

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.29274/2019 & WMP.No.29073/2019

[Video Conferencing]

D.Jayanthi

.. Petitioner

Versus

1.The Government of Tamil Nadu
represented by the Secretary to Government
Municipal Administration & Water Supply
Department, Madras 600 009.

2. The Municipal Commissioner
Udhagamandalam Municipality
Ooty, Tamil Nadu 643 001.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the 1st respondent in proceedings No.244/NN1/2019 dated 25.06.2019 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to regularise the plan submitted in respect of the construction at Door No.506, Srinivatsa Complex, Davisdale Main Road, Udagamandalam, The Nilgiris, Tamil Nadu 643 001.

For Petitioner : Ms.K.Abhirame for
Mr.V.Raghavachari

For R2 : Mr.P.Srinivas
Standing counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

- (1) The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that she has purchased landed property measuring about 6 cents in S.No.775/1A1A1A1A1A of Ootacamund Town located in Elk Hill Road, Udthagamandalam, Tamil Nadu 643 001, through a registered Sale Deed dated 09.01.2002, bearing Doc.No.21 of 2002, registered on the file of the office of the Sub Registrar, Ooty. According to the petitioner, the area is a contiguous zone and the width of the property is 39 feet and the length of the property on the Easter side is around 73 feet and 62 feet on the Western side and that, she and every one of her neighbours had also put up construction to the edge of the whole area and consequently, there is no possibility of having any space or area set back. The petitioner would aver that she obtained a Planning Permission in the year 2003 for putting up a superstructure for residential use and in order to augment her income, had put up three shops on the ground floor and she is in occupation of the first floor and the income derived from the ground floor, is used for the purpose of maintaining herself and her family. The petitioner would further aver that there is no much deviation and having aware of the same, she submitted an application on 06.10.2004, praying for modification of the plan and the outcome of the application is not yet known.
- (2) The petitioner was issued with the show cause notice dated 10.04.2008 by the 2nd respondent and challenging the same, the petitioner alleged to have invoked Section 217[K] of the Tamil Nadu District Municipalities Act, 1920.
- (3) The 1st respondent/Reviewing Authority, vide impugned communication dated 25.06.2019, has rejected the said revision, holding among other things that there is cent percent violation in the Plot Coverage Sealing and the side set back and as such, rejected the same and also indicated that if the petitioner is aggrieved by the said order, she may file a revision within sixty days before the High Court.
- (4) The learned counsel for the petitioner would submit that since the deviation is a minor one and that the petitioner, in order to augment her income, has put up an additional construction and let it for commercial purposes and further that the 1st respondent/Reviewing Authority have not considered the grounds of Review in proper perspective, prays for interference.
- (5) Per contra, Mr.P.Srinivas, learned Standing counsel appearing for the 2nd respondent would submit that the inspection of the superstructure put up by the petitioner would

reveal that there is a major deviation, and the petitioner, having admitted that she obtained Planning Permission for residential purpose, has deviated from the plan and also put up additional construction and exploited for commercial purposes, action was initiated in accordance with law and the review filed before the Government has also come to be rejected and prays for dismissal of this writ petition.

(6) This Court has considered the rival submissions and also perused the materials placed before it.

(7) The Tamil Nadu District Municipalities [Hill Stations] Building Rules, 1993 apply to all Hill Stations specified in Schedule-II and admittedly, the land on which the superstructure put up by the petitioner, comes within the ambit of Schedule-II and the petitioner, in paragraph No.2 of the affidavit, also made an admission that she obtained the Sanctioned Plan on 19.12.2003 for residential use and however, in order to augment her income, had put up three shops on the ground floor and a space of 5 feet 9 inches on one side and put up construction on the edge of the other side and she is in occupation of the first floor and the income derived from the three shops put up on the ground floor, is used for purpose of maintaining herself and her family and that the construction is not of much deviation.

(8) The primordial submission made by the learned counsel for the petitioner is that in the light of the mandate cast by the 1st respondent under Section 217A of the Tamil Nadu District Municipalities Act, 1920, the impugned order passed by the 1st respondent is not in order.

(9) It is relevant to extract Section 217 [L] of the Tamil Nadu District Municipalities Act, 1920:-

217-L. Revision by High Court:-

(1) Any person aggrieved by an order of the State Government under Section 217-K may, within a period of sixty days from the date on which a copy of the order was communicated to him, file an application for revision of such order to the High Court :

Provided that the High Court may, within a further period of thirty days, entertain an application made after the said period of sixty days, if it is satisfied that the petitioner had sufficient cause for not making the application within the said period of sixty days.

(2) The application shall be in the prescribed form, shall be verified in the prescribed manner and shall be accompanied by such fee as may be prescribed.

(3) In disposing the application for revision, the High Court may confirm, cancel or vary such order :

Provided that no order prejudicial to any party shall be passed unless such party has been given an opportunity of being heard.''

(10) In the light of the effective alternative remedy available, this Court is of the considered view that the present writ petition is not maintainable. However, if the petitioner is so advised, she is at liberty to challenge the impugned proceedings of the 1st respondent by invoking Section 217-L of the Tamil Nadu District Municipalities Act, 1920 and while calculating the limitation period, the petitioner may also invoke Section 14 of the Limitation Act.

(11) In the result, the writ petition stands dismissed with the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
The Government of Tamil Nadu
Municipal Administration & Water Supply
Department, Madras 600 009.

2. The Municipal Commissioner
Udhagamandalam Municipality
Ooty, Tamil Nadu 643 001.

+1 cc to M/s.V.Raghavachari, Advocate Sr.No. 4885

WP.No.29274/2019

BR(CO)
RMP(01/03/2021)

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