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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P(MD)No.24674 of 2022
and
W.M.P(MD)No.18791 of 2022

B.Navaneetha Krishnan,
Rep. by his Power of Attorney,
S.Navaneethan ... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
St. George Fort,
Chennai – 9.

2.The Commissioner,
Theni-Allinagaram Municipality,
Theni,
Theni District.

3.The Member Secretary,
Theni Town Planning Authority,
Allinagaram,
Theni,
Theni District ... Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondents from taking any coercive steps for the lock and seal of the petitioner's premises viz., Hotel Ramyas situated in Survey Nos.21/1A1B, Allinagaram, Theni, Theni District till the disposal of the appeal, dated 23.06.2022 filed by the petitioner under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971, before the first respondent and the revised plan by way of retention application, dated 23.06.2022 submitted by the petitioner before the third respondent in the light of Section 56(3) r/w 49 of the Tamil Nadu Town and Country Planning Act, 1971, within the period stipulated by this Court.

For Petitioner : Mr.Ajmal Khan
Senior Advocate

For R – 1 : Mr.V.Nirmal Kumar
Government Advocate

For RR 2 & 3 : Mr.K.Hema Karthikeyan

ORDER

(Order of the Court was made by R.MAHADEVAN, J.)

Mr.V.Nirmal Kumar, learned Government Advocate, takes notice for the first respondent and Mr.K.Hema Karthikeyan, learned counsel, takes notice for the respondents 2 and 3. By consent of all the parties, this writ petition is taken up for final disposal at the time of admission itself.

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2. The relief sought in this Writ Petition is to issue a Writ of Mandamus, forbearing the respondents from taking any coercive steps for the lock and seal of the petitioner's premises viz., Hotel Ramyas situated in Survey Nos.21/1A1B, Allinagaram, Theni, Theni District till the disposal of the appeal, dated 23.06.2022 filed under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971 (in short, "the Act"), before the first respondent and the revised plan by way of retention application, dated 23.06.2022 before the third respondent in the light of Section 56(3) r/w 49 of the Act, within a time period to be stipulated by this Court.

3. According to the learned Senior Counsel appearing for the petitioner, the petitioner is the owner of the land in Survey No.21/1A1B, Allinagaram, Theni, Theni District, by virtue of the sale deed, dated 21.02.2003 registered as Document No.775 of 2003; and from the date of purchase, he has been in possession and enjoyment of the same, without any hindrance. With an intent to develop the said land by constructing a Hotel, he filed an application seeking planning permission, which was considered and planning permission was also accorded by the second respondent, vide proceedings, dated 11.11.2015. Thereafter, the petitioner

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started construction in the said land. While so, the third respondent issued a notice, dated 20.01.2022 under Section 56 of the Act alleging that the said development is contrary to the planning permission accorded and calling upon the petitioner to furnish explanation for the same. Subsequently, the third respondent issued a proceedings dated 20.04.2022 stating that the development / construction is in deviation of the approved plan. Challenging the said proceedings dated 20.01.2022 and 20.04.2022, the petitioner filed W.P(MD)No.10487 of 2022, which was disposed of by order, dated 25.05.2022, by directing the respondents not to act upon the said notices as well as lock and seal notice dated 19.05.2022 and if any fresh action, it is open to them to take such action, in accordance with law. Despite the same, according to the learned Senior Counsel, the third respondent issued proceedings dated 14.06.2022, calling upon the petitioner to retrieve the deviation made in the building constructed in the subject land. Aggrieved by the same, the petitioner preferred special revision petition under Section 80A of the Town and Country Planning Act before the first respondent on 23.06.2022.

