



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.09.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

**Crl.O.P.No.8121 of 2021
and Crl.M.P.No.5347 of 2021**

Mr.T.P.Abdul Shakoor

...Petitioner

Versus

The Chief Executive Officer,
Cantonment Board Office,
Rep. by its Junior Engineer,
Mr.M.Aravindharaj
St.Thomas Mount,
Chennai – 600 016.

...Respondent

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the entire records pursuant to the case in S.T.C.No.11 of 2021 on the file of learned Judicial Magistrate No.II, Tambaram and quash the summons.

For Petitioner : Mr.R.Abdul Mubeen

For Respondent : Mr.C.Mohan
for M/s.King & Patridge



ORDER

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This criminal original petition has been filed by the petitioner seeking to quash the case in S.T.C.No.11 of 2021 on the file of the learned Judicial Magistrate No.II, Tambaram.

2. The case of the prosecution is that the petitioner is having a property (B-2 Land) situated at Rajendra Prasad Road, C.Pallavaram, Chennai – 600 043 in GLRS.No.338/299, within the local body limits of the office of respondent and he submitted a building plan for constructing a building to an extent of 470 Sq.ft in ground floor & 1st floor in the said property. The respondent vide Letter dated 31.01.2019 approved the building plan submitted by the petitioner. While so, after obtaining the approval from the respondent, the petitioner had constructed a building to an extent of 1,670 Sq.ft in ground & 1st floor and thereby, deviated from the sanctioned plan of Cantonment Board. Therefore, the respondent had issued a Show Cause Notice to the petitioner on 12.09.2019, but, even after the receipt of said Show Cause Notice, the petitioner had continued the unauthorized construction work. Thereafter, the respondent vide order



dated 22.06.2020, directed the petitioner to stop the unauthorized construction work forthwith. However, the petitioner did not stop the construction work. So, the respondent vide Statutory Notice dated 30.07.2020, directed the petitioner to remove the unauthorized construction within 7 days from the date of receipt of that notice, but, even after the receipt of said Statutory Notice, the petitioner had not stopped the unauthorized construction work. Hence, the respondent has filed a complaint before the Court of learned Judicial Magistrate No.II, Tambaram seeking to punish the petitioner with maximum fine as stipulated under Section 244 & 247 of the Cantonments Act, 2006 (hereinafter referred to as 'Act'). The said complaint was taken on file in S.T.C.No.11 of 2021. Hence, the present petition.

3. The learned counsel for the petitioner submitted that the respondent vide Letter dated 31.01.2019, approved the building plan submitted by the petitioner for proposed demolition and re-construction of commercial building in ground floor, 1st floor & 2nd floor in the aforesaid property of the petitioner. Pursuant to the approval of respondent, the



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petitioner had commenced the construction work in his property. While so, the respondent sent a Show Cause Notice dated 12.09.2019 to the petitioner stating that the petitioner made the construction to an extent of 1,200 Sq.ft in ground floor & 1st floor and deviated from the sanctioned plan of Cantonment Board and thereby, committed an offence under Section 247 of the Act. Thereafter, the respondent vide order dated 22.06.2020, directed the petitioner to stop the construction work forthwith. After the receipt of said order, the petitioner vide Letter dated 29.06.2020, requested the respondent to revoke the order dated 22.06.2020, but, without considering the same, the respondent had filed the complaint against the petitioner. He further submitted that as per Section 337 of the Act, unless a complaint has been made against a person, within a period of six months from the date of commission of offence, no Court shall try such person for the offence punishable under the Act. In the present case, the Show Cause Notice was issued to the petitioner on 12.09.2019, whereas, the complaint was filed on 08.01.2021 i.e., more than 1 year from the date of issuance of Show Cause Notice. So, the complaint filed by the respondent is barred by limitation under Section 337 of the Act. Therefore, the learned counsel prayed this



Court to quash the complaint filed by the respondent and to dispense with the personal appearance of the petitioner before the trial Court.

4. The learned counsel appearing for the respondent submitted that the respondent had approved the petitioner's building plan for constructing a building to an extent of 470 Sq.ft in ground floor & 1st floor in his property, however, after obtaining the approval from the respondent, the petitioner had constructed the building to an extent of 1,670 Sq.ft in ground floor & 1st floor and deviated from the sanctioned plan of Cantonment Board. Hence, the respondent had issued the Show Cause Notice dated 12.09.2019, Order of Stoppage of Building Work dated 22.06.2020 and Statutory Notice dated 30.07.2020 to the petitioner, but, even after the receipt of same, the petitioner had continued the unauthorized construction work and thereby, committed the offence punishable under Section 244 of the Act. He also submitted that the respondent had filed the complaint well within the period of limitation. Therefore, the learned counsel prayed for dismissal of this petition.



