



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 10.01.2022
ORDERS PRONOUNCED ON: 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.No.29773 of 2017

V.Ramesh

... Petitioner

Vs.

1.The State of Tamilnadu
Rep. By the District Collector
Coimbatore Collectorate
Coimbatore 18.

2.The Joint Director
Town and Country Planning
Coimbatore Region
Corporation Commercial Complex
Dr.Nenjappa Road
Coimbatore - 18.

3.The Commissioner
Valparai Municipality
Valparai
Coimbatore District 642 127.

4.The Tahsildar
Valparai
Coimbatore 642 127.

5.V.Shanthi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, directing the respondents 1 to 4 to take immediate action to demolish the unauthorised 6 storied commercial building constructed by the 5th respondent in the residential area of Valparai Town at Kumaran Road, Vazhai Thottam, Valparai, Coimbatore District and direct the 5th respondent to pay adequate compensation to the petitioner for the damages caused in the petitioner's property and for the monetary loss and mental agony suffered in approaching the authorities and filing the litigation to ensure the implementation of the rules and regulations pertaining to the construction of buildings.



WEB COPY

For petitioner - Mrs.A.Arulmozhi

For respondents - Mr.K.V.Sajeev Kumar
Special Government Pleader
for RR 1, 2 and 4
Ms.K.Bhuvaneswari
Standing Counsel for R3
Mr.S.Sathiachandran for R5

O R D E R

V.SIVAGNANAM, J.,

This writ petition has been filed, to direct the respondents 1 to 4 to take immediate action to demolish the unauthorised 6 storied commercial building constructed by the 5th respondent in the residential area of Valparai Town at Kumaran Road, Vazhai Thottam, Valparai, Coimbatore District and direct the 5th respondent to pay adequate compensation to the petitioner for the damages caused in the petitioner's property and for the monetary loss and mental agony suffered in approaching the authorities and filing the litigation to ensure the implementation of the Rules and Regulations pertaining to the construction of buildings.

2.Heard Mrs.A.Arulmozhi, learned counsel appearing for the petitioner; Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents 1, 2 and 4, Ms.K.Bhuvaneswari, learned Standing Counsel appearing for the 3rd respondent and Mr.S.Sathiachandran, learned counsel appearing for the 5th respondent.

3.The learned counsel for the petitioner, Mrs.A.Arulmozhi, submitted that the petitioner is a permanent resident of Valparai Town. In the year 2015, the 5th respondent and her husband started constructing a multi storied building in the land situated adjacent to the petitioner's house, without obtaining approval from the concerned authorities. During the construction, the petitioner's property got cracks over it, as the depth of soil excavated for foundation, was so unusual and deeper. Therefore, the petitioner sent detailed representation to the respondents 1 to 4. Since no action was taken by the respondents, the petitioner applied for copy of approval plan under the Right to Information Act, in respect of the unauthorised construction made by the 5th respondent. He received a reply, vide proceedings No.Na.Ka.7a/2016/Aa-2 dated 25.01.2016, in which it has been stated that no sanction was granted for the building constructed by the 5th respondent.

4.Again, on 02.02.2017, the petitioner made a representation



before the respondents and thereby, the 2nd respondent, vide his proceedings dated 09.02.2017 directed the 3rd respondent to take legal action under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act. Thereafter, the Commissioner of Town and Country Planning, Chennai called for a report from the 2nd respondent, regarding the action taken on the unauthorised construction put up by the 5th respondent. The 2nd respondent, vide his proceedings dated 24.04.2017, submitted the details regarding the unauthorised construction and thereby, directed the 3rd respondent in its proceedings dated 21.04.2017, to take further action on the issue involved in this writ petition.

5. Apart from this, during the pendency of this writ petition, this Court, by order dated 03.12.2018, directed the respondents 1 to 4 to take further necessary action to its logical end, if they come to a definite conclusion that the commercial building constructed by the 5th respondent is an unauthorised and illegal one. Though the counter affidavit was filed by the 3rd respondent, clearly states that there was an unauthorised construction put up at Survey No.18/5, no further action has been taken by the official respondents. Therefore, she prays for a suitable direction to demolish the illegal construction put up by the 5th respondent in Valparai Town at Kumaran Road, Vazhai Thottam, Valparai, Coimbatore District.

