



W.P(MD) No.12271 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
17.06.2022	06.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.(MD) No.12271 of 2022
and
W.M.P(MD) No.2728 of 2022

Balasubramanian

... Petitioner

-VS-

1.The Executive Officer,
Palanichettipatti Town Panchayat,
Theni District.

2.A.Mithun Chakaravarthi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records related to the impugned order of the first respondent made in Na.Ka.No.449/2014/A2, dated 26.05.2022 and quash the same as it is illegal.

For Petitioner : Mr.R.Suriya Narayanan

For Respondents : Mr.J.Ashok,
Addl. Govt. Pleader for R1



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ORDER

(Made by P.N.PRAKASH, J.)

This writ petition has been filed by the petitioner for issuance of a Writ of Certiorari, to quash the impugned notice, dated 26.05.2022.

2. The minimum facts that are required for deciding this writ petition are as under:-

2.1. The petitioner is the owner of a land measuring around 3504 Sq.Ft. in Survey No.1432/3 in Palanichettipatti Village. Sometime in the year 2001, he applied for planning permission for constructing a residential building in the said property. He was given permission to construct a residential building comprising ground floor (547 Sq.Ft.) and first floor (547 Sq.Ft.) on 02.08.2001.

2.2. According to the petitioner, he constructed a residential building with two floors in accordance with the plan but, he is using it as a commercial complex. Subsequently, sometime in the year 2012, the petitioner sought permission to construct a commercial complex in the



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vacant land adjacent to the residential building, for which, he submitted a plan which was approved vide Ka.Oo.No.124/2012-13, dated 16.11.2012.

2.3. According to the petitioner, he has constructed a commercial complex in the said property which is in accordance with the sanctioned plan. The petitioner became the Chairman of Palanichettipatti Town Panchayat sometime in the year 2011 defeating Ammavasi, who is the father of the second respondent herein. The second respondent filed a public interest litigation in W.P(MD) No.2253 of 2015 alleging that the petitioner has constructed a commercial complex instead of residential complex and therefore, a direction was sought for demolishing the same. The said writ petition came to be dismissed with costs of Rs.25,000/- on 05.10.2016 on the ground that there were no *bona fides* in the claim of the petitioner therein (the second respondent herein). The Division Bench had not given a finding that the petitioner had not violated the planning permission, but it only found that the public interest litigation that was filed by the second respondent was a motivated one.



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2.4. However, the second respondent approached the Tamil Nadu Local Body Ombudsman making the same allegation. The Ombudsman, by a detailed order dated 20.05.2017, directed the Executive Officer, Palanichettipatti Town Panchayat to take appropriate action against the petitioner. Challenging the same, the petitioner filed W.P(MD) No.12225 of 2017 which was dismissed by this Court.

2.5. While that being so, the first respondent issued a notice dated 26.05.2022 calling upon the petitioner to demolish the structures put up by him in violation of the planning permission within seven days from the date of receipt of the notice or face action under the Tamil Nadu District Municipalities Act, 1920. Challenging the notice dated 26.05.2022, the present writ petition has been filed.

3. Heard Mr.R.Suriya Narayanan, learned counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader for the first respondent.

4. At the outset, the learned counsel for the petitioner submitted that after winning the local body elections that were held in the year



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2021, the second respondent has become the Chairman of the said Town Panchayat and therefore, at his instance, the present notice has been issued. Though at first blush, this submission appeared to be appealing, on a closer scrutiny, we observed that the impugned notice refers to all the earlier proceedings between the petitioner and the Town Panchayat. In the reference portion of the impugned notice, five previous proceedings have been referred to in connection with the instant case. In reference No.2, it is stated that notices were earlier issued in Na.Ka.No. 449/2014 on 09.06.2017 and 24.06.2017. During that period, the second respondent was not the Chairman of the Town Panchayat. It is true that the second respondent is a political opponent of the petitioner, but, that by itself, cannot be a reason to quash the impugned notice.

5. The following observations of the Supreme Court made in ***K. Anbazhagan vs The Superintendent Of Police & Ors., [(2008) 3 SCC 767]***, would be an answer to this contention and the relevant paragraph Nos.12 and 13 read as follows:-

“12. ... The petitioner being a political opponent, is vitally interested in the administration of justice in the State and is a "party interested" within the meaning of sub-



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section 2 of Section 406 Cr.P.C. Even otherwise Mr. Subramaniam Swamy was the original complainant. He supports these transfer petitions.

13. It has also been urged that the petitioner being a political opponent of respondent No.2, these petitions have been launched against respondent no.2 on ground of political vendetta. This submission has also no force. In a democracy, the political opponents play an important role both inside and outside the House. They are the watchdogs of the government in power. It will be their effective weapon to counter the misdeeds and mischiefs of the government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. In that view of the matter, being a political opponent, the petitioner is a vitally interested party in the run of the government or in the administration of criminal justice in the State. The petition lodged by such persons cannot be brushed aside on the allegation of a political vendetta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of criminal justice system. This question has



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been set at rest by this Court in Sheonandan Paswan v.

State of Bihar, (1987) 1 SCC 288 (SCC p. 318, para 16),

where it is said:

"It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

6. This decision has also been reiterated in ***E.Sivakumar vs Union of India & Ors., [(2018) 7 SCC 365]*** and the relevant paragraph No.15 read as follows:-

"... The Court, while entertaining public interest litigation at the instance of respondent No.14, has relied upon the dictum in K. Anbazhagan Vs. Superintendent of Police and Ors.,⁷ wherein it is observed that the political opponents play an important role both inside and outside the House and are the watchdogs of the Government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. Referring to this decision, the Court noted in paragraph 70



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of the impugned judgment that a petition filed by such persons (such as respondent No.14) cannot be brushed aside on the allegation of political vendetta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of (2004) 3 SCC 767 criminal justice system. Accordingly, the ground of challenge under consideration, in our opinion, is devoid of merits.”

7. Learned counsel for the petitioner contended that the petitioner is only using the residential building as a commercial building and has not deviated the approved plan. When this Court suggested to the petitioner that it would appoint an Advocate Commissioner to visit the spot and find out the correct state of affairs, the learned counsel for the petitioner was a little reluctant. Learned counsel for the petitioner submitted that without prior notice under Section 216 of the Tamil Nadu District Municipalities Act 1920, the present impugned notice is bad in law.

8. Admittedly, this issue has not cropped up now. The issue of the petitioner having constructed a commercial building has been under



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contest between the petitioner and the respondents from the year 2017 onwards as could be seen from the various proceedings that have been referred to in the reference portion of the impugned notice.

9. Learned counsel for the petitioner contended that the construction has been regularized inasmuch as the Town Panchayat has levied property tax of Rs.36,048/- vide receipt dated 05.03.2018.

10. A perusal of the receipt shows that in the foot note, it is clearly stated as follows:-

“குறிப்பு: அனுமதியின்றி கட்டப்பட்ட கட்டிடத்திற்கு 12
அரையாண்டுகளுக்கான சொத்துவரி வரவு
(சொத்துவரிவிதிப்பு எண்.6291,6292)”

11. That apart, collection of property tax shall not be construed as regularization of such unauthorized construction. On the other hand, when this Court is frowning upon unauthorized constructions, it should not tie the hands of the Executive Authorities by staying such notices.



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12. In the result, this writ petition is devoid of merits and hence, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[P.N.P., J.] [R.H., J.]

06.07.2022

Index : Yes / No
Internet : Yes / No
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To:

The Executive Officer,
Palanichettipatti Town Panchayat,
Theni District.



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