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W.P.No.20002 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 01.12.2023

ORDERS DELIVERED ON: 14.12.2023

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.20002 of 2021

and

W.M.P.No.21268 of 2021

S.Venkat Kumar

... Petitioner

vs.

1.The District Collector,
Collectorate Office,
Coonoor – 643 102,
The Nilgiris District.

2.The Commissioner,
Coonoor Municipality,
Coonoor – 643 102,
The Nilgiris District.

3.The Town Planning Office,
Coonoor Panchayat,
Coonoor – 643 102,
The Nilgiris District.

4.Hema Sri Kumar

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to take action against the 4th respondent for illegal construction being made in violation of the Tamil Nadu District Municipality (Hill Stations) Rules, 1993 read with the Master Plan in R.S.No.568 in T.S.No.B/4/68, Gray Hill, Coonoor Town and Municipality, The Nilgiris District on the basis of the petitioner's representations dated 23.11.2021, 21.06.2021 and 30.07.2021 within the time to be stipulated by this Court.

For Petitioner : Mr.R.Bharath Kumar

For R1 : Mr.S.Mythreye Chandru
Special Government Pleader

For R2 & R3 : Mr.P.Srinivas

For R4 : Mrs.M.Sneha

For Advocate
Commissioner : Mrs.Ramya & Mr.E.Sridharan

* * * * *

ORDER

(Order of the Court was made by N.MALA,J.)



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This writ petition is filed to direct the respondents 1 to 3 to take action against the 4th respondent for illegal construction being made in violation of the Tamil Nadu District Municipality (Hill Stations) Rules 1993 read with the Master Plan in R.S.No.568 in T.S.No.B/4/68 Gray Hill, Coonoor Town and Municipality, The Nilgiris District on the basis of the petitioner's representations dated 23.11.2020, 21.06.2021 and 30.07.2021 within the time to be stipulated by this Hon'ble Court.

2.The petitioner is the neighbour of the 4th respondent. The 4th respondent constructed a house in R.S.No.568 in T.S.No.B/4/68 Gray Hill, Coonoor Town and Municipality, Nilgiris District measuring 5.5 cents, which is situate on the Northern side of the petitioner's property. The petitioner states that the construction put up by the 4th respondent in the aforesaid land was in total violation of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993 read with the Master Plan. The petitioner further states that under Rule 4(3) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993, the soil stability certificate should be obtained from a qualified Engineer. The Assistant Geologist of Geology and Mining department, Nilgiris vide the Geo-Technical report dated 04.03.2016 in File No.68/GTC/2015 certified that the land upon which the 4th respondent put up the construction is entirely covered up with the soil and no outcrop of the rocks is seen in the site. The petitioner



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states that the total soil thickness is found to be 5 mts. in the aforesaid report and therefore the 4th respondent ought not to be permitted to construct the building that too with ground plus two floors. According to the petitioner, the 4th respondent constructed the said house without any planning permission and in total violation of the Master plan r/w. Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993. Earlier the petitioner's father lodged a complaint on 08.03.2017 against the 4th respondent and some other persons for their unlawful activities like removing the warning boards and the C.S.R.No.39/2017 was issued in this regard. The petitioner's father also filed a writ petition in W.P.No.8042 of 2017 before this Court against the private respondents including the 4th respondent forbearing the official respondents therein from granting building permission on account of lack of proper access to their property. The said Writ Petition was dismissed on 10.09.2018 with liberty to the petitioner therein to redress his grievance regarding the non-compliance of the building planning permission to the respondents therein. The petitioner sent representations on 23.11.2020 and 21.06.2021 to the respondents 2 and 3 requesting them to inspect the 4th respondent's property and to take necessary actions but the respondents did not respond to the aforesaid representations. The petitioner sent another representation on 30.07.2021 but as the 4th respondent continued with the construction in violation of the Rules, the petitioner left with no other alternative remedy approached this Court for the



aforesaid relief.

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3.The 4th respondent filed a counter stating that the construction plan for the residential house put up by her on the property was approved in proceedings in B.A.No.150/2017/F1 in B.L.No.31/2017/F1 dated 14.02.2017 of the second respondent, and the approval was valid till 02.02.2018. The 4th respondent applied for the extension and the same was permitted vide proceedings dated 01.02.2019. According to the 4th respondent the petitioner out of envy sent a representation to the authorities alleging violation in the construction of the building by her and so, the second respondent issued a de-occupation notice to her on 09.07.2020. The 4th respondent filed an appeal to the Secretary to the Government, Municipal Administration & Water Supply Department and in the appeal a direction was issued to remove the seal of the building for three months to enable her to rectify the violations pointed out by the second respondent. The second respondent on 22.06.2021 in pursuance of the order passed in the appeal sent a communication to the 4th respondent informing that the building would be desealed to rectify the violation. The 4th respondent contends that the rectifications were carried out since 02.06.2021 by removing the sunshades and ensuring that the rain water did not fall on the fences of the petitioner. The 4th respondent further contends that due to COVID Pandemic situation, shortage of



labourers and escalation of prices of raw materials further work could not be carried out. The 4th respondent states that as the rectification was delayed an application for extension of time for three months was filed and pending with the Secretary to Government, Municipal Administration & Water Supply Department. The 4th respondent denies that there was violation committed by the 4th respondent. On the aforesaid pleas the 4th respondent prayed for dismissal of the writ petition.

