



W.P.(MD)No.20783 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

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1.A.Rajavel

2.P.Selvaraj

3.D,Simmerson

... Petitioners

Vs.

1.The Thoothukudi Municipal Corporation,
Represented by its Commissioner,
No.113, Palai Road,
Thoothukudi – 628 002.

2.The Assistant Commissioner,
Thoothukudi Municipal Corporation,
Thoothukudi.

3.The Assistant Engineer,
Thoothukudi Municipal Corporation,
Thoothukudi.

4.The Director of Town and Country Planning,
O/o. the Director of Town and Country Planning,
807, Anna Salai, Chennai – 02.



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5.Uma Maheswari

6.A.Maria Kavitha

7.V.Masudhu

8.T.Thangaraj

9.A.Andhonyraj

10.A.Mariapparaja

11.Muthu Krishnan

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents 1 and 2 to take action against the unauthorized construction put up by the respondents 5 and 6 in the shopping site in the layout promoted in the name of Ezhil Nagar by SPIC Employees' Co-Operative Housing Society Limited in approved Layout No.LP/DTCP No.1244/1991 located in Kanthasamypuram Main Street T.Sy.No. 26/2, Block-7, Town Survey Ward-B, Thoothukudi, Municipal Corporation Limits within a time period that may be determined by this Court.

For Petitioners : Mr.N.Dilip Kumar

For Respondents : Mr.N.Anandakumar
for R1 to R3

Mr.Lingadurai
Special Government Pleader for R4



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Mr.B.Saravanan,
Senior Counsel,
for Mr.C.Jegannathan for R5 & R6

No appearance for R7 to R11

ORDER

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

This Writ Petition has been filed seeking a direction to the respondents 1 and 2 to take action against the unauthorized construction put up by the respondents 5 and 6 in the shopping site in the layout promoted in the name of Ezhil Nagar by SPIC Employees' Co-Operative Housing Society Limited in the approved Layout No.LP/DTCP No.1244/1991 located in Kanthasampuram Main Street, T.Sy.No.26/2, Block-7, Town Survey Ward-B, Thoothukudi, Municipal Corporation limits within a time frame.

2. The 5th and 6th respondents put up a three storied building i.e., ground floor + 2 floors without any permission, either from the local planning authority viz., Thoothukudi Municipal Corporation or from the Town and Country Planning authority. This has given a cause of action for the writ petitioner to approach this Court.



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3. The writ petitioner pleaded two points viz., that the purchase by respondents 5 and 6 is invalid and that the construction that has been put by them is entirely unauthorized and therefore, action has to be initiated.

4. Insofar as the first point is concerned, the petitioner as well as respondents 5 and 6 have agreed that proceedings have been initiated under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and therefore, we are not inclined to go into that issue in the Writ Petition. It is expected that appropriate action will be initiated based on the report that has been filed under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983.

5. Insofar as the second point is concerned, it is admitted that the entire building has been put up without appropriate permission or licence. The issue that we have to consider is whether the filing of an application under Section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971 on 15.09.2023 (pending the Writ Petition) after completion of the building will save the building from the teeth of further action being initiated under the Town and Country Planning Act, 1971. This requires us to peruse few provisions of the Town and Country Planning Act, 1971.



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6. Under Section 47 of the said Act, no person is entitled to develop any land without the permission of the authorities. The manner to make an application for carrying out development of land or building is narrated under Section 49. In case a building is put up in an unauthorized manner then Section 56(1) kicks in. Section 56 (1) contemplates four situation:-

- (i) putting up of structure without permission in its entirety;
- (ii) in contravention of the permission that has already been granted;
- (iii) where the permission has been revoked in terms of the provisions of the Act; and
- (iv) in contravention of any permission which has been modified in terms of the provisions of the Act.

7. If the superstructure is put up without a permission or if the permission granted has been revoked in its entirety, then, it is the statutory duty of the authorities to restore the land to its condition before the development took place. In case, a construction has been made in contravention of the permission, which has been granted, but the permission has not been revoked or in case permission has been modified but the construction has been put up without



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compliance of the said modification, then, the authorities are bound to ensure that the building is in accordance with the permission so granted or modified.

8. Section 56(2) of Town and Country Planning Act enables the authorities to

- (i) demolish or direct alteration of any work;
- (ii) to carry out works on the land or building; and
- (iii) to ensure discontinuance of the use of the land and building.

If action is initiated under Section 56(2), then the appropriate planning authorities are empowered under Section 56(2)-A to direct locking or sealing of the building and thereby ensuring discontinuance of the building. This brings us to the fulcrum of this case viz.. interpretation of Section 56(3) of the Act.

