



WEB COPY



W.P.No.731 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.731 of 2020

and

W.M.P.Nos.882, 883 & 8335 of 2020

T.Kandasamy

... Petitioner

Vs.

1.The Commissioner,
Attur Municipality,
Municipal Office Attur,
Salem District.

2.The Assistant Commissioner (Excise),
Salem.

3.The Tahsildar,
Attur.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order dated 28.11.2019 in Na.Ka.No.5405/2019/E1 of the 2nd



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respondent and order dated 13.12.2019 in Na.Ka.No.4686/2018/A5 of the 3rd respondent and quash the same and consequently direct the 3rd respondent to grant building license in respect of the building of the petitioner at D.No.664/20, Kamarajanar Road, Attur Town, Attur Taluk, Salem District.

For Petitioner : Mrs.AL.Ganthimathi
Senior Counsel

For R1 : Mr.B.Anand

For R2 and R3 : Mr.M.Bindran
Additional Government Pleader

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is filed challenging the order passed by the 2nd respondent, dated 28.11.2019, refusing to grant FL3 Licence to the petitioner for running a Bar and the order passed by the 3rd respondent, dated 13.12.2019, refusing to grant building licence for the building put up by the petitioner.



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2. There is no dispute that the petitioner is the absolute owner of the commercial complex put up by him in Survey No.500/8 T.S.50 Ward No.D, Block No.43, Attur Town and Taluk, Salem District. Though the building was constructed in the year 2015, the petitioner is unable to get approval for the basement as well as the 2nd and 3rd Floors which have also been constructed without any building plan permission or approval. In other words, the petitioner after obtaining planning permission for Ground Floor and First Floor, has constructed Basement, 2nd and 3rd Floor without permission or approval.

3. In the counter affidavit filed by the 1st respondent, it is pointed out that the petitioner submitted the building plan for approval for construction of Ground and 1st floor, measuring 4100 sq.ft. each. Whereas, the petitioner has constructed 7189 sq.ft. in the Ground Floor and 6866 sq.ft. in the 1st floor, apart from the basement which was never permitted. Despite the fact that the petitioner did not obtain any planning approval for the basement



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and had no approval for the 2nd and 3rd floors, it appears that the petitioner is running a Hotel in the 1st floor of the building in the name and style of “Rajkrishna Residency”, with an attached Bar, with FL3 Licence. It is in the said circumstances, since the petitioner was unable to get building licence, the renewal application filed by the petitioner for FL3 Licence was rejected by the 2nd respondent by the impugned order, dated 28.11.2019. Thereafter, the application for grant of building licence was also rejected by the 3rd respondent by the impugned proceedings dated 13.12.2019.

4.The petitioner has challenged before this Court the order of the 3rd respondent only on the ground that his application for regularisation is pending consideration.

5.In the counter affidavit filed by the 1st respondent, it is stated that the petitioner, along with his wife, submitted an application for regularisation to the Director of Town and Country Planning, who is not the authority for regularisation under the Regularisation Scheme, 2017. Though the application with enclosures was submitted by the petitioner to the 1st



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respondent on 11.10.2019, it is reported by the 1st respondent that the building plan submitted by the petitioner with regard to Basement, 1st Floor, 2nd Floor and 3rd Floor were not as per the actual construction. The application with enclosures were returned to the petitioner by the 1st respondent on 24.12.2019. Though at the time of filing counter affidavit, the application was not resubmitted by the petitioner, learned counsel appearing for the 1st respondent states that the petitioner has now resubmitted the application and it is in the process of consideration by the 1st respondent. However, it is pointed out that no application for regularisation is pending before the Director of Town and Country Planning.

6.From the facts narrated, it is not difficult for this Court to understand the nature of construction put up by the petitioner in utter disregard to the building plan submitted by the petitioner. Without even seeking for permission to construct Basement, 2nd and 3rd Floors, the petitioner has completed a massive construction on the basis of a building plan approval obtained for Ground + 1 Floor with 4100 sq.ft. in each floor. Having regard to the nature of construction put up by the petitioner, the 1st



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respondent is right that regularisation should also be considered by the Director of Town and Country Planning. Learned Senior Counsel appearing for the petitioner now states before this Court that the petitioner has also applied before the Director of Town and Country Planning for regularisation of building.

7.Considering the fact that the petitioner had already approached the 1st respondent and the Director of Town and Country Planning for regularisation and the 1st respondent has now reported that the application will be considered on merits, this Court is inclined to dismiss this writ petition only with a liberty to the petitioner to pursue his application for regularisation before the 1st respondent and the Director of Town and Country Planning, who may consider the same, purely on merits and in accordance with law, as per the Regularisation Scheme, 2017, or the eligibility of the petitioner to seek regularisation under any other Scheme of Regularisation. Having regard to the conduct of the petitioner, except stating that the 2nd respondent shall not pull down the structure on the ground of unauthorised construction till such time the regularisation



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application is considered and disposed of on merits, the petitioner is not entitled to any other indulgence from this Court. Accordingly, **this writ petition is dismissed** subject to the rider indicated above.

8. Having regard to the fact that the petitioner has put up construction without any building plan permission or approval for Basement, 2nd and 3rd Floors and that there is violation even in Ground and 1st Floors, the petitioner shall not use the building for any purpose till such time he gets building licence. The premises in question shall be kept under lock and seal till such time. However, the petitioner may be permitted to do any maintenance work like painting, etc., with a previous intimation to the 1st respondent, up to 15 days in an year. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
05.01.2024

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Internet : Yes

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Neutral Citation : Yes / No

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