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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.NO.17070 OF 2019
AND
WMP.NOS.16626 AND 16627/2019

R.Ravi

... Petitioner

-vs-

1. The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam,
Nilgiris District.
2. The Senior Town Planner,
Udhagamandalam Municipality,
Udhagamandalam, Nilgiris District.

... 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 on the file of the 1st respondent relating to the impugned order dated 15.04.2019 bearing Ref.No.Na.Ka.No.2486/2019/F1 and quash the same and consequently, direct the respondents to restore the building of the petitioner in its original shape by rebuilding the demolished portion.

For Petitioner : Mr.T.Sai Krishnan

For Respondents : Mr.P.Srinivasan
1 and 2



ORDER

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

WEB COPY This Writ Petition has been filed challenging the impugned order of the 1st respondent dated 15.04.2019 bearing Ref.No.Na.Ka.No.2486/2019/F1 and for quashing the same with a consequential direction, directing the respondents to restore the building of the petitioner in its original shape by rebuilding the demolished portion.

2. Learned Counsel appearing for the petitioner would submit that the petitioner's mother is the assignee of the plot bearing No.F4/4/145 and after receiving an order of assignment, they built a house with thatched roof on the first floor. In the entire area of Kasthuribai Colony, all are assigned plots and without obtaining previous planning permission, they have raised constructions. Moreover the 1st respondent Municipality has not given any planning permission to any of them in that locality. The petitioner and his family members who are the followers of Christian faith used to conduct regular closed door prayer meetings with the pastor and the other neighbour christians who assembled in the petitioner's house. The said prayer is completely a private affair inside the petitioner's house without raising noise by using any loudspeaker or causing any public nuisance to anyone. But some religious persons calling themselves as Hindu Munnani raised objection for conducting such prayer meetings. Thereafter, they have also given written complaints to the 1st respondent, namely, Commissioner of Police, Udhagamandalam Municipality, Udhagamandalam, Nilgiris District, alleging that the petitioner has put up unauthorized construction on the place of worship. Accepting the said complaints, the 1st respondent, forgetting the secular nature of office immediately passed the impugned order, ordering to seal the premises of the petitioner.

3. Learned Counsel for the petitioner would further submit that without any notice whatsoever, the impugned notice dated 26.03.2019 has been issued and the officials belonging to the office of the respondents 1 and 2 came with the police protection and they have not only sealed the petitioner's premises, but also demolished a part of the first floor. The said action carried out by the respondents is in total violation of Section 56 of the Tamil Nadu Town and Country Planning Act. Reading Section 56 of the Act, the learned Counsel for the petitioner would also submit that if any land is there and without permission required under this Act, the said land is developed by raising any construction therein in contravention of any provision, notice shall be issued on the owner or



occupier, granting one month's time to take such steps as may be specified in the notice. But in the present case, when the counter affidavit filed by the 1st respondent shows that the impugned notice dated 26.03.2019 said to have been served was refused and thereupon they have effected affixture on the same date then as per Section 56(3) of the Act, the respondents ought to have waited for a period of 30 clear days. But in the present case, the counter affidavit filed by the 1st respondent also shows that the demolition took place on 26.04.2019. Therefore, the counter affidavit filed by the 1st respondent proves the case of the petitioner and disproves the case of the respondents. Hence, a direction should be given to the respondents to restore the demolished building in the same condition existed before carrying out the demolition, he pleaded.

4. Learned Counsel appearing for the respondents placing before us the official records stated that originally, the impugned notice was issued to the petitioner on 14.03.2019, but not 26.03.2019. The paragraph 7 of the counter affidavit has failed to give a correct date of issuance of the notice as 14.03.2019 since there was an inadvertent typographical error it was mentioned as 26.04.2019.

5. On a perusal of the official records produced by the learned Counsel for the respondents, it appears that the notice was issued only on 14.03.2019 and when an attempt was made to serve the notice on the petitioner, he refused to receive the same. The notice further says that therefore, affixture was effected on the same day. Hence, the sealing of the objectionable building taken place on 26.04.2019 is well within the time because it is beyond the period of 30 days. Even for a moment, if we accept the contention of the learned Counsel for the petitioner that the notice dated 26.03.2019 issued should be taken for the purpose of accepting the contentions mentioned in Section 56(3) of the Act, again taking action for sealing the petitioner building on 26.04.2019 falls on 31st day. Therefore, the submissions made by the learned Counsel for the petitioner that without waiting for the 30 clear days as per Section 56(3) of the Act is far from acceptance because it does not have any locus to stand. Secondly, the petitioner till date has not moved any application whatsoever before the 1st respondent citing a reason that he was unaware of the affixture effected on 26.03.2019. Even for a moment if we accept the case of the petitioner that the respondents have taken steps to seal the building on 26.03.2019, till date no application whatsoever has been filed before the 1st respondent under Section 56(3) of the Act. In view of all the above, we do not find any merit in the present Writ Petition.



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6. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam,
Nilgiris District.
2. The Senior Town Planner,
Udhagamandalam Municipality,
Udhagamandalam, Nilgiris District.

+1cc to M/s.T.Sai Krishnan, Advocate, S.R.No.22327

W.P.No.17070 of 2019

JPL(CO)
RLP(28/04/2022)