9. In this case, as stated above, the entire building has been put up without any permission. According to Mr.B.Saravanan, learned Senior Counsel, appearing on behalf of the respondents 5 and 6, since they have presented an application under Section 56(3) post the construction and pending the Writ Petition, he is entitled to retain the building as it stands. In other words, his argument is as per Section 56(3), even if a building is put up entirely without



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permissions, the authorities can thereafter entertain an application under Section 56(3) and permit the person, who has put up the building unauthorisedly, to retain the superstructure or ratify the illegal constructions. We are unable to agree for more than one reason.

10. First, Section 47 prohibits the development of a site without the authorisation of the appropriate authorities. If any construction takes place contrary to Section 47 or Section 49, it is against the statutory bar imposed in a legislation.

11. Second, the legislation demands planned development. Therefore, a superstructure raised without an approval is an illegal structure. It is also too well settled that the legislation captures the public policy of a State. An act contrary to public policy is void. A void act cannot be ratified. An action of putting up an unauthorized structure is nowhere contemplated under the Town and Country Planning Act. On the contrary, the Act prohibits development without permission.



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12. Third, if we read Section 47 as a prohibition, as the Section states and stands as on today, then this prohibition cannot be gotten over by a plea for ratification. This is because there is no Section / Provision enables such an ratification. It is in this situation, that the provision relating to regularisation came into Section 113-A to 113-C. These Sections were created as an exception to rigours of the Statute. The very fact that three Sections were brought in specifically as “one time” measures shows that any construction contrary to Town and Country Planning Act is specifically prohibited. By virtue of the regularisation amendments, which were brought in by way of separate legislations, it becomes clear that the authorities under the Town and Country Planning Act do not possess the power of regularisation before and it was only by virtue of the amendments, such power was conferred upon them by the legislature. Therefore, if the argument of Mr.Saravanan is to be accepted that by virtue of Section 56(3), the authorities under the Town and Country Planning Act have the power of regularisation, we would be conferring a power upon the authorities, which even the legislature did not contemplate.

13. According to us, Section 56(3) would apply only when some semblance of permission had initially been granted and there is a deviation from



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the permission. This Section permits modification of the originally approved plan, in order to bring it in accordance with the Town and Country Planning Act. Such modification is also permitted only if it is within the permissible limits. If a building is entirely unauthorized, there is no question of application of Section 56(3).

14. This issue is no longer *res integra* and had been considered in the case of ***Prabhakar, P.T. v. The Member Secretary, CMDA [2006 (5) CTC 449]***, wherein it is held as follows:-

“18. Section 49 contemplates that any person intending to carry out any development on any land or building on or after the date of the publication of the resolution under Sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette under Section 26, shall make an application in writing to the appropriate planning authority for permission. There is no difficulty if the construction is made as per the planning permission accorded on the basis of the application made under Section 49. In case, any development on any land or building has been carried on without permission required under the Act or in case of any contravention of any permission granted or of any condition subject to which permission is granted, the appropriate planning authority by notice require such person within such period not less than one month as may be specified therein after the service of



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notice to take steps as may be specified in the notice to restore the land as to its condition before the said development took place. As in this case admittedly, no application was made under Section 49 prior to the construction, notice could be issued under Section 56(1)(a) of the Act and in such event, the land owner or the builder as the case may be, could restore the land to its condition before the said development took place. Under Sub-section (3) of Section 56, any person aggrieved by such notice, may within the period specified in the notice apply for permission under Section 49 for the retention of the land or any buildings or works or for continuance of any use of the land or building to which the notice is issued. If such application is filed, the planning authority may consider the continuance of the use of the land or building. A combined reading of both the provisions would show that in case if there is no planning permission applied and construction was made, violater is entitled to make an application under Section 49. In case he is called upon by issuance of notice under Section 56, such right in our considered view for filing application can be construed to mean for retention of the land or building so far as the violation can be brought within the permissible limit of Development Control Rules. In case, admittedly, the violations are beyond permissible limit, the provision of Section 49 cannot be invoked. To meet the contingency as to entertain an application to condone, even the violation beyond what is prescribed in the Regulation as a one time measure, the Government brought the Amendment Act. The Amendment Act (Tamil Nadu Amendment Act 58/98) was enacted by inserting Section 113-A and



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113-B of Town Planning Act. Under Section 113-A the Government or any officer or authority authorised by the Government, by notification, may on application by order, exempt any land or building or class of lands or buildings developed on or before 28.5.2002, regularise after collecting regularisation fee at such rate not exceeding Rs. 20,000/- per square meter. By that provision only, the planning authority or the Government as the case may be, could derive a power for regularisation. The validity of of the said provision was ultimately upheld by the Supreme Court in Consumer Action Group v. State of Tamil Nadu as a one time measure. Thereafter, the Town and Country Planning (Amendment) Act (Tamil Nadu Act 17 of 2001) was enacted putting off the date for regularisation of the unauthorised constructions to 31st July, 2001 and thereafter the cut off date for regularisation was again extended to 31st March, 2002 by the Tamil Nadu Town and Country Planning (Amendment) Act, 2002 (Tamil Nadu Act 7 of 2002). The validity of the provisions were questioned in the judgment reported in 2006(4) CTC 483. The Division Bench ultimately declared the above Amendment Acts were ultra vires and further ordered that all applications for revised plan and orders passed on such applications are considered to be bad.

