



C.R.P.No.1704 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1704 of 2019
and C.M.P.No.10943 of 2019

Good Shepherd International School,
Rep. By its Custodian & Public Relations Officer,
C.K.Dhananjayan,
Governor Shola Road, Fernhill,
Udhagamandalam,
Nilgiri District.

.. Petitioner

VS

1.The Principal Secretary to Government
Department of Municipal Administration and
Water Supply,
Government of Tamil Nadu,
Fort St.George, Chepauk,
Chennai – 600 009.

2.The Commissioner,
Udhagamandalam Municipality,
The Nilgiris District.

.. Respondents

Petition filed under Section 217L of the Tamil Nadu District Municipalities Act, 1920 as amended by Tamil Nadu Act 58 of 1982 read with Article 227 of the Constitution of India to set aside the order passed by the second respondent in his proceedings in UAC No.21/1995 (s) dated 05.12.2008, as confirmed by the first



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respondent in his proceedings in Letter (Pa) No.106/Ne.Ne.-1/2019
dated 01.03.2019.

For Petitioner : Mr.Raja Kalifulla,
Senior Advocate
for Mrs.M.Thenmozhi

For Respondents : Mr.B.TamilNidhi
Additional Government Pleader
(CS) for R1
Mr.P.Srinivas, for R2

ORDER

The petitioner school has invoked the jurisdiction of this Court under Section 217L of the Tamil Nadu District Municipalities Act, 1920 (in short, 'the Act'). The primary sections which fall for interpretation are Section 217DD and Section 217J of Chapter XA of the Act.

2. The petitioner school was started in the year 1978. It purchased a property to an extent of 19.04 acres, together with construction of 5000 square meters from the family of erstwhile Maharaja of Baroda. It shifted the school to the premises in 1979. From 1992 onwards, the building has been assessed to property tax.

3. The Government brought in Chapter XA of the Act in the



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year 1992, to be specific, through the Tamil Nadu Act 58 of 1982, with effect from 09.12.1992.

4. The cause of action for this petition is that the District Collector had issued a notice to the institution on 14.07.1995 calling upon an explanation from the School as to how it is putting up a new construction measuring 59' x 22' 9" and 68' 9" x 75' 9". The said construction is alleged to be the ground, first and second floors. It is accepted by both sides that the area of the School falls within the 'prohibited zone' as per the master plan for the town of Udthagamandalam.

5. In response to the show-cause notice dated 14.07.1995, a reply was issued on 20.07.1995 stating that the building is already in existence and all that is being done is strengthening, re-plastering and re-flooring of the said building. Matter lay like this for a period of nearly two decades.

6. One Elephant Rajendran, initiated a PIL before Court regarding large scale violations that were taking place in Ooty and the unauthorized construction that are happening therein. This, was by way of a public interest litigation, in W.P.Nos.32747 and 32855



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of 2007. Directions were passed by this Court in the aforesaid writ petitions to the municipalities and other authorities to initiate action against any violation of laws. The said direction was issued on 19.02.2008.

7. Pursuant to these above directions, notice was issued under Section 217J (1) of the Act. The Udhagamandalam municipality issued a notice on 02.05.2008. The allegation of the Municipality is that, the construction to an extent of 6601 square feet had been made by the petitioner. Treating this as illegal, notice was issued under Section 217J of the Act by the Executive Authority of Udhagamandalam Municipality. A reply was issued by the civil revision petitioner stating that they were taken by surprise for the notice dated 02.05.2008 and that they had promptly replied to the notice issued by the Collector on 20.07.1995 and that they have paid the property tax and there is nothing illegal.

8. However, not being satisfied with the reply, on 05.12.2008, the show-cause notice was confirmed holding that the building is a newly constructed building attracting the provisions of Section 217J of the Act. Challenging the same, a review was filed before the first respondent under Section 217K of the said Act. The



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review was filed in the year 2009 but was kept pending for a period of nearly 10 years. It was finally taken up on 15.02.2019 fixing the hearing date as 21.02.2019. Immediately on receipt of the letter, a reply was given by the civil revision petitioner stating that being a very short time, an opportunity may be afforded to them by adjourning the matter for a period of thirty days. However, it is on record that one Dhananjayan had appeared before the authorities on behalf of the civil revision petitioner. Not being satisfied with the response given by the said Dhananjayan, the Government dismissed the review, against which the present revision has been filed.

