



CRP(MD)No.1827 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.11.2023

PRONOUNCED ON : 24.11.2023

CORAM

THE HONOURABLE **MR.JUSTICE P.B. BALAJI**

C.R.P.(MD)No.1827 of 2018

and

C.M.P.(MD)No.8000 of 2018

1.S.Ramanuja Mohan (Died)

2.S.Ranjani

3.Shanthi

4.Nishanthi

...Petitioners

(P2 to P4 are brought on record the legal heirs of the deceased sole petitioner vide Court order dated 28.04.2023 in CMP(MD)Nos.5005, 5007 & 5009 of 2023 in CRP(MD)No.1827 of 2018.)

/Vs./

1.S.Thangaraj

2.Kovilpatti Municipality,

Rep. By its Commissioner,

Kovilpatti Taluk,

Thootukudi District.

...Respondents

PRAYER:- Petition - filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed in IA No.671 of 2017 in OS No.192 of 2014 dated 04.06.2018 on the file of the Principal District Munsif, Kovilpatti and set aside the same by allowing this civil revision petition.



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For Petitioners : Ms.M.Muthugeethayan

For Respondents : Mr.H.Arumugam (R1)

No appearance (R2)

ORDER

The second defendant in the suit in OS No.192 of 2014 filed for the reliefs of declaration and permanent injunction is the revision petitioner. The second defendant / revision petitioner filed an interim application in IA No.671 of 2017 to reject the plaint, invoking the provisions of Order 7 Rule 11 (d) r/w Section 151 of CPC. The said application was dismissed by the trial Court, as against which the present revision has been preferred. The parties are described as per their litigative status.

2. The brief facts that are necessary to adjudicate the present civil revision petition are as follows:-

(i) The plaintiff and the second defendant are neighbours. The plaintiff proposed to develop his property and applied for planning permission. Sanction was given for construction of ground floor and first floor. However, the second defendant / petitioner objected to the construction of a marriage hall in the first floor, contrary to the permission sanctioned for running a store. The planning



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authorities initiated action against the plaintiff under Sections 205 (1) & (2) and 317 of the Tamil Nadu District Municipalities Act, 1920 and the plaintiff was called upon to show cause as to why action should not be taken for the alleged violations. The second defendant filed a writ petition in WP No.34277 of 2003 impleading the statutory authorities as well as the plaintiff herein, with a prayer seeking for a direction to demolish the offending construction put up by the plaintiff in the first floor. The said writ petition came to be allowed by this Court and a direction was issued to restore the building to its original condition. The plaintiff has further stated that in pursuance of the said order of this Court, the first floor has been pulled down and the ground floor has been retained and status quo ante has been restored in terms of the condition of the building prior to planning permission.

(ii) It is the further case of the plaintiff that the second defendant lodged another complaint against the plaintiff and the authorities issued notices dated 02.09.2013 and 09.08.2014 calling upon the plaintiff to show cause as to why the offending construction in the ground floor should not be demolished. The plaintiff has challenged these notices in the said suit on the ground that notices are null and void and not binding on the plaintiff.



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(iii) Pending the suit, the Municipality, namely, the first defendant filed an application to reject the plaint in I.A.No.1178 of 2014. The trial Court dismissed the said application on 15.11.2014 holding that the suit has to be tried and cannot be rejected at the threshold. Thereafter, the second defendant has taken out an application in IA No.671 of 2017 seeking to reject the plaint on the ground that the suit is an abuse of process of law; the plaintiff has already exhausted all his remedies available under the Statutes; and the suit was nothing but a re-litigation of already contested and closed issues.

(iv) The said application was resisted by the plaintiff stating that cause of action for the suit was only the two notices issued by the Municipality, which have been challenged in the suit. Moreover, the first defendant Municipality filed an application to reject the plaint earlier and the same was dismissed and therefore, the second defendant cannot be allowed to take out a similar application for the issue that has already been decided by the Court.