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20. Mr. AR. L. Sundaresan, learned senior counsel appearing for the respondents 4 to 8 would contend that inasmuch as the 3rd respondent had already invoked the provisions of Section 49 of the Act for regularisation of unauthorised construction and the Member



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Secretary had rejected the same by order dated 16.8.2005 and the 3rd respondent had preferred an appeal under Section 79 which he has already availed, the entire matter as to regularisation shall be left to the Government for adjudication and decision. We are not inclined to accept the said submission for which we give our own reasons. Firstly, there is no provision under the Town Planning Act empowering the planning authority to entertain an application for regularisation except the Tamil Nadu Amendment Act, 2000 and such benefit would be availed only by such of those individuals who had put up the constructions prior to 28.2.1999 and applied for regularisation prior to 30.6.2002. The construction put up by the 3rd respondent was after 3.12.2003 the date after he was issued with the permission by the Corporation of Chennai and no application for regularisation could be entertained either by the Member Secretary, CMDA or by the Government. Section 49 enables the planning authorities to consider the planning permission and in case of deviation of planning permission granted by the authority, it can entertain an application for revised planning permission and not other wise. Secondly, the 3rd respondent did not make any application for planning permission from the planning authority to enable him to file revised application under Section 49. Thirdly, the planning permission was granted by Commissioner, Corporation of Chennai only and that too to put up ground and first floor and the revised plan was also refused by the Commissioner and the same has become final and lastly, even assuming that the 3rd respondent could file application for permission to a revised plan, his application was belated and could not have been



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entertained by the planning authority. The notice under Section 56 of the Planning Act, was issued on 4.11.2004 calling the 3rd respondent to restore the position of the building in 30 days failing which the building will be demolished. The 3rd respondent could have invoked the provision of Section 49, by making an application in writing within the notice period. Factually, an application under Section 49 was made only on 2.2.2005 much after the notice period. Such application cannot be entertained. Hence, for the disposal of the Writ Petition, neither the order of Member Secretary CMDA dated 16.8.2005 nor the pendency of appeal before the Government can have no bearing.

...

27. The above judgments would show that only such deviation deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the advantage suffered. That apart, if the deviations are grave and serious breach of the licensing provisions or building regulations, such deviations cannot be condoned and the buildings should be demolished.”

It is brought to our notice that the Special Leave Petition preferred against the said judgment dated 29.06.2006 in S.L.P. (Civil) No.16990 of 2006 was dismissed on 12.10.2006.



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15. We are unable to accept the contention of the learned Senior Counsel appearing on behalf of the respondents 5 and 6 that a person can put up an entirely unauthorized construction and thereafter, take advantage of Section 56(3) and seek for retention of the building. If such was the situation, factually, there would have been no necessity for the State to come up with regularisation amendments to the Act. Section 56(3) is not a mode to regularize an entirely unauthorized structure. It is only to enable a person who has deviated, within the permissible limits, to seek for approval of the said deviation. Deviation implies existence of the permission and violation of the same. It does not imply that a person does not apply for permission and yet is emboldened to put the building in brazen violation and disobedience of the Town and Country Planning Act and thereafter, seek a protection of the very same Act to retain the building, which had been put up in violation of the same. The very fact that the respondents 5 & 6 put up a structure and applied under Section 56(3), pending the Writ Petition makes us conclude that the act of construction was deliberate and designed to flout the law.

16. If we were interpreting the Section in the manner in which Mr.B.Saravanan wants us to do, it will lead to a conflict between Section 56(3) and Section 47. It is one of the fundamental principles of interpretation of Statutes



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that Sections have to be read so that one section is not defeated by interpreting another. If Section 56(3) is given the same interpretation as sought for by respondents 5 and 6, it will lead to nullifying Section 47 and Section 49, which is not the purpose of statutory interpretation and therefore it is rejected.

