



W.P.(MD).No.2798 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.12.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD).No.2798 of 2019
and
W.M.P.(MD).No.2125 of 2019

G.N.Ashok Kumar

.. Petitioner

Vs.

1.The State Represented by its
The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai - 9.

2.The Member Secretary,
Local Planning Authority,
Thanjavur.

3.The Commissioner,
Thanjavur City Municipal Corporation,
Thanjavur.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the entire records in connection with the impugned order passed by the 1st respondent vide his proceedings Ref: Letter No.13101/UD4(1)/2016-15 dated 04.01.2019 and quash the same.



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For Petitioner : Mr.Niranjan S.Kumar
For R-1 : Mr.M.Lingadurai
Special Government Pleader for R-1
For R-2 & R-3 : Mr.N.Dilip Kumar

ORDER

(Order of the Court was made by V.LAKSHMINARAYANAN,J.)

The present Writ Petition has been filed challenging the the impugned order passed by the first respondent dated 04.01.2019.

2. The petitioner had obtained planning permission for ground floor and first floor. However, in deviation of the same, he had constructed a commercial building consisting of a basement and three floors. Taking note of the deviation, proceedings were initiated under Section 56 and 57 of the Town and Country Planning Act, 1971 (hereinafter referred to as 'T & CP Act'). Challenging the same, the petitioner filed a Writ Petition in W.P. (MD).No.13364 of 2015 before this Court. The Writ Petition was disposed of by permitting the petitioner to file an appeal under Section 80A of the T & CP Act. Pursuant to the orders of this Court dated 20.06.2016, the petitioner filed an appeal in June, 2016. The appeal was pending for nearly



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four years. Pending disposal of the appeal, the stay of proceedings under Section 56 and 57 of the T & CP Act had been granted. Finally, an order was passed on 04.01.2019 rejecting the appeal. This order is under challenge before us.

3. Heard Mr.Niranjan S.Kumar, learned counsel for the petitioner, Mr.M.Lingadurai, learned Special Government Pleader appearing for the first respondent and Mr.N.Dilip Kumar, learned counsel for the second and third respondents.

4. Mr.Niranjan S.Kumar, learned counsel for the petitioner would argue that there is a violation of principles of natural justice, since the petitioner had sent a request for adjournment and it had been refused and orders had been passed. He would want us to hold that since the adjournment had not been granted and since the petitioner had appeared in all other hearings other than the crucial hearing on 20.12.2018, we have to take a lenient view and allow the Writ Petition and remand it for fresh disposal. This is stoutly resisted by the learned Special Government Pleader.



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5. We have carefully gone through the records. The facts narrated above would show that the petitioner had obtained permission only for ground and first floor, but in violation of the same, had put up a basement and three floors. The fact that there has been a deviation is not in dispute. Taking note of the deviation, the Local Planning Authority of Thanjavur had issued notices to the writ petitioner to bring the building in line with the approved plan or in default, it had concluded that it will proceed under Section 56 and 57 of the T & CP Act. This order was challenged before the first respondent. The first respondent, on perusal of the records, has come to the conclusion that there is no approved plan for the deviated portion. Under such circumstances, it does not give any room for the authorities not to proceed under Section 56 and 57 of the T & CP Act.

6. It was argued by the learned counsel for the petitioner that since the petitioner was assessed with property tax from the year 2000-2001, his building need not be proceeded against.

7. Payment of tax has nothing to do with the construction of the building. Tax is levied on a building, which has been constructed, but that



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does not mean levy of tax by itself is an act of regularisation of an unauthorised building. The first respondent has also recorded the fact that the plea that since there are other buildings which are deviated, the petitioner's building may be exempted, is no plea at all. We are constrained to agree with the same. There cannot be equity in illegality.

8. Apart from that, the authority has found the following aspects are lacking in the building:

- (i) set back requirements,
- (ii) parking requirements and
- (iii) coverage requirements.

Thus, crucial aspects not being available in the building of the petitioner, we are not inclined to agree with him that there has been a violation of principles of natural justice. Notice was issued and appeal was filed through a counsel. Neither the party nor the counsel was present in the crucial hearing. It is not in dispute that notice has been served. The plea that there was Gaja cyclone and therefore, the petitioner could not appear is a futile plea, since Gaja cyclone took place in November 2018 and the appeal was heard in December 2018.



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9. In the light of the above, we find that the order of the first respondent is in line with Section 56 and 57 read with Section 80 of the T & CP Act. The building being a deviation, we are not inclined to interfere with the impugned order. Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
06.12.2023

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

To

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2.The Member Secretary,
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3.The Commissioner,
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