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W.P.No.15551 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2022

CORAM

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU**

W.P.No.15551/2021 and WMP.No.16466/2021

C.Ravisankar

... Petitioner

-VS-

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.
 2. The Director of Town and Country Planning,
CMDA Office Complex,
E & C Market Road,
Koyambedu, Chennai-600 107.
 3. The Deputy Director of Town and Country Planning,
Salem District Office,
Suramangalam,
Salem & District.
 4. The Commissioner,
Athur Municipality,
Athur, Salem District.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari, calling for the records connected in Na.Ka.No.900/2021/F1 dated 03.05.2021 of the 4th respondent and quash the same.



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(Prayer amended vide order dated 12.04.2022 made in
WMP.No.18780/2021 in W.P.No.15551/2021)

For Petitioner : Mr.R.Singaravelan,
Senior Counsel
for Mr.G.Elanchezhiyan

For Respondents : Mr.K.V.Sajeev Kumar,
Special Government Pleader for 1 to 3
Mr.B.Anand for R4

ORDER

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

Challenging the order of the 4th respondent passed in Na.Ka.No.900/2021/F1 dated 03.05.2021 wherein the petitioner has been called upon to move an application under the provisions of the Tamil Nadu Combined Development and Building Rules, 2019, to get permission for conversion of the building-in-question, the present Writ Petition has been filed.

2. Mr.R.Singaravelan, learned Senior Counsel appearing for the writ petitioner submitted that after purchasing three plots along with building bearing old survey Nos.510/8 and 510/9 to an extent of 3680 sq.ft. at Athur Municipality, he has also registered three sale



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deeds for the above said properties at Athur Sub-Registrar Office in Document Nos.3322/2017, 3323/2017 and 3324/2017 respectively.

Thereafter, he has decided to change the use of the building from hospital to Boarding and Lodging and accordingly, he has made some repair works and interior alteration works without changing the structure and also the height of the building. Thereafter, he has been running the boarding and lodging in that building and he has also obtained licence from Athur Municipality and paying property tax to the Municipality regularly. Besides this, he has also obtained licence from the Tahsildar, Athur Taluk and 'No Objection Certificate' from the Fire Service Department. As the building-in-question was very old which was constructed in the year 1995 after obtaining planning permission, only after the change of ownership of the building, the petitioner has decided to make some interior alterations and some repair works. When the petitioner has been running the Boarding and Lodging, on entertaining a frivolous complaint given by one Mrs.Jayamala, impugned notice has been issued calling upon the petitioner to get further order of conversion from the competent authority, namely, the Commissioner, Athur Municipality, Athur, Salem District. The petitioner also, on receipt of the impugned notice, sent a detailed reply dated 18.05.2021. But till date, no order has been passed thereon. If the 4th respondent sets his mind unbiased and passes a speaking



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order, the grievance of the petitioner would be made known.

Therefore, a direction may be issued to the 4th respondent to consider the representation of the petitioner dated 18.05.2021 given as a reply to the impugned notice and pass a speaking order.

3. Continuing his arguments, learned Senior Counsel for the petitioner further submitted that when the impugned notice passed by the 4th respondent is only on the RTI Application of Mrs.Jayamala who requested the 4th respondent only to take action against the owner for constructing of the Grand Stay Hotel as the building construction is against the Combined Development and Building Rules, 2019, but the 4th respondent has not applied his mind. In addition, he has not even inspected the building-in-question and verified the relevant records before issuing the impugned notice as to whether any building plan approval was obtained or not. Therefore, the impugned notice issued by the 4th respondent only on the basis of the RTI application of one Mrs.Jayamala is not maintainable.

4. Concluding his arguments, soliciting our attention to the 'No Objection Certificate' obtained from the Fire and Rescue Services, Salem in Form No.41 dated 10.12.2020, learned Senior Counsel for the petitioner submitted that when the petitioner made an application



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for issuance of 'No Objection Certificate' by the Fire and Rescue Services, Salem District, an enquiry was conducted by one Mr.P.Sekar, Station Officer, Athur on 10.12.2020 and having satisfied with the requirement made by the petitioner, 'No Objection Certificate' has been issued specifically mentioning that there is no objection from the Fire and Rescue Service point of view to licence the said premises for lodging and boarding subject to the conditions mentioned therein. When an application was also moved on 14.12.2020 seeking building licence for M/s.LRC Grand Stay Hotel, Athur Town, the same was also issued for the period from 01.12.2020 to 30.11.2023. This apart, licence has also been issued to the petitioner for commercial purpose in respect of the building specified in the statement subject to the conditions mentioned therein by the Tahsildar, Attur. Therefore, there is no need for obtaining further permission for conversion of the building-in-question from hospital to hotel. Even the Sanitary Officer of Athur Municipality also has granted certificate that the LRC Grand Stay Hotel has been inspected and the building, the premises and the accommodation provided for the public are sufficient. Accordingly, a Sanitary Certificate has been given stating that the same is valid till 03.12.2021 only. In view of the above, there is no need for the petitioner to apply for conversion certificate, it is pleaded.