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5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. As far as this case is concerned, the petitioner is the accused in C.C.No.11 of 2021 on the file of the Court of learned Judicial Magistrate No.II, Tambaram. The allegation against the petitioner is that he had obtained approval from the respondent for constructing a building to an extent of 470 Sq.ft in the ground floor & 1st floor in the property belongs to him, but, after obtaining the approval, he deviated from the sanctioned plan and constructed the building to an extent of 1,670 Sq.ft in the ground floor & 1st floor. It is also seen that even after the issuance of Show Cause Notice dated 12.09.2019, Order of Stoppage of Building Work dated 22.06.2020 and Statutory Notice dated 30.07.2020 by the respondent, the petitioner had continued the unauthorized construction work.

7. The learned counsel for the petitioner has not disputed the allegation against the petitioner, whereas, he has taken a plea that the



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complaint filed by the respondent is barred by limitation under Section 337 of the Act.

8. On the other hand, the learned counsel for the respondent contended that the respondent had filed the complaint well within the period of limitation and the petitioner is liable to be prosecuted for contravention of Section 244 of the Act.

9. Before going into the discussion that whether the complaint filed by the respondent is barred by limitation under Section 337 of the Act, it is pertinent to extract Sections 337 & 244 of the Act.

10. Sections 337 & 244 of the Act are as follows:

*“377. **Limitation for prosecution.** - No court shall try any person for an offence made punishable by or under this Act, after the expiry of six months from the date of the commission of the offence, unless the complaint in respect of the offence has been made to a Judicial Magistrate within the six months aforesaid.”*

and

*“244. **Restrictions on use of buildings** – (1) No person shall,*



without the written permission of the Board or otherwise than in conformity with the conditions, if any, of such permission, -

(a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and the bye-laws made thereunder;

(b) change or allow the change of the use of any land or building;

(c) convert or allow the conversion of one kind of tenement into another kind.

(2) Any person who contravenes the provisions of sub-section (1) shall on conviction be punishable with a fine which may extend to one lakh rupees and in the case of continuing contravention with an additional fine of rupees ten thousand for every day during which the contravention continues after the date it comes to the notice.”

Section 377 of the Act states that if a complaint is filed after the expiry of six months from the date of commission of offence, no Court shall try the accused person for the offence punishable under the Act, whereas, Section 244(2) of the Act states that any person who contravenes the provisions of sub-section (1) shall be punished with conviction & fine of Rs.1,00,000/- and in the case of continuing contravention, the person shall



be punished with an additional fine of Rs.10,000/- for every day during which the contravention continues even after the date it comes to the notice.

11. In the present case, it is to be noted that the Show Cause Notice was issued to the petitioner on 12.09.2019, but, even after the receipt of said Show Cause Notice, the petitioner had continued the unauthorized construction work, till the date of filing of the complaint. Hence, it cannot be said that the complaint filed by the respondent is barred by limitation under Section 337 of the Act. Further, it is to be noted that the petitioner has continuously contravened the provisions of Section 244(1) of the Act and hence, the complaint filed by the respondent is sustainable in law.

12. Considering the above facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court is of the opinion that the petitioner's case deserves no merit of consideration and hence, it would not be appropriate to quash the complaint in S.T.C.No.11 of 2021 on the file of the learned Judicial Magistrate No.II, Tambaram.



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13. For the foregoing reasons, this criminal original petition is dismissed.

14. Considering the request made by the learned counsel for the petitioner to dispense with the personal appearance of the petitioner before the trial Court, the personal appearance of the petitioner before the trial Court is dispensed with on condition that he shall appear before the trial Court, as and when required for further proceedings.

15. It is also made clear that the learned Judicial Magistrate No.II, Tambaram shall complete the trial in S.T.C.No.11 of 2021, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

07.09.2023

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Index: Yes/No

Speaking Order (or) Non-Speaking Order

10/12



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To

1.The Judicial Magistrate No.II,
Tambaram.

2.The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM, J.

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