9. I have heard Mr. Raja Kalifulla, learned Senior Advocate for Ms.Thenmozhi, learned counsel on record for the petitioner, Mr.Tamil Nithi, learned counsel for the first respondent and Mr.P.Srinivas, learned counsel for the second respondent.

10. Two fold submissions were made by Mr.Raja Kalifulla, learned Senior Advocate.

10.1 The Executive Authority does not have jurisdiction to issue a notice under 217J of the Act. He makes the submissions on



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the ground under Section 217DD of Chapter XA of the Act, the power to grant licence for a building exceeding 250 square meters is available only with the State Government and Municipality has the power only to initiate action only if the construction is less than 250 square meters.

10.2 The next submission is that sufficient opportunity was not afforded to the petitioner by the first respondent and, therefore, this Court has to set aside the same.

11. Mr.P.Srinivas, learned counsel appearing for the Executive Authority drew my attention to Section 217-O (2) stating that Chapter XA is in addition to and not in derogation of the powers conferred under the Act. For any unauthorized or unplanned development under the Act, the Executive Authority has the power to issue notice to stop work. Finally, both Mr.Tamil Nithi, learned counsel for first respondent and Mr.P.Srinivas, learned counsel for the second respondent, would submit that one Dhananjayan having appeared before authority and having made his submissions, there has been sufficient compliance with the principle of natural justice. Therefore, they pray for dismissal of the civil revision petition.



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12. I have carefully considered the arguments on either side. I have applied my mind to the facts of the case and to the relevant statutory provisions and authorities cited before me.

13. Taking up the first argument, if I agree with learned Senior Advocate that Section 217J of the Act is a stand alone provision, then, the Executive Authority cannot issue a notice at all. However, if I disagree with him, then, the notice that has been issued and the consequential order that has been passed have to be held as within the jurisdiction of the said authority. The argument as already extracted shows that Section 217DD has to be read into Section 217J. This is because, Section 217J itself does not have any limitation with respect to the extent of construction.

14. Reading Section 217DD, one is able to see that the State Government amended the law in the year 1998. The said amendment was introduced because prior to the amendment, even for grant of licence, person living in the hill station had to approach only the State Government. This made the provision nearly unworkable. It would have well-nigh impossible for ordinary residents to rush to Chennai to move the Government for securing permission.



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15. Perhaps, taking into consideration the difficulties faced, the amendment came into force conferring the power to the Executive Authority for granting licences for construction not exceeding 250 square meters. This is clear from a reading of Section 217D and the amendment, which occurred in 1998, by inclusion of 217DD.

16. The power to grant licence is different from the power to initiate action for unauthorized construction. For example, as in the present case, the allegation is that the construction had gone on in a prohibited zone i.e., next to Udhagamandalam Lake. This is referable to Rule 5 sub-clause (5) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993. As per Rule 5, sub-clause (5), no construction is permitted within 200 meters of the boundaries of the lake in Kodaikanal and Udhagamandalam, 100 meters of the boundaries of Gymkhana grounds in Kodaikanal, 100 meters from the boundaries of Race course in Udhagamandalam and 100 meters from the boundaries of SIMS Park at Conoor. The Rule also makes it clear that apart from the ban on construction, the existing character and manner of the buildings, which stood as on 13.06.1993, cannot be amended.



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17. The power to grant licence under Section 217D and Section 217DD are enabling provisions for a person who wants to develop his property. In case, a person does not apply for licence under Section 217D or under Section 217DD, then his/her action will invite the wrath of action under Section 217J.

18. Learned Senior Advocate would argue that under Section 217J, the State Government as well as the Executive Authority have been given power to initiate action but I should read the limitations placed on Section 217DD into Section 217J. To expand on this, my understanding of the argument is that, if the unauthorized construction is below 250 square meters only the Executive Authority will have the power to initiate action and for construction above 250 square meters it is the State Government which will have the powers.

19. Learned Senior Advocate raises the above argument because admittedly the construction of the property is 6601 sq ft per floor, which comes to more than 19,000 square feet and, therefore, exceeds the limit under Section 217DD. So his argument is that only the State Government has the power under Section 217J.