(v) The trial Court dismissed the said application filed by the second defendant on the ground that the cause of action for the present suit is only the notices issued by the first defendant Municipality, alleging violation of Building



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Rules and moreover, from the Advocate Commissioner's report filed in the trial Court, it is seen that the ground floor walls are old and not of recent origin and in such circumstances, the parties had to let in oral and documentary evidence before deciding as to whether the plaintiff is entitled to the reliefs claimed in the suit.

(vi) Aggrieved by the dismissal of the said application seeking rejection of the plaint, the revision petitioner / second defendant has approached this Court, challenging the order of the trial Court on the grounds that the trial Court failed to see that the suit is not maintainable and is a sheer abuse of process of Court; the plaintiff had already suffered orders of this Court in writ petitions and writ appeals including a contempt petition before this Court and even thereafter, the plaintiff has chosen to approach the Civil Court on the strength of the very same set of facts, which is clearly amounting to re-litigation; the suit challenging the notices issued by the Municipality is not maintainable in law; the trial Court has verbatim copied and pasted the order in IA No.1178 of 2014 dated 15.12.2014 in the present impugned order without applying its mind independently to the several contentions raised by the second defendant / revision petitioner, seeking rejection of the plaint; the plaintiff has unsuccessfully exhausted all his remedies seeking for approval of a revised plan



and no further course of action was available to the plaintiff; the trial Court has failed to consider the orders passed by this Court in WP No.34277 of 2003, which was also confirmed in WA No.1309 of 2004 and the order passed in WP(MD)No.6961 of 2006. The second defendant / revision petitioner has sought for the interim application filed by him seeking for rejection of the plaint to be allowed, by putting forth all these grounds.

3. I have heard the learned counsel appearing for the second defendant / revision petitioner and the learned counsel appearing for the plaintiff / first respondent. I have also perused the records and the various decisions which have been placed by the learned counsel for the parties.

4. The learned counsel appearing for the second defendant / revision petitioner would vehemently contend that the plaintiff has no axe to grind after having lost the earlier litigation before the Division Bench of this Court in writ proceedings. The notices issued by the Municipality were all statutory in character and the same cannot be challenged in a civil Court. Further, he would also contend that there was an express bar in the statute to approach the civil Court in matters of this nature. He would place reliance on the following decisions:-



(i) ***Consumer Action Group, Rep. By its Trustee and others vs. The State of Tamil Nadu, Rep. By its Secretary to Government, Law Department and Others*** reported in **2006 (4) CTC 483**, where the Division Bench of this Court held that no civil Court shall entertain any suit or proceedings in respect of action taken by the CMDA or Corporation in respect of the illegal construction and encroachments on roads and pavements.

(ii) ***P.T.Prabhakar and another vs. The Member Secretary, Chennai Metropolitan Development Authority and Others*** reported in **2006 (5) CTC 449**, where the Division Bench of this Court came down heavily on the authorities regularizing violations and deviations in construction of buildings.

(iii) ***R.Chitralekha vs. Government of Tamil Nadu and Another (WP No.17635 of 2019 dated 05.06.2023)***, where the Division Bench of this Court followed the ratio laid down in ***Consumer Action Group*** case referred to herein supra and held that the building owner was not entitled to regularization; and

(iv) ***C.H.S.Gopi vs. Thiruvottiyur Nagara Vanniyarkula Shakthiriyar Trust and Others (CRP No.9 of 2016 dated 10.07.2023)***, where the learned Single Judge of this Court struck off the suit invoking Article 227 of the Constitution of India. In the said decision, the learned Single Judge, in very similar circumstances, referring to writ proceedings and statutory remedies availed of earlier, held that there is a clear bar of jurisdiction of civil Court and



the civil Court cannot nullify the effect of various orders passed by this Court in writ proceedings.

