



W.P.No.33860 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.33860 of 2022
and WMP No.33340 of 2022,

Apna Sapna Holidays P Ltd.,
Represented by its Managing Director,
Mr.Sunil Baberwal,
S/o.Biharilal Baberwal
DT-5, G.R.Grand Residency,
Kanakapura Road, 6th Phase,
Bangalore - 560 078

...Petitioner

Vs

1. The District Collector,
Nilgiris, Udhagamandalam.
2. The Block Development Officer,
Udhagamandalam Panchayat Union,
Udhagamandalam.
3. The President,
Hullathy Panchayat,
Udhagamandalam.

...Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution



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of India praying to issue a Writ of Certiorarified Mandamus to call for records relating to the 3rd respondents proceedings in Na.Ka.No. 2/ 2022 dated 3.07.2022 quash the same and further direct the 3rd respondent to remove the seal of the petitioner premises comprised in R.s. No. 35/2 New R.S. No. 143/2 situated at Hullathi Village Kallatti Estate Udhagamandalam Panchayat union Udhagamandalam Nilgiris District.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.A.M.Ayyathurai (for R1)
Government Advocate

Mr.E.Sundaram
Government Advocate
for R2 and R3

ORDER

This writ petition has been filed challenging the proceedings of the 3rd respondent dated 03.07.2022 and for a consequential direction to the 3rd respondent to remove the lock and seal from the subject property comprised in RS No.35/2, New RS No.143/2, situated at Hullathi Village, Kallatti Estate, Udhagamandalam Panchayat Union, Udhagamandalam, Nilgiris District.



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2. The case of the petitioner is that he is the Managing Director of a company named as Apna Sapna Holidays Private Limited. The property is owned by the Company. The petitioner executed a lease agreement in favour of one R.Mahesh on 01.05.2017. Even in the lease agreement, it was made clear that the property must be used only for residential purpose.

3. The further case of the petitioner is that the above said Mahesh unauthorizedly sub-leased the property through a lease agreement dated 21.01.2021 in favour of one Manjunathan as if he is the owner of the property. The said Manjunathan is said to have utilized the property as a guest house. According to the petitioner, he was not aware about the same.

4. The 3rd respondent on inspection found that the subject property has been unauthorizedly used as guest house and hence, through the impugned proceedings dated 03.07.2022,



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proceeded to lock and seal the property. The same has become the subject matter of challenge before this Court in this writ petition.

5. The 2nd respondent has taken a stand that the property was used as a guest house without seeking for any permission. Even as per the original plan, the permission was obtained only for using the property for residential purpose. Since there was a violation in the usage of the property, the respondents exercised their power and jurisdiction and the property was locked and sealed. Hence, the respondents have justified the action taken by them and sought for the dismissal of this writ petition.

6. When the matter came up for hearing during the previous occasion, considering the stand taken by the petitioner, this Court directed the petitioner to file an undertaking affidavit by specifically undertaking that the petitioner will not use the



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property for any non-residential purpose. If at all the petitioner wants to put the property to commercial use, he will obtain necessary permission and only thereafter the property will be put to commercial use.

7. The matter was posted for final hearing today and the undertaking affidavit filed by the petitioner is also taken note of. For proper appreciation, the relevant portions in the undertaking affidavit are extracted hereunder :-

3. I specifically deny each and every allegations made in the affidavit filed in support of the writ petition except save those that are specifically admitted herein.

4. I state that the decision to pass the impugned order came to be taken after issuing show cause notice as mandated under Section 56 of Tamil Nadu Town and Country Planning Act. I



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state that it is admitted case of the petitioner that the petitioner was issued with show cause notices requesting him to submit the planning permission obtained by him for using the building for its commercial operations. The said show cause notice was issued on 18 January 2022, and 3rd July 2022. The petitioner had categorically admitted the fact that he is not residing in the premises and notice was pasted on the conspicuous place of the building, thus the petitioner is estopped to plead that no notice was service on to him. Thus the impugned order came to be passed after complying with principles of natural justice as mandated under Section 56 of the Town and Country Planning Act.

8. Heard Mr.M.Muthappan, learned counsel for



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petitioner and Mr.A.M.Ayyathurai, learned Government Advocate for 1st respondent and Mr.E.Sundaram, learned Government Advocate for R2 and R3.

9. In the considered view of this Court, it is not necessary for this Court to go into the legality of the impugned proceedings of the 3rd respondent dated 03.07.2022 at this stage. This is in view of the fact that the petitioner has feigned ignorance about his tenant letting out the property for commercial purpose and the petitioner has also undertaken by filing an affidavit that the tenant has already vacated and the petitioner will not use or let out the premises for any commercial purposes without obtaining proper permission from the competent authorities. There will be no objection on the side of the respondents if the property is utilized for residential purpose.

10. In view of the above, taking note of the undertaking



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given by the petitioner, there shall be a direction to the 3rd respondent to remove the lock and seal from the subject property. If the petitioner intends to put the subject property to commercial use, the petitioner shall submit an application and get the permission of the competent authorities and only thereafter put the property to commercial use. Till the petitioner uses the property for residential purpose, there will be no issue. If the petitioner attempts to utilize the property for commercial purpose, without any permission in future, it is always left open to the respondents to take action in accordance with law.

11. This writ petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

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