4.The respondents 2 and 3 filed their counter stating that the 4th respondent was granted planning permission on 14.02.2017. The 4th respondent did not commence work she applied for extension of planning permission and the same was granted from 02.02.2018 to 01.02.2019. As she did not commence work even thereafter further extension was granted from 01.02.2019 to 02.02.2020. The 4th respondent was granted permission to construct, ground plus and first floor to an extent of 124.25 sq.mts. each, but she constructed totally 449.82 sq.mts. in ground plus and first floor. The 4th respondent was therefore issued the lock and seal notice on 20.03.2020 and since the violations were not rectified, de-occupation notice was issued on 09.07.2020 and the premises was sealed on 14.07.2022. The 4th respondent preferred an appeal under Section 217 K of the Tamil Nadu District Municipalities Act, 1920 and in the appeal the Secretary to Government, Municipal Administration and Water Supply passed orders



granting three months time to rectify the defects pointed out by the respondents 2 and 3.

The respondents 2 and 3 thereafter removed the lock and seal on 22.06.2021 for enabling the 4th respondent to carry out the rectification work within the stipulated period of three months. In the last week of September, 2021 it was found that the rectification work was not carried out and the deviations continued. The 4th respondent submitted a letter on 18.09.2021 seeking extension of three months to carry out the rectification work, which was kept pending in view of the present writ petition. On 04.10.2021 the de-occupation notice was issued to the 4th respondent and the building was sealed on 10.10.2021. On the complaint of the petitioner dated 22.10.2021, the respondents inspected the premises on 23.10.2021 and found that the 4th respondent continued with the construction activities and therefore the 4th respondent was warned and the premises was resealed.

5. When the matter was taken up for hearing on 29.07.2022 the respondents 2 and 3 represented that fresh de-occupation notice dated 14.07.2022 was issued to the 4th respondent as she continued with the construction activities in spite of the lock and seal notice. According to the respondents 2 and 3 even though the time granted for compliance expired, in view of the pendency of the writ petition no further action was taken. This Court after recording the said representation directed the respondents to



take appropriate action against the 4th respondent and to file a report on the status and posted the matter after four weeks. On 11.10.2022 this Court finding that in spite of the specific directions of this Court, the respondents 2 and 3 had not taken any action, directed the 2nd and 3rd respondents to appear before the Court. Thereafter the case was taken up for further hearing on 02.11.2022 and on the said date, this Court recorded the undertaking given by the 4th respondent to rectify the deviations within a period of 45 days. This Court granted time to the 4th respondent to remove the deviated portions and to bring the construction in conformity with the approved plan within the said period with further direction to the Coonoor Municipality to de-seal the building for the purpose of carrying out the rectification. It was made clear that in case the 4th respondent failed to rectify the deviations the Coonoor Municipality should re-seal the premises, disconnect water and electricity supply and take further action to bring the building in conformity with the approved plan. The Coonoor Municipality was directed to file the compliance report on 02.01.2023. On 11.08.2023, when the matter was taken up for hearing, the learned counsel for the second respondent filed a status report stating that the 4th respondent had not rectified the deviations as undertaken by her in the affidavit filed by her. The 4th respondent vehemently disputed the report, denied the contention of the 2nd respondent and further prayed for appointment of an Advocate Commissioner to inspect the property. In view of the above submissions, this Court



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passed an order directing the 4th respondent to first deposit the sum of Rs.5,00,000/- as undertaken by her in the affidavit filed on 25.10.2022 before the Registry to the credit of the writ petition on or before 18.08.2023. This Court further observed that on production of proof of deposit, the request for independent inspection would be considered, subject to the contentions to be raised on behalf of the opposing counsels.

6.The matter was taken up for hearing on 07.09.2023. This Court recorded the deposit of Rs.5,00,000/- by the 4th respondent, appointed an Advocate Commissioner to inspect the site, report about the deviations and rectifications, if any, carried out and to further report if the violation of the planning permission was set right as undertaken by the 4th respondent. In pursuance of the order of this Court, the Advocate Commissioner filed her report pointing out the various deviations in the construction put up by the 4th respondent with reference to the Town and Country Planning Act and also the Tamil Nadu District Municipality (Hill Stations) Rules. After noting the deviations the Advocate Commissioner observed that the violations of the planning permission were not set right.