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19.1 I am unable to accept the said submission on two grounds.

19.2 Section 217DD has a non-obstante clause. In the non-obstante clause it does not deal with Section 217J. Similarly, reading of Section 217J does not show anywhere that the extent of the unauthorized construction shall be a jurisdictional divide to issue stop work notice by the Executive Authority or by the State Government. Section 217J reads as follows:-

"217-J. Power to stop work .— (1) The State Government 1 [or the Executive Authority as the case may be] may, at any time by notice in writing, direct the owner, lessee or occupier of any land in a hill station

*(a) to stop the construction or reconstruction of any building on such land ;
or*

(b) to stop the user of any building or land for any purpose ; or

(c) to alter or demolish, within such time as may be specified in the notice, any building or any part thereof, or

(d) to stop the user of any agricultural land for non-agricultural purpose; or



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(e) to stop the building, engineering, mining or other allied operations,

if in the opinion of the State Government 1 [or the Executive Authority as the case may be,] the construction or reconstruction of the building or part thereof, the user of the building or land or the user of any agricultural land for non-agricultural purpose or the carrying out of the building, engineering, mining or other allied operations is in contravention of any of the provisions of this Act and in particular, the provisions of this Chapter or the rules made thereunder or any of the terms and conditions subject to which a licence is granted under this Chapter.

(2) If any direction. given under sub-section (1) is not complied with, within the time specified in the notice, the State Government [or the Executive Authority as the case may be] may have such direction carried into effect at the cost of the local authority of the hill station concerned and the amount thereof shall be recovered from the defaulter by the said local authority as if it were an arrear of land revenue."

19.3 Where the section is clear, I need not labour myself with any more than reading the section itself. Section 217J operates



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when work has commenced without requisite permission. At the time of commencing of the work, the Executive Authority or the State Government will have no idea as to what extent the person is proposing to violate the law. To assume that the construction will be only less than 250 square meters is a matter which cannot be read into the Section. The extent of violation is known only to the violator.

20. When a stop work notice is given, perhaps only ground work would have just commenced. Therefore, the limitation on extent of construction cannot be read into Section 217J. Apart from the lack of non-obstante clause excluding Section 217J and the fact that there is no limitation in Section 217J itself, I agree with Mr.P.Srinivas, that the Executive Authority will have the power by virtue of the other provisions of the Act. It cannot be disputed that the Executive Authority has been empowered by the Act to stop unauthorized construction under the Act.

21. A reading of Section 217-O(2) makes it clear that the provisions under Chapter XA is in addition to and not in derogation of any of the provisions of the Act. Therefore, reading all the three together, I have come to the irresistible conclusion that the



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Executive Authority has the power to initiate action irrespective of the extent of violation.

22. I am not willing to telescope Section 217DD into Section 217J for the simple reason that if I were to do so, I will not be interpreting the Section but I will be amending the section and I will be bringing into the fold of the non-obstante clause in Section 217DD, the provision of Section 217J. I am not willing to do so as the Court has the power only to interpret laws and not to amend the laws. Therefore, on the question of jurisdiction, I hold against the petitioner.

23. I take support of the judgment of this Court in W.P.No.7069 of 1996 order dated 23.01.2003 (DB). Speaking for the Division Bench, Justice Sirpurkar (as he then was), held as follows:-

"7. The contention raised by the learned Government Advocate appears to be a correct contention. Merely because Sec.217DD has been introduced by way of an amendment, it does not divest the Collector of the power if the power of the State Government has been delegated to him. It will be seen that all the notices



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pertain to the buildings which are already in existence. The Collector has issued those notices because the Collector finds prima facie that it is necessary to stop the construction/reconstruction activities or to stop the user of the building or of altering or demolishing the existing building, etc. However, Sec.217DD operates in a very limited sphere. It pertains to the buildings which are essentially the residential buildings and which do not exceed 250 sq.mts. in plinth area. The purpose of the section is only to empower the Executive authority for the grant of licence to construct the buildings, which are residential in nature and which are not to exceed 250 sq.mts. in plinth area. There is no power to deal with an existing building under that provision. If any existing building or any building, the construction of which is in progress, is in contravention of the norms then, the State Government or the Executive authority, as the case may be, would alone have the power under Sec.217J. Up to the amendment, which was introduced in the year 1998, this power was only concentrated in the State Government; now that power is also given to the Executive authority but, that is under



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Sec.217J. The essential difference between Sec.217DD and Sec.217J, at least in so far as it concerns the buildings, is that Sec.217 DD is in respect of grant of licence to construct the building while Sec.217J is for the purposes of controlling the constructions already in existence, fully or partly. Therefore, there is nothing wrong if the Collector, in whose favour there is a valid delegation of power of the State Government, exercises the power under Sec.217J. In all these petitions, the buildings are in existence and, therefore, in our opinion, there is nothing wrong if the notices are issued by the Collector who had the necessary authority to do so."