5. Per contra, the learned counsel appearing for the plaintiff / first respondent would submit that the suit was laid only pursuant to the notices issued by the Municipality at the instigation of the second defendant / revision petitioner and the cause of action for the suit was entirely new, different and not in any way related to the earlier writ proceedings. He would also rely on the decision of the Hon'ble Supreme Court in the case of ***Shiv Kumar Chadha vs. Municipal Corporation of Delhi and Others*** reported in ***1993 (3) SCC 161***, where the Hon'ble Supreme Court held that there is no absolute bar of jurisdiction for a civil Court to entertain matters pertaining to Building violations and deviations. At paragraph 29, the Hon'ble Supreme Court held thus:-

“29.It is well-known that in most of the cities building regulations and bye-laws have been framed, still it has been discovered that constructions have been made without any sanction or in contravention of the sanctioned plan, and such constructions have continued without any intervention. There cannot be two opinions that the regulations and bye- laws in respect of buildings, are meant to serve the public interest. But at the same time it cannot be held that in all circumstances, the authorities entrusted with the demolition of unauthorised



constructions, have exclusive power, to the absolute exclusion of the power of the Court. In some special cases where "jurisdictional error" on the part of the Corporation is established, a suit shall be maintainable. According to us,

(1) The Court should not ordinarily entertain a suit in connection with the proceedings initiated for demolition, by the Commissioner; in terms of section 343 (1) of the Corporation Act. The Court should direct the persons aggrieved to pursue the remedy before the Appellate Tribunal and then before the Administrator in accordance with the provisions of the said Act.

(2) The Court should entertain a suit questioning the validity of an order passed under section 343 of the Act. only if the Court is of Prima facie opinion that the order is nullity in the eyes of law because of any "jurisdictional error" in exercise of the power by the commissioner or that the order is outside the Act."

6. From a reading of the judgment of the Hon'ble Supreme Court, it is clear that in normal circumstances, a suit challenging demolition notice or notice issued under the Tamil Nadu District Municipalities Act, 1920 cannot be entertained. The exception carved out by the Hon'ble Supreme Court are two fold, ie., whether the Court is able to prima facie opine that the order challenged in the suit is nullity in the eye of law, as a result of jurisdictional error in exercise of power by the authority concerned or whether the order is outside the scope of the Act itself.



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7. Reverting back to the facts of the present case, I am unable to see any jurisdictional error committed by the planning authorities. The authorities have found the building to be in deviation of planning permission and building rules and they have thus proceeded to issue the notices, which are under challenge in the suit. The notices issued are also not outside the scope of the Tamil Nadu District Municipalities Act, 1920 or Tamil Nadu Town and Country Planning Act, 1971. Thus, the plaintiff cannot seek shelter under both the exceptions set out by the Hon'ble Supreme Court in the aforesaid decision.

8. Infact, on the contrary, it is seen from the records that this Court has earlier come down very heavily on the plaintiff for the illegal construction put up. In WP(MD)No.6961 of 2006, the plaintiff, in his affidavit filed in support of that writ petition has stated as follows:-

“I submit that I had constructed shops/stores in the above said property and during the year 2002 I applied to the 2nd respondent municipality for granting planning permission and the respondent municipality vide plan sanction No. 250/2002 dated 17 10 2002 granted permission to construct ground + 2 floors and as per the plan, shops were put up in the ground floor and in the first and second floors store rooms were put up Accordingly, as per the sanctioned plan I have constructed ground first and second floors in the above said lands. I submit



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that there is no deviation the construction and I have put up constructions according to the plan leaving the necessary side set backs.”

9. Contrary to such averments in that writ petition, the plaintiff in the present suit has taken a totally divergent stand that he did not demolish the existing ground floor and intends to only put up a first floor over the existing ground floor. This is nothing but a clever ruse attempted by the plaintiff to get over the orders passed by this Court exercising writ jurisdiction.

10. Infact, the plaintiff is guilty of committing perjury, having projected before this Court in a writ petition, where he has stated that in furtherance of planning permission, he has constructed ground + two floors, as per the plan, ie., he has put up shops in the ground floor and in the first and second floors, store rooms were put up. It is also seen that the plaintiff has suffered an order in WP No.34277 of 2003 and was unsuccessful in challenging the same in WA No. 1309 of 2004, where the Hon'ble Division Bench of this Court, while disposing the writ appeal on 07.04.2004, observed that the plaintiff can avail all other remedies available under the Tamil Nadu District Municipalities Act, 1920.

