



W.A.Nos.1007 & 1026 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.Nos.1007 & 1026 of 2021
and
CMP.Nos.6356 & 6425 of 2021

The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam,
Nilgiris District.

... Appellant in both W.A's

Vs.

Jansi Kishore

... 1st respondent in
W.A.No.1007 of 2021

M/s.Mistair Realty's Private Limited,
Represented by its Director,
P.Kishore
Having registered Office at
Door No.4, Shalomn Apartments,
No.1, Josier Street,
Nungambakkam,
Chennai - 600 034.

... 1st respondent in
W.A.No.1026 of 2021



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District Collector,
Udhagamandalam.

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The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai.

[R2 & R3 *suo motu* impleaded *vide* court order
dated 07.07.2021 in W.A.Nos.1007 & 1026 of 2021
by MMSJ & RNMJ]

The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai - 600 009.

... Respondents 2 to 4 in both
W.A's

[R4 *suo motu* impleaded *vide* court order dated 17.08.2021
in W.A.Nos.1007 & 1026 of 2021 by MMSJ & RNMJ]

Common prayer: Writ Appeals filed under Clause 15 of Letters Patent to set
aside the order dated 30.11.2020 passed in W.P.Nos.13777 & 13874 of 2020
respectively.

For Appellant : Mr.P.S.Raman
Advocate General
assisted by
Mr.P.Srinivas [in both W.A's]

For R1 : Mr.T.Mohan
Senior Counsel
for Mr.S.Ashok Kumar [in both W.A's]

For R2 to R4 : Mr.T.Chandrasekaran [in both W.A's]

COMMON JUDGMENT



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(Common judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

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Application submitted by the 1st respondent seeking extension of time, to commence the building construction, as per the Building Plan Permission granted was under challenge in the writ proceedings.

2. The writ court allowed the writ petition, which came to be challenged by way of intra-court appeal by the Commissioner, Udthagamandalam Municipality.

3. There is no serious dispute on facts. The 1st respondent submitted application seeking Building Plan Permission, which was originally granted in the year 2007 and 2014 respectively. Admittedly, the 1st respondent had not commenced building construction and consequently the Building Plan Approval lapsed. Subsequently, application seeking extension of time to commence the construction based on the original Building Plan Approval was sought for and rejected by the appellant in the year 2019. The said order came to be challenged in the writ proceedings.

4. Mr.P.S.Raman, learned Advocate General assisted by



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Mr.P.Srinivas, appearing behalf of the appellant in both the writ appeals would submit that under Section 204 of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as 'the Act'), if the construction or reconstruction of any building is not completed within a period specified, permission shall lapse, a fresh application shall be made before the work is continued. Therefore, for all purposes, the Building Plan Permission granted to the respondents in the year 2007 and 2014 become lapsed and there is no provision for granting extension of time to commence the construction based on the original Building Plan Permission granted in the year 2007 and 2014.

5. The learned Advocate General would further submit that Chapter-X-A was inserted by the Tamil Nadu District Municipalities Amendment Act, 1992 with effect from 09.12.1992. Chapter-X-A would apply only to hill stations. Section 217-F denotes **period of license**. Accordingly, every license granted under [Section 217-D or 217-DD] shall be valid for a period of one year from the date on which it is granted and if the construction or reconstruction of a building or the user of agricultural land for non-agricultural purposes, or the engineering, mining or other allied



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operation for which the license is granted, is not commenced within the said period, it shall not be commenced thereafter unless [the State Government or the Executive Authority as the case may be], on application made therefor has extended the period of license.

6. Relying on the above provision, the learned Advocate General would contend that the applications submitted after a period of about 12 years and 5 years respectively cannot be considered and such applications are to be construed as fresh application for the purpose of granting Building Plan Approval. Therefore, applications submitted by the 1st respondent must be considered based on the law prevailing as on the date of application and the 1st respondent cannot seek extension of time to construct the building based on the original Building Plan Approval granted in the year 2007 and 2014 respectively.

7. Mr.T.Mohan, learned Senior Counsel appearing on behalf of the 1st respondent in both the writ appeals would oppose by stating that the 1st



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respondent has not even commenced construction based on the Original Building Plan Approval granted in the year 2007 and 2014. They are law abiding citizen and would proceed with the construction only after obtaining due approval from the competent Authority.

8. Section 217-F would provide that extension application would be entertainable and in the present case, there is no change in law, which would be applicable for grant of Building Plan Permissions. Thus, there is no impediment for the appellant to grant Building Plan Permission by entertaining the extension application submitted by the 1st respondent. As far as the hilly area is concerned, Section 204 has no application and Section 217-F of the Act would apply. Thus, the arguments as advanced by learned Advocate General is running counter to the provisions. Therefore, the writ order is to be confirmed.

9. Mr.Mohan, learned Senior Counsel would further drew the attention of this Court to Section 217-O and submit that Section 204 would



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have no application with reference to hilly areas under Chapter-X-A of the Act. Therefore, the question of treating the extension application as fresh application running counter to the Act. Thus, the findings made by the learned Single Judge is to be approved.

10. We have considered the rival submissions made on behalf of the parties to the *lis* on hand.

11. The issue to be considered by this court is whether the extension application submitted seeking extension of time to commence the construction based on the original Building Plan Approval granted in the year 2007 and 2014 is to be considered or not.