(emphasis supplied)

24. The Division Bench had pointed out the essential difference between Section 217DD and Section 217J. A reading of the judgment shows that Section 217J does not operate in the same field as Section 217DD and, therefore, there is no bar on the Executive Authority of the Udthagamandalam Municipality for initiating action as against any violation of the master plan.

25. Turning to the second point, I have to agree with



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Mr.Raja Kalifulla, learned Senior Advocate that the first respondent had not given a fair opportunity to the petitioner to place its case before it. The petitioner had moved the authorities, taking the assistance of a lawyer, even as early as 2009, when it filed the appeal. But for the reasons best known to the first respondent, notice was not issued to the lawyer, but it was sent directly to the petitioner at Udhagamandalam.

26. Immediately on receipt of the letter, the civil revision petitioner had brought to the notice of the first respondent that it wants a month's time for the purpose of gathering documents and evidence to place it before the first respondent. The said request for adjournment had not been specifically refused but nonetheless the review had been taken up for hearing on 21.02.2019.

27. Learned Senior Advocate would submit that on that day i.e., 21.02.2019 Mr.C.K.Dhananjayan, PRO/custodian appeared before the authority and had sought for time and the authority also graciously agreed to grant time. He would state that his client was under the impression time was being granted and therefore, he had left the premises. The civil revision petitioner has made a specific statement in paragraph 9 of the affidavit in support of the stay



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application that no enquiry / no hearing was conducted. To the said specific averment, the first respondent has not gone on record by way of any counter.

28. Fixing a time for hearing is not a formality. The petitioner ought to have been granted sufficient time to make its case, especially when the appeal is taken up for hearing after a lapse of nearly ten years. He had sought for time because he had filed appeal through a lawyer but the lawyer had not been put on notice of the hearing at all. Having received the request for adjournment, heavens would not have fallen if the matter had been adjourned especially when the matter had been kept pending before the authority for ten years.

29. Learned Senior Advocate also would point out that insofar as the building in question is concerned, they had obtained permission from the authority as early as 12.10.1982.

30. This statement is seriously disputed by Mr.P.Srinivas, learned counsel for the second respondent. He would state that the building covered under the building plan B.A.No.205/82 L.No.162/82 dated 12.10.1982 is not the construction which is the



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subject-matter of the dispute. He would state that as per the show-cause notice issued by the Collector, the construction had commenced in and around July, 1995 and the said building which has been put up in 1982 is a different building and not the building which is the subject-matter of the civil revision petition.

31. I am not going into the said issue at this stage. I feel that sufficient opportunity had not been granted to the petitioner, and his advocate was not put on notice by the first respondent. Therefore, while setting aside the order of the first respondent, I remit the matter to the first respondent to have a re-look at the said review. It is made clear that the first respondent will not go into the issue of jurisdiction of the Executive Authority as I have concluded that the authority has jurisdiction to issue notice under Section 217J. The authority shall grant sufficient time not less than two weeks to the petitioner to make his submissions.

32. Prior to passing the order, the first respondent shall hear the second respondent, who shall, if necessary, file a report in reply to the review. It is always open to the second respondent to adopt the report already filed or file a fresh report, if it so desires. The said exercise of hearing the petitioner and the second



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respondent and passing an order shall be completed within a period of three months from the date of receipt of a copy of this order. In any event, the proceedings should conclude on or before 31.10.2023.

33. With the above directions, this civil revision petition is allowed. No costs. Connected miscellaneous petition is closed.

14.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

- 1.The Principal Secretary to Government
Department of Municipal Administration and
Water Supply,
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- 2.The Commissioner,
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V. LAKSHMINARAYANAN,J.

ssm

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