11. It is the admitted case of the plaintiff that subsequent to the dismissal of the writ appeal with the above observations, the plaintiff's revised plan was



also rejected and another revised plan submitted by him was also refused citing building plan violations. The said rejection was challenged by the plaintiff by way of an appeal before the Director of Town and Country Planning and the same came to be dismissed on 14.06.2006. Thereafter, when a show cause notice was issued on 26.07.2006, calling upon the plaintiff to demolish the existing construction in the property and to restore the building to the original condition, the plaintiff filed one another writ petition namely WP(MD)No.6961 of 2006. The said writ petition was however dismissed as withdrawn by the plaintiff on 08.11.2011. Thus it can be seen that the plaintiff has exhausted all his available remedies under the statute.

12. Despite having got an observation from the Hon'ble Division Bench of this Court, the plaintiff has not been able to secure his building. The present notices that have been issued by the first defendant are only invoking powers under the Tamil Nadu District Municipalities Act, 1920. There is a clear bar of jurisdiction of a civil Court under Section 217-N of the Tamil Nadu District Municipalities Act, 1920 and the same is extracted for easy reference:-

“217-N. Civil Courts not to decide questions under this Chapter.- No Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Chapter required to be decided or dealt with by [the State Government or the executive authority, as the case may be].”



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13. Therefore, in light of the above discussion and the express bar of jurisdiction of civil Court as set out in Section 217-N of the Tamil Nadu District Municipalities Act, 1920, coupled with the fact that notices under challenge are neither outside the scope of the Act nor amounting to any jurisdictional error on the part of the issuing authority, the plaintiff cannot maintain the suit under any pretext whatsoever. The suit has to necessarily go.

14. With regard to the contention of the learned counsel appearing for the plaintiff / first respondent that since similar application taken out by the first defendant has been dismissed, the present application cannot be entertained, I am unable to countenance the said submission, when the suit is *ex facie* illegal and barred by the provisions of the Tamil Nadu District Municipalities Act, 1920. I see no reason as to why the second defendant cannot invoke the provisions of the Order 7 Rule 11 of CPC.

15. Moreover, as rightly pointed out by the learned counsel appearing for the second defendant / revision petitioner, the trial Court has not even applied its mind to the grounds raised by the revision petitioner in seeking rejection of the plaint and has chosen to verbatim repeat the very same findings and the



observations made in the earlier application seeking rejection of the plaint filed at the instance of the first defendant Municipality.

16. Further, I also find that when said application filed by the first defendant Municipality was taken up, the revision petitioner was not even a party to the suit. It was later that he sought to implead himself and by order in IA No.1177 of 2014 dated 13.01.2015 alone, the revision petitioner was impleaded as the second defendant in the said suit. Therefore, viewed from this angle also, merely because the application filed by first defendant was dismissed, it will not be a bar to the second defendant to seek rejection of the plaint, when the plaint is alleged to be a sheer abuse of process of law and clearly amounting to re-litigation. Therefore, I am unable to countenance the submission of the learned counsel appearing for the plaintiff / first respondent that there is a bar for entertaining the second application in rejecting the plaint, at the instance of the another defendant.

17. In fine, I find that the order of the trial Court refusing to reject the plaint is perverse, illegal and liable to be set aside. This civil revision petition is allowed. The order in IA No.671 of 2017 in OS No.192 of 2014 dated 04.06.2018 on the file of the Principal District Munsif, Kovilpatti is set aside



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and consequently, the suit in OS No.192 of 2014 stands rejected. There shall be
no order as to costs.

24.11.2023

NCC : Yes/No
Internet :Yes/No
Index :Yes/No
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TO:-

- 1.The Principal District Munsif, Kovilpatti.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B. BALAJI, J.

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Order made in
C.R.P.(MD)No.1827 of 2018

Dated:
24.11.2023