6. The learned Special Government Pleader, Mr.K.V.Sajeev Kumar, submitted that on 03.12.2018, a spot inspection was conducted by the respondent 2 and 4 on 10.12.2018 and filed an inspection report wherein it has been stated that the 5th respondent had constructed the commercial building at Door No.251 and Survey No.18/5 to an extent of 4314 sq.ft.,. Therefore the 3rd respondent has sent proceedings dated 06.03.2015 under Sections 217(B), 217 (J) and 217 (G) of the Tamil Nadu District Municipalities Act, to the 5th respondent, directing her to demolish the unauthorised construction. Further in the said notice it was mentioned that if the construction is not demolished, proceedings will be initiated under Sections 339 (2) and 340(1) of the Tamil Nadu District Municipalities Act.

7. It is the submission of the learned counsel appearing for the third respondent that no final decision is taken on the Regularization application filed by the fifth respondent and he is ready to pass orders in accordance with law.

8. The learned counsel appearing for the 5th respondent, Mr.S.Sathiachandran would urge that the existence of the building is mentioned in the sale deed dated 12.10.1998, under which the fifth respondent's vendor purchased the property and the same was found mentioned in his sale deed dated 30.10.2014.



So, the allegation that the building was constructed in the year 2015 is not correct. Further it is stated that the 5th respondent is running a cottage in the name and style of Sri Siva Sakthi Home Stay, after getting approval from the 4th respondent, for which she was issued with a licence No.02/2017/A6 dated 17.08.2017 from 15.07.2017 to 14.07.2020. He further submitted that since the 5th respondent's husband has filed a suit in O.S.No.39 of 2013 on the file of the District Munsif cum Judicial Magistrate, Valparai, against the petitioner herein, and the suit was also decreed in favour of the 5th respondent's husband, this writ petition has been wrongly filed as against the 5th respondent in order to wreak vengeance. Further, the 5th respondent's vendor has constructed the building with some minor deviations and she submitted a revised plan before the 3rd respondent, for regularisation of the building. In that, the 3rd respondent by proceedings dated 11.12.2017 directed the 5th respondent to obtain NOC from the Public Works Department. Now, the 5th respondent has submitted her application for regularization, and it is pending consideration on the file of the respondents.

9. The learned counsel appearing for the fifth respondent drew the attention of this Court to the additional counter filed by the fifth respondent and submitted that the Regularization application could not be processed earlier as the height of the building was about 7.5 mts, however she has not closed bottom two floors permanently and the building is presently satisfying the building norms.

10. Taking note of the submissions made by the learned Standing Counsel appearing for the third respondent and the learned counsel for the fifth respondent, the third respondent shall pass orders on the Regularization application submitted by the fifth respondent in accordance with law within a period of eight weeks. In the event of the fifth respondent found ineligible to get Regularization, the third respondent shall take necessary action to remove the unauthorized construction by following due process of law.

11. With the above direction, the Writ Petition is disposed of. There is no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jer



To

1.The District Collector
State of Tamilnadu
Coimbatore Collectorate
Coimbatore 18.

2.The Joint Director
Town and Country Planning
Coimbatore Region
Corporation Commercial Complex
Dr.Nenjappa Road
Coimbatore - 18.

3.The Commissioner
Valparai Municipality
Valparai
Coimbatore District 642 127.

4.The Tahsildar
Valparai
Coimbatore 642 127.

+lcc to Ms.K.Bhuvaneswari, Advocate, S.R.No.7164
+lcc to Mrs.A.Arulmozhi, Advocate, S.R.No.7155
+lcc to Mr.S.Sathiachandran, Advocate, S.R.No.7071
+lcc to the Government Pleader, S.R.No.7696

W.P.No.29773 of 2017

KG(CO)
CT 03/03/2022