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5. A detailed common affidavit has been filed by the respondents 1 to 3 whereas a separate counter affidavit has been filed by the 4th respondent, namely, Commissioner, Athur Municipality, Athur, Salem District.

6. Learned Counsel appearing for the 4th respondent also referring to Rule 4 of the Tamil Nadu Combined Development and Building Rules, 2019, submitted that the petitioner has no doubt converted the hospital into Boarding and Lodging, therefore, Rule 4 will apply to the case on hand. As per Rule 4, no person shall carry out any development or construction of building or structure, subdivision, layout, reconstitution or amalgamation of land or change of use of land or building without the written permission of the competent authority. In the present case, the petitioner having shown before this court various orders, namely, NOC from the Fire and Rescue Service Department and the building licence from the Tahsildar, Athur Taluk etc. has not shown any permission or order as per Rule 4 obtained from the competent authority, namely, Athur Municipality for change of use of land or building. Therefore, he has been instructed to apply for planning permission under Rule 4 for conversion.



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7. We also find some merits on the said submission of the learned Counsel appearing for the 4th respondent.

8. Referring to the detailed counter affidavit filed by the respondents 1 to 3 and also supporting the stand taken by the 4th respondent, learned Special Government Pleader appearing for the respondents 1 to 3 submitted that though the petitioner has obtained licence from Fire and Rescue Service Department and also fulfilled some of the other conditions, he has not fulfilled any condition mentioned in Rules 4 and 6(8). In this regard, it is relevant to extract the said Rules here under:

"4. Written Permission for development:-(1)Subject to Section 47 and 58 of the Tamil Nadu Town and Country Planning Act 1971 (Tamil Nadu Act 35 of 1972) no person shall carry out any development or construction of building or structure, sub-division, layout, reconstitution or amalgamation of land or change of use of land or building without the written permission of the competent authority.

Explanation : Such written permission shall include an electronic version issued with the digital signature of the competent authority.



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(2) Any site approval or Permission for any development/construction under these rules shall not absolve the applicant of his responsibilities to get clearance or permission under other Acts and Rules, if so required.

6. Application for Planning Permission and Building Permit-

(8) An application in Form-B in Annexure-II accompanied by proof of ownership, detailed plans, specifications, site plan, key plan and topo plan showing existing developments to a radius of 100 metres drawn to a scale of 1:500 and such other details as may be required from time to time shall be submitted to the competent authority, in the case of development of land and buildings, change of land and building use and in the case of site approval."

A perusal of the above shows that when the petitioner has purchased three plots along with the building-in-question which is meant for running a hospital, he has decided to change the use of the building from hospital to hotel and after undertaking some repair



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works and interior alteration works, he has been running the Boarding and Lodging in the same building. No doubt, as we have highlighted above, the petitioner has also obtained licence from Athur Municipality but that order does not speak about the conversion of the land or building-in-question. Therefore, the petitioner has been rightly informed by the impugned order to obtain an order for conversion of the land and building from hospital to hotel as per Rule 4 in which we do not find any infirmity or illegality.

9. In view of the above, we hereby direct the petitioner to approach the 4th respondent herein, namely, the Commissioner, Athur Municipality, Athur, Salem District, with an application seeking conversion, within a period of four weeks from the date of receipt of a copy of this Order and on receipt of any such application being made, the 4th respondent is at liberty to consider and dispose of the same on merits and in accordance with law, within a period of eight weeks thereafter.



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**AND
P.D.AUDIKESAVALU, J.**

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10. With the above directions, the Writ Petition is disposed of.
No costs. Consequently, connected Miscellaneous Petition is closed.

(T.R.J.,) (P.D.A.J.,)

06.09.2022

tsi

To

1. The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.
2. The Director of Town and Country Planning,
CMDA Office Complex,
E & C Market Road,
Koyambedu, Chennai-600 107.
3. The Deputy Director of Town and Country Planning,
Salem District Office,
Suramangalam, Salem & District.
4. The Commissioner,
Athur Municipality,
Athur, Salem District.

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