17. We take the support of the view of the Supreme Court in the case of ***Esha Ekta Apartments Cooperative Housing Society Ltd., v. Municipal Corporation of Mumbai [(2013) 5 SCC 357]***, wherein, it is stated as follows:

3. In ***Royal Paradise Hotel (P) Ltd. v. State of Haryana and Ors., (2006) 7 SCC 597***, this Court noted that the construction had been made in the teeth of notices issued for stopping the unauthorized construction and held that no authority administering municipal laws can regularize the constructions made in violation of the Act. Some of the observations made in that judgment are extracted below:

“7. ... Whatever it be, the fact remains that the construction was made in the teeth of the notices and the directions to stop the unauthorized construction. Thus, the predecessor of the appellant put up the offending construction in a controlled area in defiance of the provisions of law preventing such a construction and in spite of notices and orders to stop the construction activity. The constructions put up are thus illegal and unauthorized and put up in defiance of law. The appellant is only an assignee from the person who put up such a construction and his present attempt is to defeat the statute and the statutory scheme of protecting the sides of highways in the



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interest of general public and moving traffic on such highways. Therefore, this is a fit case for refusal of interference by this Court against the decision declining the regularization sought for by the appellant. Such violations cannot be compounded and the prayer of the appellant was rightly rejected by the authorities and the High Court was correct in dismissing the Writ Petition filed by the appellant. It is time that the message goes aboard that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of High Courts to ensure that such definers of law are not rewarded. The High Court was therefore fully justified in refusing to interfere in the matter. The High Court was rightly conscious of its duty to ensure that violators of law do not get away with it.

8. We also find no merit in the argument that regularization of the acts of violation of the provisions of the Act ought to have been permitted. No authority administering municipal laws and other laws like the Act involved here, can encourage such violations. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception. The authorities and the High Court were hence right in refusing the request of the appellant.”



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18. Apart from this, we would also take notice of Rule 15(1) and 12(2) of the Tamil Nadu Combined Development and Building Rules of 2019. The said Rules is of the year 2019, which came into force on 04.02.2019 and was enacted in pursuance of several local body legislations. It was also by virtue of the powers conferred on the Government under Section 32(4) read with Section 122 of the Tamil Nadu Town and Country Planning Act. The said statutory Rules declare under Rule 15(1) that no development shall be in contravention of the Rules. It further states that no land, premises or building shall be **developed, constructed,** altered, reconstructed, sub-divided, amalgamated, reconstituted, laid out or changed or **put to use** and which are not in conformity of the said Rules.

19. We have to take note of the fact that the purchase as well as the construction were after the said rules had come into force. Therefore, the entire building, which is unauthorized, is not only in violation of the Tamil Nadu Town and Country Planning Act, but also in total violation of the Tamil Nadu Combined Development and Building Rules of 2019.

20. If relief is granted to persons, who have in violation of the Act and



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Rule put up a superstructure, it would be the beginning of anarchy. Law does not permit any person to take law into his own hands, thereafter, pleads for mercy from the very authorities, whose permission had not been taken. Had the building been put up with some semblance of permission and there had been violation within permissible limits, we would have agreed with Mr.Saravanan, learned Senior Counsel.

21. In fact, very recently a Division Bench of this Court in ***N.Sankar v. The Principal Secretary (Town and Country Planning) [CDJ 2023 MHC 5337]*** , after analysing the entire law, held as follows:-

“No application for approval after completion of the building can be entertained, as it would amount to putting a cart before a horse.”

The position of law being clear, all we have to do is to apply the same to the facts of the case.

22. Mr.Saravanan, when confronted with this position would bring to the notice a few orders of this Court, stating that this Court has directed to consider the application made under Section 56(3) and therefore, he would plead that since respondents 5 & 6 has applied under Section 56(3) that application should also



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have been considered accordingly.

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23. We have to state that an application, which is not maintainable under the Act, cannot be maintained by an authority or entertainable by virtue of an order in a petition seeking Writ of Mandamus. There cannot be a Mandamus contrary to the Statute. A Mandamus can lie for performance of a statutory duty or when a right is established. Here is a case, where the respondents 5 and 6 are entirely in the wrong and if we were to follow the orders, which are but mere “dispose of representation or application”, we would literally be directing the authority to act contrary to the Statute. Therefore, the order directing “disposal” of the applications filed under Section 56(3) would not come to the rescue of the respondents 5 and 6. This is because the application under Section 56(3) as we have interpreted above, does not permit an entirely unauthorized structure to be regularized.

24. Regularisation is an exception and cannot be the Rule. The Town and Country Planning Authority viz., the fourth respondent has filed a counter that the powers vested to initiate action against unauthorized occupants has been delegated to the first respondent the Thoothukudi Municipality. Having noticed that the entire structure is illegal, all that remains is to issue a Mandamus as sought for.



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25. Therefore, the first respondent is directed to initiate immediate action for demolition of the building. The said action shall be done without reference to the application made under Section 56(3) by the respondents 5 and 6 as the same is not maintainable and it will not be a bar to proceed further in exercise of the statutory powers. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

26. Accordingly, the Writ Petition stands allowed. No costs.

(S.M.S., J.) & (V.L.N., J.)
30.11.2023

NCC : Yes / No
Index : Yes / No
SJ

To

1. The Director of Town and Country Planning,
O/o. the Director of Town and Country Planning,
807, Anna Salai, Chennai – 02.



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