12. Admittedly, the renewal application was submitted by the 1st respondent after a lapse of about 12 years and 5 years respectively. The learned Advocate General would submit that lapse of time would result in treating the application as fresh. However, Mr.Mohan, learned Senior Counsel would oppose by stating that such procedures become unnecessary, since there is no change in law. Therefore, a citizen need not be driven to submit a



fresh application.

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13. The contention is that the rejection order, which is impugned in the writ petition reveals that there is no provision under the Act. When Section 217-F contemplates entertaining extension application, the decision arrived by the appellant is in violation of Section 217-F.

14. Section 204 denotes lapse of permission, which reads as under:

"If the construction or reconstruction of any building is not completed within the period specified, the permission shall lapse and a fresh application shall be made before the work is continued."

15. Section 217-F provides period of license. We have to consider these two provisions to form an opinion, whether an application seeking extension of time is entertainable or not or such applications are to be construed as fresh application for grant of Building Plan Permission.

16. There is no ambiguity under Section 204 that if the construction or reconstruction of building is not completed within a period specified, the



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permission shall lapse and thereafter fresh application alone is entertainable.

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17. Section 217-F, which is applicable to hilly areas would indicate that every license granted shall be valid for a period of one year from the date on which it is granted.

18. If the construction has not commenced within a period of one year, it shall not be commenced thereafter, unless an application made therefor has extended the period of license. Therefore, Section 217-F would unambiguously stipulates that it is only for commencement of building construction and not in respect of the Building Plan Approval, which has been lapsed, in view of Section 204 of the Act. Section 204 would be applicable to all the Municipalities including hilly areas. Section 217-F would be applicable only to hilly areas. The amendment is intended to ensure that the commencement of building construction in hilly areas are made within a period of one year from the date on which it is granted. However, the said period of one year has not been stipulated in section 204. It is abundantly clear that Section 217-F is intended to grant extension only if the building construction has not commenced within a period of one year. If beyond the



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period of one year, no commencement has been made and building permission granted lapsed under Section 204 due to expiry of period specified, then question of entertaining an application for extension of time would not arise at all.

19. Section 217-O speaks about Chapter-X-A to override other laws. Sub-section (1) indicates the provision of this chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act. Therefore, harmonious interpretation of Section 204 and 217-F would be necessary to form an opinion. Under Section 217-DD, Executive Officer namely, Commissioner is empowered to grant license. However, under Section 217-F, every license granted shall be valid for a period of one year from the date on which it is granted. In the present case, the license remained valid only for one year i.e. 21.07.2007 and 14.05.2014 respectively. In the first case, the license lapsed under Section 204 on 20.05.2008 and in the second case, the license lapsed on 13.05.2015. One year period is applicable for commencement of building construction based on the Building Plan Approval. In the event of not commencing the building construction within a period of one year, then an application for extension shall be entertainable



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and if the building is not completed within a period of two years as specified in the building permission, then the permission become lapsed under Section 204 of the Act. Therefore, the Authorities are empowered to entertain extension application for grant of extension of time, if the building construction has not been commenced within a period of one year from the date of Building Plan Approval but construction commenced and not completed within a period of two years, then the Building Plan Approval become lapsed. In respect of lapsed building plan permission, question of entertaining an application for extension of time would not arise at all.

20. Only in cases, where the building construction are not commenced within a period of one year under Section 217-F, application for extension can be entertained and in the present case, admittedly, even after a lapse of five years and twelve years respectively, the building construction has not been commenced. Therefore, application for extension of time is not entertainable as rightly decided by the competent Authority under the Act.

21. Chapter-X-A Building Regulations in Hilly areas have to be read along with the other provisions. Constructive interpretation of Chapter-X-A



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along with other provisions of the Act is imminent. Section 217-F speaks about period of license and not lapse of permission. Therefore, both the provisions are distinct and different and has got applications in different situations as dealt by us in the above paragraphs.

22. In the case of ***RBI v. Peerless General Finance & Investment Co.Ltd.***, reported in ***1987 (1) SCC 424***, the Apex Court held that the principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute.

23. In the case of ***State of U.P v. Manbodhan Lal Srivastava***, reported in ***AIR 1957 SC 912***, it is held that the use of the word "shall" *prima facie* it is mandatory but the Court may ascertain the real intention of the legislature by carefully attending the whole scope of the statute.

24. In view of the facts and circumstances, the application submitted by the 1st respondent in both the writ appeals are directed to be treated as



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fresh application for grant of Building Plan Permission and the same is to be scrutinised by following the due process and appropriate orders are to be passed on merits and in accordance with law. Since there is a long delay, the appellant is directed to process the application and take a decision within a period of three (3) months from the date of receipt of a copy of this order.

25. Accordingly, the impugned writ order dated 30.11.2020 passed in W.P.Nos.13777 & 13874 of 2020 is set aside and the writ appeals stand **allowed**. No costs. Connected miscellaneous petitions are closed.

[S.M.S., J.] [C.K., J.]
27.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Commissioner,
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Udhagamandalam,

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Nilgiris District.

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2. District Collector,
Udhagamandalam.
3. The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai.
4. The Secretary to Government,
Municipal Administration and
Water Supply Department,
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S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN, J.

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Common judgment in
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