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W.P.[MD]No.15076 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.15076 of 2020

and

W.M.P.[MD]Nos.12709 & 12710 of 2020

R.R.Premkumar

... Petitioner

Vs.

1.The Commissioner
Aranthangi Municipality,
Pudukottai District.

2.Subburaman

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in c/Miz/108/BL/2020/00047, dated 06.05.2020 and quash the same as illegal, consequently forbearing the second respondent from proceeding with the construction any building in Survey No.12/5 at Aranthangi Town, Pudukottai District.

For Petitioner : Mr.T.Lenin Kumar

For 1st Respondent : Mr.P.Mahendiran,
Additional Government Pleader

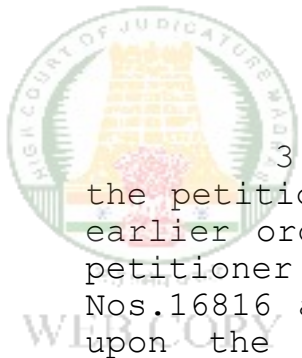
For 2nd Respondent : Mr.K.Baala sundaram

O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

This writ petition has been filed for a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent, dated 06.05.2020, as illegal and consequently, forbear the second respondent from proceeding with the construction of any building in the said property.

2. Heard Mr.T.Leninkumar, learned counsel for the petitioner and Mr.P.Mahendiran, learned Additional Government Pleader for the first respondents and Mr.K.Baala sundaram, learned Counsel appearing for the second respondent.



3. We need not spend much time to decide as to what relief the petitioner is entitled to in this writ petition, because of two earlier orders passed by this Court in writ petitions filed by the petitioner herein and by the second respondent herein. In W.P.(MD) Nos.16816 and 23716 of 2018, the petitioner sought for a direction upon the second respondent herein on the ground that illegal construction has been put up without obtaining planning permission. The writ petitions were clubbed along with other connected matters and disposed of by order dated 15.10.2019. The operative portions of the said order reads as follows :

"3. The learned counsel appearing for respondent Municipality has filed counter affidavit stating that they are not the silent spectators, but they have taken action and rejected the revised plan submitted by V.K.Subbaraman on 16.02.2018.

4. The third writ petition before us is filed by V.K.Subbaraman challenging the proceedings of the Revenue Divisional Officer dated 17.04.2018, by which action has been initiated to cancel the license issued for running a marriage hall and lodging house. As long as there is no approval obtained for putting up construction either as marriage hall or as lodging house. The question of approval by the Revenue Authorities does not arise.

5. The Revenue Authority had granted approval earlier in favour of V.K.Subbaraman on 05.12.2017, which is illegal. It is not known how the Tahsildar, Aranthangi had given approval without even verifying whether the building has an approved plan. We can infer that there is a collusion between the Tahsildar and the V.K.Subbaraman. In any event, the Municipality, having rejected the application for planning permission, has not proceeded further on account of the pendency of these writ petitions. Pendency of these writ petitions cannot be a bar for the Municipality to proceed further in accordance with law. If the building is totally unauthorized, it has to be locked and sealed immediately. We direct the Municipality to do so within a period of three weeks from the date of receipt of a copy of this order.

6. As we have pointed out earlier, the building does not have any planning permission. Therefore, no approval could have been granted by the Tahsildar for using the building as marriage hall. Therefore, permission granted in favour of V.K.Subbaraman on



05.12.2017 by the Tahsildar, Aranthangi is set aside and quashed. After the building is locked and sealed by the respondent Municipality, it is open to V.K.Subbaraman to workout his remedy in the manner known to law."

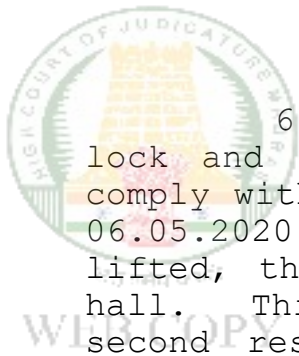
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4. In terms of the above order, the petitioner's building was locked and sealed and the second respondent was required to demolish the same, apply for fresh planning permission and then proceed with the construction. It appears that the second respondent applied for grant of building permission, which has been granted by impugned order, dated 06.05.2020.

5. The learned counsel for the first respondent Municipality submitted that the condition is very specific that the building should be demolished and then only, the second respondent can construct as per the planning permission, dated 06.05.2020. The second respondent approached this Court and filed W.P.(MD)No.8611 of 2020 praying for a direction to grant planning permission to remove the lock and seal to enable him to put up construction as per the planning permission dated 06.05.2020, which is impugned in this writ petition. The said writ petition was disposed of by order, dated 06.08.2020, directing the lock and seal to be removed, but however, there were other directions as well. The operative portions of the said order reads as follows:

"7. In the light of the fact that the respondent Municipality had accorded planning permission, vide order dated 06.05.2020, this Court is of the considered view that the lock and seal put up on the premises in question pursuant to the common order dated 15.10.2019 made in W.P(MD)Nos.12205, 16816 and 23716 of 2018, is to be lifted. Since the petitioner had applied and got new planning permission/licence, he is expected to proceed with the construction strictly in accordance with the sanctioned plan without any deviation whatsoever. It is also open to the respondent Municipality to cause regular or surprise inspection as to whether the construction is being made strictly in accordance with the sanctioned plan and if any unauthorised deviation or infraction is noted, they are expected to take immediate, necessary and appropriate action in accordance with law.

8. In view of the above, the respondent is directed to lift the lock and seal put up on the premises in question within a period of three weeks from the date of receipt of a copy of this order."



6. The above order makes it clear that the lifting of the lock and seal was conditional that the second respondent should comply with the condition imposed in the planning permission, dated 06.05.2020. The petitioner alleges that after the lock and seal was lifted, the second respondent is using the building as a marriage hall. This allegation is denied by the learned counsel for the second respondent. In any event, it is the look out of the Municipality, to ensure that their orders are implemented and it is not for this Court to remind the Commissioner of the Municipality of his duties as enumerated under the provisions of the Tamil Nadu District Municipalities Act and various Rules framed thereunder and the directions issued by the Government from time to time. If the Commissioner of Municipality fails to take action, it would amount to failure to discharge his statutory duty and he would be liable for disciplinary action. This should be borne in mind by the Commissioner of the Respondent / Municipality.

7. In the light of the above, there would not be any necessity to quash the impugned planning permission and suffice it to direct the first respondent to conduct a surprise inspection and proceed in accordance with law.

8. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar (CS)

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Commissioner
Aranthangi Municipality,
Pudukottai District.

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+1 CC to M/s.P.MAHENDRAN, Advocate (SR-16609[F] dated 20/04/2021)

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-16686[F] dated 20/04/2021)

ORDER MADE IN
W.P.[MD]No.15076 of 2020
19.04.2021

JA(05.05.2021) 5P 4C