



W.P.No.12180 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MR. JUSTICE **T.RAJA**
and
THE HONOURABLE MR. JUSTICE **K.KUMARESH BABU**

W.P. No.12180 of 2021

The Arcot Lutheran Church,
Rep. By its Secretary,
9, ALC Campus, Cuddalore.

.. Petitioner

-vs-

1.The Commissioner,
Panruti Municipality, Cuddalore.

2.The Revenue Divisional Officer,
Panruti Municipality, Cuddalore.

3.The Tahsildar,
Panruti Municipality, Cuddalore.

4.Prabhu
5.Kalpana

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus directing the first respondent herein to consider the representation of the petitioner dated 17.08.2020 and consequently direct the respondents 1 to 3 to take appropriate action under Tamil Nadu District Municipalities Act, 1920 against the illegal constructions put up by the respondents 4 and 5 in Survey No. 334 situated at Panruti Municipality.



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For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.K.Karthick Jaganathan
Government Advocate
for R1 to R3
No appearance for R4 and R5

ORDER

(Order of the Court was made by **T.RAJA, J.**)

Seeking a direction to the first respondent herein to consider the representation of the petitioner dated 17.08.2020 and consequently direct respondents 1 to 3 to take appropriate action under Tamil Nadu District Municipalities Act, 1920 against the illegal construction put up by respondents 4 and 5 in Survey No. 334 situated at Panruti Municipality, the present writ petition has been filed.

2. We have heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for respondents 1 to 3.

3. It is the case of the petitioner that the petitioner Church owns many lands and in the month of January, 2018, respondents 4 and 5, who are the husband and wife, approached the petitioner for lease of



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vacant land to put up a fruit shop temporarily and a lease agreement was also entered into between them for a period of 11 months for the land measuring an extent of 10000 sq.ft. comprised in Survey No.334 situated in Panruti Town, Panruti Taluk, Cuddalore District. In violation of lease agreement, respondents 4 and 5 cut century old trees, put up a huge shed and bathroom and also made construction without obtaining prior approval.

3.1 Despite the request made by the petitioner, respondents 4 and 5 not only refused to stop the construction but also stopped paying rents. While so, notice dated 19.05.2020 under Sections 199 and 216(1) and (2) of Tamil Nadu District Municipalities Act, 1920 has been issued to the fourth respondent to set right the illegality by obtaining necessary approval from the authorities of Panruti Municipality. Pursuant to the representation made by the petitioner, the second respondent issued a letter to the third respondent requesting to conduct enquiry, however, no action has been taken. Therefore, the petitioner submitted a representation dated 17.08.2020 to the first respondent. Since the same has not been considered, the present writ petition has been filed.



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4. After notice, the first respondent has filed the status report dated 14.06.2022 and relevant portion of the status report reads as under:

6. It is respectfully submitted that while this being so, a fresh notice dated 10.06.2022 in Na.Ka.No.955/2020/F1 has been issued by this respondent under Sec.199 and 216(1) and (2) to the writ petitioner being the owner, as well the fourth respondent being the tenant, giving them 7 days time, as final opportunity, to apply for necessary planning permission, failing which suitable action would be pursued.

7. It is respectfully submitted before this Hon'ble Court that on failure on the part of the writ petitioner and/or the respondents 4 and 5, to apply for planning permission within the stipulated time of 7 days and obtain the same, suitable action in accordance with the provisions of the Act viz.,

(i)prosecution under Sec.317 & 339(3) for conviction of the offence of failure to obey the direction issued under Sec.216;

(ii)demolition of the unauthorised construction in accordance with Sec.339(2);

(iii)recovery of the expenses incurred under Sec.339 recoverable under Sec.340(1) shall be strictly pursued and the violators shall be brought to task.



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5. We have perused the status report filed by the first respondent, wherein it has been stated that a fresh notice dated 10.06.2022 has been issued by the first respondent under Sections 199 and 216 (1) and (2) of of Tamil Nadu District Municipalities Act, 1920 to the petitioner being the owner as well as the fourth respondent giving seven days time to apply for necessary planning permission. Therefore, the first respondent is at liberty to proceed in accordance with law, in the event of failure on the part of the fourth respondent to get planning permission.

6. Insofar as the suit instituted by the fourth respondent to declare the notice dated 10.06.2020 as null and void, the learned Government Advocate submitted that as per Section 352 of the Tamil Nadu District Municipalities Act, 1920, no suit is maintainable against the State Government. Section 352 of the Act reads as under:

352. Indemnity to the Government, Collector, Revenue Divisional Officer, Municipal Authorities, officers and agents .— *No suit shall be maintainable against the State Government, the district Collector, the Revenue Divisional Officer or any municipal Chairman, Executive Authority, officer or servant or any person acting under the direction of any municipal Chairman,*



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Executive Authority, officer or servant, or of a Magistrate, in respect of anything in good faith done under this Act or any rule, by-law, regulation or order made under it.

7. In the light of the above provision, we have no hesitation to say that the suit filed by fourth respondent is not legally maintainable. Therefore, the first respondent has rightly issued notice to both the petitioner and the fourth respondent giving seven days time to apply for necessary planning permission. In the event of failure on the part of the fourth respondent, the first respondent is directed to proceed further as per the procedure prescribed under the Tamil Nadu District Municipalities Act, 1920.

8. It is also stated that although on earlier occasion, notice dated 10.06.2020 was issued to the fourth respondent by the first respondent, now a fresh notice dated 10.06.2022 has been issued. Therefore, the first respondent shall proceed as per the fresh notice dated 10.06.2022 as if no suit is pending in view of Section 352 of the Tamil Nadu District Municipalities Act, 1920.

9. For the reasons stated above, the writ petition stands disposed of giving liberty to the first respondent to proceed further in



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the event of failure on the part of the fourth respondent in getting necessary planning permission. No costs.

(T.R., J.) **(K.B., J.)**
15.06.2022

Index: Yes/No
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To

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AND
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