7.When the matter was taken up for hearing on 01.12.2023, the learned counsel for the 4th respondent prefaced her arguments by stating that she did not dispute that the



deviations continued, but all she wanted was to place certain discrepancies in the reports dated 13.11.2021 and 10.08.2023 of the second respondent only to show that the officials were taking contradictory stands. Whereas in the first report the violation of roof top of the first floor was said to be 100%, in the second report the violation was shown as nil. The set back violation in the front set back and side set back was 100% in the first report, but, in the second report it was shown as nil. The learned counsel further submitted that the 4th respondent had provided a sloping roof top on the first floor by using GI sheet and therefore there was no roof top violation. When a specific question was put to the learned counsel for the second respondent if placing of GI Sheets on the first floor would satisfy the requirement of law, the learned counsel submitted that it would not.

8.Be that as it may, the other violations particularly the plot coverage violation is a major violation which even according to the 2nd respondent cannot be rectified. As far as the plot coverage is concerned, the petitioner was permitted to put up the construction in the ground floor to an extent of 124.25 sq.mts. and in the first floor to an extent of 124.25 sq.mts. The 4th respondent was permitted coverage of 224.91 sq.mts. totally in ground and first floor. The 4th respondent contrary to the said permission constructed 224.91 sq.mts. in the ground floor and 224.91 sq.mts. in the first floor



totalling 449.82 sq.mts., which is 50% over and above the permitted coverage. Even if the report of the respondents 2 and 3 is found to be contradictory, the report of the Advocate Commissioner which is filed recently clearly spells out the violations and records that the same are not rectified. Perhaps in recognition of the fact that the deviations still continue, the learned counsel for the petitioner prefaced her arguments by stating that she was not on the deviation but on the contradictions in the second respondent's report.

9.The 4th respondent with scant regard for the building Rules and in spite of the lock and seal notice completed the construction. The 4th respondent also filed an affidavit before this Court stating that she would pay a sum of Rs.5,00,000/-, if she failed to rectify the deviation. Contrary to the undertaking affidavit, the 4th respondent did not rectify the deviations and paid the amount that too on the specific directions of this Court.

10.We are surprised and dismayed at the report of the second respondent, in so far as it relates to the violation of the roof top of the first floor. The law mandates that the roof top of the first floor should be sloped, but the 4th respondent has put up a flat roof. The photographs filed by the Advocate Commissioner show that at the centre of the flat



terrace in the first floor, the 4th respondent has put up a small structure over which a GI sheet was placed in a slope. According to the second respondent this would satisfy the requirement of the law. In our view by no stretch of imagination can it be said that it satisfies the requirement of law. It is ironical that the respondents even without knowing the purpose for which sloping roof is mandated have reported that there is compliance in this regard. During monsoons landslides are common in hilly areas. Sloping roofs ensure the free flow of water which reduces the pressure and damage to the roofs because of heavy rains in hilly regions.

11.Further it is seen from the Geo-Technical report dated 04.03.2016 of the Assistant Geologist of Geology and Mining department, Nilgiris that the 4th respondent's property is situate in Zone II of Zonation Map of the Nilgiris District. The areas falling under Zone II are said to be less susceptible to landslides. The Assistant Geologist recommended for construction of the residential building subject to several conditions, of which conditions 1,2 and 3 are relevant.

- “i) No building construction should be done on the slopes
 - ii) The surface flow of rain water should not be obstructed
 - iii) Spacing between one house to the other should be 10m
- to avoid close cutting on the slope.”



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12.It is to be noted that the hill stations are ecologically sensitive areas and prone to landslides. Therefore any development in violation of the building Rules will have devastating effect on the environment. Considering all the above aspects, we are of the view that there should be zero tolerance to violations of the building Rules. Therefore it is appropriate that the deviations in the building put up by the 4th respondent be demolished and brought in conformity with the building plan.

13.It is seen that the 4th respondent was given several opportunities to bring the building in conformity with the sanctioned plan, but inspite of such opportunities the 4th respondent has not rectified the deviations. We therefore direct the second respondent to demolish the deviated portions and bring the construction in conformity with the building plan. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. The amount deposited by the 4th respondent before this Court shall be utilised towards the expenses for carrying out the aforesaid demolition. If the expenses exceed Rs.5 lakhs, the respondent shall be at liberty to recover the same from the 4th respondent. We make it clear that the premises shall be resealed forthwith and the aforesaid direction be carried out within the stipulated time.



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14. Accordingly, this Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

J.N.B., J. N.M., J.

14.12.2023

Index : yes/no
Internet : yes/no
Speaking order : Non-speaking order
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To

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J.NISHA BANU, J.
and

N.MALA, J.

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PRE-DELIVERY ORDER IN
W.P.No.20002 of 2021

14.12.2023