore the petitioner now wanted to renew the said building permission and accordingly, when he made an application, the same should have been considered and the renewal should have been given after collecting the necessary fee prescribed in this regard, instead the respondent municipality had rejected the same, saying that



the petitioner shall make a new application, as if that he is a new applicant through a cumbersome process called UTIS-software and therefore that kind of process cannot be applied to the case of the petitioner, because it is only a renewal application.

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7. In support of his contention, the learned counsel would also make submission stating that, the issue raised in this writ petition, as to whether the person like a petitioner has to make a new application or a fresh application, has already been gone into in a batch of writ petitions by this Court, where an order has been passed on 30.11.2020 in the matter of M/s. Mistair Realty's Private Limited, Rep, by its Director Mr.P.Kishore v. The Commissioner, Udthagamandalam Municipality, where the learned counsel appearing for the petitioner has relied upon the following portion of the order of the learned Judge :

"12. Chapter~X of the Tamil Nadu District Municipalities Act, 1920, deals with building regulations. It will be relevant to extract Section 204 which falls under this chapter hereunder:

204. Lapse of permission.? If the construction or reconstruction of any building is not completed within the period specified, the permission shall lapse and a fresh application shall be made before the work is continued.

13. A plain reading of the above provision shows that where a construction has not been completed within the license period and the permission has lapsed, fresh application should be made before the work is continued. This provision came up for consideration in [M/s Golden Homes Private Ltd. Vs. The Secretary to Government and others] in WP 3946 of 2017, dated 17.04.2017. The relevant portions in the judgment are extracted hereunder:

10.Admittedly in the case on hand, the petitioner has applied within the time. Section 204 of the Tamil Nadu District Municipalities Act, 1920, has to be looked at from his own context. It merely states that a fresh application has to be made before the work is continued. Therefore, the object of this provision is to make sure that there is no construction without permission. There is a



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difference between a fresh application and a new application. To put it differently, an application seeking renewal is nothing but a fresh application and not a new one. Provisions of a statute have to be read in consonance with each other to avoid any unnecessary conflict. Therefore, Section 204 has to be read with 321 (9a) of the Tamil Nadu District Municipalities Act, 1920.

11. The matter can be looked at from the different perspective as well. The permission is sought for the same project. The petitioner has not changed the permission sought for and obtained earlier. Merely because, the project could not be completed, the respondent no.3 cannot seek the payment once again. A mere availability of the alternative remedy per se cannot be a ground. This issue sought for lies in a very narrow campus. It is one dealing with the payment of charges.

14. It will also be relevant to take note of the orders passed by this Court in WP Nos. 13696 and 11432 of 2017, dated 07.08.2017. The relevant portions in the order are extracted hereunder:

6. The 1st respondent has filed his counter, wherein at Para 7, he has stated that as per Section 204 of the Tamil Nadu District Municipalities Act, 1920, at the time of ending license, new building permission can only be granted. Further, he has also mentioned that under Section 50 of the Tamil Nadu Town and Country Planning Act, 1971, the respondent had demanded for New Building Planning Permission, vide letter dated 15.05.2017.

7. Mr.P.H.Aravind Pandian, learned Senior counsel appearing for the petitioner submitted that in similar circumstances, this Court in an unreported Judgment dated 17.04.2017



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made in W.P.No.3946 of 2017 set aside the impugned order passed by the Municipality and directed the authority to renew the planning permission on payment of requisite scrutiny fee.

8. Mr.P.H.Aravind Pandian, learned Senior counsel appearing for the petitioner also submitted that the petitioner is willing to pay the requisite scrutiny fee on demand being made by the 1st respondent.

9. Mr.S.Diwakar, learned Special Government Pleader appearing for the respondents has also submitted that the issue involved in the present Writ Petition is covered by the Judgment relied upon by the learned Senior Counsel appearing for the petitioner.

10. In view of the submission made by both sides, the impugned orders dated 27.02.2017 and 13.04.2017 passed by the 1st respondent and the impugned order dated 15.05.2017 passed by the 1st respondent in W.P.No.13696 of 2017 passed by the 1st respondent are set aside. The 1st respondent is directed to process the petitioner's application for renewal of the planning permission, on payment of requisite scrutiny fee and other applicable payments, such as, Building Construction Welfare Fund and Vacant Site Tax.

15. The learned standing counsel appearing on behalf of the respondent municipality placed reliance upon Section 321(9~A) of the Act. It is clear from the above judgment that this Court made a conjoint reading of Section 204 along with Section 321(9~A) of the Act and has given a beneficial constructions by holding that an application seeking for renewal is nothing but a fresh application and it is not a new application more particularly when it is sought for the same project without any change made to the earlier







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

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12. Now the stand of the respondent Municipality is that, whether it is a fresh application or new application, the only way to make the application is through the website of respondent Municipality, as no other go by making an application in person or manually is available with the respondent Municipality to accept the application.

13. However, merely because an application is made in the website through UTIS-software, it cannot be construed that, all such application made through that software are only new applications.

14. Either it may be new application or fresh application, that should be routed only through the UTIS software and therefore, the petitioner cannot take any exception to the said mode of making an application

15. But at the same time that merely because the petitioner has made an application through the mode of UTIS software, the respondent Municipality also shall not consider it or construe it, as if that the petitioner makes a new application to take the cumbersome route to consider it, as if, first time the petitioner making application to get the relief concerned.

16. Instead, such an application, if any to be filed by the petitioner through UTIS software as a fresh application as has been declared or interpreted by this Court in the Judgment referred to above, the same shall be treated only as a fresh application, of course after collecting the necessary fee to that effect, the same shall be processed and the plea of the petitioner to get renewal of the building permission can be considered accordingly and an order to that effect may be passed within a time frame.

17. In that view of the matter, this Court feel that, this writ petition shall be disposed of with the following order :

"(i) that the petitioner is permitted to make a fresh application for getting renewal of the building license, which was lapsed in the year 2006 itself in the website through UTIS software mode as required by the respondent Municipality,



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within a period of two weeks from the date of receipt of a copy of this order.

(ii) On making such application through the said UTIS software mode, the respondent Municipality shall process the same, as if, it is only a fresh application for getting renewal of already lapsed building permission and not as a new application and accordingly, decide the same in accordance with law.

(iii) In this regard, whatever the fee to be collected by the respondent Municipality for renewal of building license can be collected from the petitioner and on collecting the same, the final order shall be passed by the respondent Municipality in this regard with regard to the renewal of the building permission. The needful as indicated above shall be undertaken by the respondent municipality within a period of Eight weeks from the date of receipt of such online UTIS software application afresh to be submitted by the petitioner."

18. With these directions, this writ petition is disposed of. No costs.

s/d-  
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

tsvn  
To

The Commissioner  
Dharapuram Municipality,  
No.207-A, Park Road,  
Dharapuram - 688 656,  
Tiruppur District.

+3 CCS to Mr.V.B.R.Menon, Advocate sr 58083.  
+1 CC to The Government Pleader sr 58188.

W.P.No.23572 of 2021

PH(CO)  
SP(30/11/2021)