

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.9402 of 2022
and WMP.No.9159 of 2022

S.Mahendran

.. Petitioner

-vs-

1. The Government of Tamil Nadu
rep. by its Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai - 9.
2. The Commissioner,
Pollachi Municipality, Pollachi.
3. The Member Secretary,
Local Planning Authority,
Pollachi.
4. The Joint Director,
District Town and Country Planning Office,
Corporation Commercial Complex,
Dr.Nanjappa Road, Coimbatore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Proceedings Letter No.15088/UD5(1)/2021-1, dated 02.03.2022 as the same is issued in contravention of the provisions of Section 79 of the Town and Country Planning Act and without providing opportunity to the petitioner to submit further representation insofar as the petitioner's building at No.32, 32/1 & 2, Bharathi Street, Mahalingapuram, Pollachi - 642 002 by quashing the same and consequently forbear the respondents 2 and 3 from initiating any coercive action of locking and sealing and demolishing with regard to the building put up at the aforementioned property.

For Petitioner : Mr.R.Mohan

For Respondents : Mr.K.V.Sajeev Kumar,
Spl. Govt. Pleader
for R1, R3 and R4
Mr.B.Anand for R2

ORDER

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

Challenging the correctness of the Proceedings in Letter No.15088/UD5(1)/2021-1, dated 02.03.2022 issued by the first respondent and for quashing the same on the ground that the same is issued in contravention of the provisions of Section 79 of the Tamil Nadu Town and Country Planning Act and without providing opportunity to the petitioner to submit further representation insofar as the petitioner's building at No.32, 32/1 & 2, Bharathi Street, Mahalingapuram, Pollachi - 642 002 is concerned with a consequential direction, forbearing respondents 2 and 3 from initiating any coercive action of locking and sealing and demolishing with regard to the building put up at the aforementioned property, the present Writ Petition has been filed.

2. Learned counsel appearing for the petitioner would submit that the petitioner is the owner of the property situated at No.32, 32/1 & 2, Bharathi Street, Mahalingapuram, Pollachi - 642 002 and he has constructed the building after obtaining planning permission from Pollachi Municipality. The building is in existence for more than 20 years and the same is periodically repaired and renovated. Though the property is abutting two wide roads in which one road is having 40 feet width and another road is having 70 feet width leading to Palladam Main Road, the Local Body has also not come out with any modification of City Plan despite substantial growth of development took place periodically in and around the said area. While so, when the petitioner's building consisting of ground + 2 floors with sufficient car parking space and open areas were let out to clinics and pharmacy, he was issued with a notice dated 08.02.2021 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act in Proceedings Na.Ka.No.1498/2017/G1 calling upon the petitioner to submit the revised plan and to get the building regularized. As against the said notice, the petitioner preferred a Revision Petition under Section 80-A of the Act to the first respondent on 22.07.2021 and submitted a revised plan to the second respondent. Since the revised plan was rejected by the Pollachi Municipality, the petitioner preferred appeal petition to the first respondent on 12.03.2022. But without considering the fact that the appeal filed by the petitioner is pending consideration, the first respondent has

passed a common impugned order dated 02.03.2022 calling upon the petitioner and others to rectify the deviations within 30 days. The petitioner also submitted an application for regularisation under Section 113-C of the Tamil Nadu Town and Country Planning Act. As against the order dated 02.03.2022, the petitioner has preferred Review Petition along with Stay Petition under Section 90 r/w 81 of the Tamil Nadu Town and Country Planning Act to the first respondent and the same is also still pending. Therefore, when a Review Petition is pending, if a direction is given to the first respondent to consider and dispose of the same within a time stipulated by this Court, no prejudice would be caused to anyone, failing which, the petitioner would be forced to face untold misery, it is pleaded.

3. Mr.K.V.Sajeev Kumar, learned Special Government Pleader takes notice for respondents 1, 3 and 4 and Mr.B.Anand, learned Standing Counsel takes notice for the second respondent.

4. Learned Special Government Pleader appearing for the respondents 1, 3 and 4 would submit that if sufficient time is granted, the pending review petition of the petitioner would be considered and disposed of on merits.

5. Recording the same, the first respondent herein is directed to consider and dispose of the pending Review Petition filed by the petitioner on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. Till then, the respondents are directed not to take any coercive steps in respect of the property in question. Needless to mention that the first respondent shall pass orders on the Review Petition filed by the petitioner without being influenced by any of the observations made in this order and after giving an opportunity of personal hearing to the petitioner herein.

6. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai - 9.
2. The Commissioner,
Pollachi Municipality, Pollachi.
3. The Member Secretary,
Local Planning Authority,
Pollachi.
4. The Joint Director,
District Town and Country Planning Office,
Corporation Commercial Complex,
Dr.Nanjappa Road, Coimbatore.

+1cc to Government Pleader SR. No. 36466
+1cc to Mr.R.Mohan, Advocate SR. No. 35308

W.P.No.9402 of 2022

JP (CO)
PR (20/07/2022)