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4. The learned Senior Counsel appearing for the petitioner further stated that during the pendency of section 80A petition, the second respondent issued the notice dated 28.09.2022, calling upon the petitioner to vacate the hotel premises on or before 29.09.2022, failing which, the same would be locked and sealed on 30.09.2022 at 10.15 am. Challenging the same, the petitioner filed W.P(MD)No.23142 of 2022 and this Court, by order dated 12.10.2022, disposed of the said Writ Petition by directing the petitioner to agitate all the grounds in the manner known to law in the special revision pending before the first respondent. According to the learned Senior Counsel, without appreciating the said order in a proper perspective, the second respondent issued a lock and seal notice dated 26.10.2022, directing the petitioner to remove the goods and vacate the guests staying in the hotel within a period of 24 hours from the date of receipt of the notice. Feeling aggrieved, the petitioner is before this court with the present writ petition for the aforesaid relief.

5. The learned counsel appearing for the respondents supported the action taken by the officials and sought to dismiss the Writ Petition.

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6. Heard both sides and perused the documents enclosed in the typed set of papers.

7. Earlier, in WP.No.10487 of 2022, the petitioner challenged the notices dated 20.01.2022 and 20.04.2022 as well as lock and seal notice dated 19.05.2022 issued by the third respondent on the premise that the building constructed in the subject land by the petitioner is in deviation of the planning permission granted. By order dated 25.05.2022, the said writ petition was disposed of, in the following terms:

> *"8.The petitioner is directed to produce the copy of the building plan approval, dated 11.11.2015, to the respondent office on 30.05.2022, without fail. On that date, if the petitioner or his representative comes to the office of the respondent for production of the planning permission, the respondent or any responsible officer of the respondent office shall receive and verify the same. After verification, if still the respondent feels that there is any violation on the part of the petitioner, the same can be carefully considered and in this regard, whatever action the respondent wants to take in accordance with the provisions of the Act, the same can be taken and in this regard, the action should be emanated afresh from that stage.*

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9.It is made clear that the impugned notices, dated 20.01.2022 and 20.04.2022 as well as the lock and seal notice, dated 19.05.2022, shall not be acted upon and if any fresh action the respondent wants to take, it is open to them to take such action in accordance with law.

10.With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed."

However, the third respondent issued proceedings, dated 14.06.2022, calling upon the petitioner to retrieve the deviation made in the building constructed. Aggrieved by the same, the petitioner preferred special revision petition under Section 80A of the Act before the first respondent on 23.06.2022.

8. Pending the aforesaid petition, the second respondent issued another lock and seal notice dated 28.09.2022 in respect of the hotel building, which was challenged by the petitioner in W.P(MD)No.23142 of 2022. This Court, by order dated 12.10.2022, has disposed of the said writ petition in the following terms:

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> "2. *Today, when the matter was taken up for hearing, the learned counsel for the petitioner submitted that challenging the impugned notice dated 28.09.2022, issued by the first respondent, the petitioner has filed a special revision before the Secretary to Government, Housing & Urban Development Department, under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971 and the same is pending consideration and hence, the writ petition may be closed granting liberty to the petitioner to agitate all the grounds and redress his grievance in the pending special revision.*
>
> *3. In view of the limited relief sought for, leaving it open to the petitioner to agitate all the grounds and redress his grievance in the manner known to law in the pending special revision before the Secretary to Government, Housing & Urban Development Department, the writ petition is closed. No costs. Consequently, connected miscellaneous petitions are closed."*

9. Despite the aforesaid order of this court and without passing any order in the section 80A special revision petition pending before the first respondent, the present lock and seal notice dated 26.10.2022 came to be issued by the second respondent and the same, in the opinion of this court, is illegal.

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10. Therefore, the first respondent is directed to consider the special revision petition, dated 23.06.2022 filed by the petitioner under section 80A of the Act and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of three months from the date of receipt of a copy of this order. Till such time, there shall be an order of *status quo* as on date.

11. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.M.D.,J.] [J.S.N.P.,J.]

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and
J.SATHYA NARAYANA PRASAD,J.

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To

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Housing and Urban Development Department,
St. George Fort,
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2.The Commissioner,
Theni-Allinagaram Municipality,
Theni,
Theni District.

3.The Member Secretary,
Theni Town Planning Authority,
Allinagaram,
Theni,
Theni District.

ORDER MADE IN
W.P(MD)No.24674 of 2022

DATED : 31.10.2022

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