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W.P. No.22759 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.22759 of 2018 & W.M.P. No.26593 of 2018

Angulakshmi

Petitioner

v

- 1 The Director
Town & Country Planning
IV Floor, No.807, Anna Salai
Chengalvarayan Building
Chennai 600 002
- 2 The District Collector
Office of the District Collector
Erode District
Erode
- 3 The Assistant Director
Town and Panchayats
District Collector Office
Erode
- 4 The Executive Officer
Town Panchayats
Nambiyur Post & Taluk
Erode District
- 5 M. Rahamathulla
- 6 M. Ratheesh Ali

Respondents



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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the fourth respondent *vide* proceedings in Na.Ka.No.119/2018/A2 dated 18.07.2018 and quash the same and consequently, direct the fourth respondent to regularise the construction of the petitioner's building comprised in Survey No.675/9,675/10, 675/11 and 675/12 situated at Nambiyur Village, Gobichettipalayam Taluk, Erode District.

For petitioner Mr. N. Manokaran

For RR 1 to 4 Mr. A. Selvendran
Special Government Pleader

For RR 5 & 6 Mr. D. Veerasekaran

ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition has been filed impugning the communication dated 18.07.2018, whereby and whereunder, the petitioner has been denied permission to construct two shops, on the ground of an order of interim injunction granted in O.S. No.100 of 2018 on the file of the District Munsif Court, Gobichettipalayam, which suit was filed by the petitioner's neighbours.

2 Today, when the matter was taken up for hearing, the learned counsel for the petitioner brought to the notice of this Court that the petitioner has filed a revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the Secretary to Government, Housing & Urban Development



Department, against the de-occupation notice dated 18.02.2020 issued by the fourth respondent and that in W.P. No.5555 of 2020 filed by the petitioner subsequently seeking a mandamus directing the fourth respondent to maintain *status quo* till the disposal of the said revision, this Court, by order dated 03.03.2020, has directed the fourth respondent to de-seal the petitioner's premises, in addition to directing the Secretary to Government, Housing & Urban Development Department, to dispose of the petitioner's revision within a period of 12 weeks.

3 The learned counsel for the petitioner further submitted that the petitioner is not insisting on this petition and that she is willing to abide by the orders to be passed in her revision filed under Section 80-A, *ibid*.

4 In view of the above factual matrix, we expect the revisional authority, viz., the Secretary to Government, Housing & Urban Development Department, to dispose of the petitioner's pending revision after hearing both sides and after surveying the land in question in their presence, after notice. The authority is expected to hear the revision on a day-to-day basis without adjourning the matter beyond five working days at any point of time and pass orders on merits within three months from the date of receipt of a copy of this order. It is made clear that the pendency of the suit laid by the petitioner, in O.S. No.100 of



2018 on the file of the District Munsif Court, Gobichettipalayam and the cross-suit filed by the other parties is not a bar for the aforesaid authority in considering and passing orders on the petitioner's revision. Further, the Civil Court is also expected to finalise the suits as expeditiously as possible.

5 Before parting, it will not be out of place to point out that time and again, this Court as well the Supreme Court have been frowning upon illegal / unauthorised construction and encroachments and in fact, the officials turning a Nelson's eye towards such constructions/encroachments, have even been directed to be proceeded against departmentally and apropos it would be to advert to a few of them here. (emphasis supplied)

6 In Cont. Petn. No.1769 of 2015, by order dated 23.09.2016, a Coordinate Bench of this Court held thus:

“4. We have impressed upon him the importance of ensuring that there is at least no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:-

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised



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W.P. No.22759 of 2018

construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement at least for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available.”

(emphasis supplied)

7 In Priyanka Estates International Pvt. Ltd. v State of Assam

[(2010) 2 SCC 27], the Supreme Court declined the appellant’s prayer for directing the respondents to regularize the illegal construction and observed as follows:

“It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

(emphasis supplied)

8 In yet another decision in Shanti Sports Club v Union of India

[(2009) 15 SCC 705] pertaining to buildings constructed in violation of rules, the Supreme Court held thus:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory



W.P. No.22759 of 2018

mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.” (emphasis supplied)

This writ petition stands disposed of with the above direction and observations. Costs made easy. Connected W.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)
22.08.2023

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- 5 The Secretary
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Secretariat
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