



W.A.(MD)No.101 of 2013

JUDGMENT

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(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This Writ Appeal is directed against the order passed by the Writ Court dated 09.10.2012 made in W.P.(MD)No.8390 of 2006.

2.The appellant herein constructed a house / building at T.S.No.311, Block No.1, Ward No.1, Hajiya Street, Kumbakonam, Tanjore District. In order to get approval for such building since no application has been filed, the respondent Municipality had issued a notice on 02.08.2006 to remove such unauthorized construction otherwise it would be removed.

3.Despite that, the building has not been removed. Therefore, further notice also had been given on 30.08.2006 by the respondent Municipality, directing the appellant / petitioner to remove the alleged unauthorized construction within seven days otherwise action would be taken to remove such building.



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4. Aggrieved over the same, the appellant had filed W.P.(MD)No.8390 of 2006, seeking for Certiorarified Mandamus to quash the notice dated 30.08.2006 and to permit the appellant to get regularization for the building.

5. The said Writ Petition was heard and dismissed by the learned Single Judge on 09.10.2012 by rejecting the plea raised by the appellant / petitioner.

6. As against the said order passed by the Writ Court dated 09.10.2012, the present intra-Court appeal has been filed.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent.

8. The learned counsel for the appellant would submit that since the amendment has been made in the Tamil Nadu Town and Country Planning Act, 1971 (hereafter referred to as 'the Act'), especially, Section



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113-C, thereby, permitting the building owners to get approval, which was constructed on or before 01.07.2007 on payment of necessary charges, therefore, in this context, the said amendment made on 16.07.2012 in the said Act should have been taken into account by the learned Single Judge, who passed the impugned order only on 09.10.2012.

9.Further, that aspect has not been considered by the learned Single Judge. Nevertheless, the appellant subsequently had filed a detailed application on 18.01.2013 to the respondent Municipality to regularize such construction, if it is unauthorized, in view of the amendment having been given effect to in the aforestated provisions of the Act and the said application is also kept pending by the respondent Municipality till date.

10.Per contra, the learned counsel for the respondent would submit that, the documents submitted along with the application for regularization had been in fact scrutinized by the respondent Municipality, where they found some deficiencies even with regard to the ownership of the land in question, where the alleged unauthorized building had been constructed and in this context, since patta copy submitted along with the



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application by the appellant discloses that it is a joint patta in the name of two persons and the land also seems to have been the land of HR & CE Department. Therefore, these aspects have to be gone into, then only the claim made by the appellant to regularize such unauthorized construction has to be looked into.

11.We have considered the rival submissions made on either side and perused the materials available on record carefully.

12.Insofar as the construction that has been made in the land in question is concerned, it is admittedly unauthorized construction as no approval had been obtained under the provisions of the Act from any of the authority including the respondent Municipality.

13.In this context, if at all any subsequent application had been filed on 18.01.2013 based on the amendment made in the Act on 16.07.2012, that can be considered by the respondent Municipality.



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14.However, insofar as the reasoning given by the learned Single Judge in rejecting the plea of the appellant / petitioner to quash the impugned order before the Writ Court through the impugned order herein is concerned, we do not find any infirmity in the said order. Therefore, that has to be sustained, but at the same time, since subsequent development had been taken place under which on 18.01.2013 an application has been filed, which is admittedly pending consideration before the respondent Municipality, we feel that a direction can be given to the respondent Municipality to consider the said application on merits and in accordance with law.

15.In that view of the matter, this Court is inclined to dispose of this Writ Appeal with the following orders:-

“(i)the impugned order since does not suffer with any infirmity which is to be sustained, accordingly, it is sustained. Nevertheless, the right of the appellant to file an application to regularize the unauthorized construction within the meaning of the provisions of the Act since has been protected within the meaning of the amended provisions of the said Act and pursuant to which the



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appellant also has made an application to the respondent Municipality on 18.01.2013, the same shall be considered and decided on merits and in accordance with law by the respondent Municipality within a period of six weeks from the date of receipt of a copy of this order;

(ii)It is made clear that while considering the same, it is open to the respondent Municipality to verify the claim made by the appellant with regard to the ownership of the land in question also and accordingly, a decision can be taken; and

(iii)It is further made clear that till such final decision is made by disposing the application submitted by the appellant, by the respondent Municipality, status-quo of the building in question as on today shall be maintained.”



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16. With these directions, this Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) & (K.K.R.K, J.)

07.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.
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