



WEB COPY



W.P.No.8565 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.8565 of 2020

Neelavathi
W/o Sundharamurthy .. Petitioner

v.

1. The Commissioner of Municipality
Coonoor Municipality
Coonoor, The Nilgiris

2. The Building Inspector
Coonoor Municipality
Coonoor, The Nilgiris .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records connected with the proceedings of the impugned Notice in A.Ka.No.2/2020 dated 13.05.2020 issued by the 1st respondent quash the same, consequently to direct the respondents to pass appropriate orders in accordance with law on the application for reconstruction of house dated 20.02.2020 made by the petitioner within a time frame stipulated by the Hon'ble Court.



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For Petitioner :: Mr.K.Thilageswaran

For Respondents :: Mr.P.Srinivas

ORDER

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

The petitioner has filed this writ petition praying as follows:-

“To issue a Writ of Certiorarified Mandamus, to call for the entire records connected with the proceedings of the impugned Notice in A.Ka.No.2/2020 dated 13.05.2020 issued by the 1st respondent quash the same, consequently to direct the respondents to pass appropriate orders in accordance with law on the application for reconstruction of house dated 20.02.2020 made by the petitioner within a time frame stipulated by the Hon'ble Court.”

2. The petitioner has admitted putting up construction of a new house.

It is her case that she and her ancestors were in enjoyment of some land in Muthalamman Street, Ottupattarai, Coonoor including a residential house bearing Door No.18. The petitioner has stated in the affidavit that the house was constructed with mud and roofed with zinc sheet and after the structure



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was found dilapidated, the petitioner was forced to repair/reconstruct it before the rainy season. Since there was no other facility like toilet in the old house, it is stated by the petitioner that she has put up a pucca construction now.

3. Strangely, the petitioner, while putting up a new construction, admitted that she has not applied for permission for building a house or for planning approval so far. It is her case that the petitioner was asked to pay a sum of Rs.9,600/- for permission and that the same was paid by the petitioner on 24.02.2020. Despite the petitioner submitting proper application for construction, it is stated by the counsel that the first respondent, by the impugned notice dated 13.05.2020, has directed the petitioner to stop the renovation work and remove the construction within three days.

4. This Court, from the documents, finds that the petitioner had paid a sum of Rs.9,600/- while seeking permission for renovation of the building. The petitioner has demolished the entire mud house and put up a new



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construction with RCC roof. The whole construction was put up by the petitioner without even making necessary application either for site approval or for planning permission or for approval of the plan. It is in the said circumstances, the learned counsel for the respondents submitted that the illegal construction put up by the petitioner cannot be permitted and this writ petition has to be dismissed for want of merits.

5. The respondents have filed a counter affidavit elaborating the details about the nature of construction and the fact that the construction is without obtaining any planning permission as required under Section 217-J of the Tamil Nadu District Municipalities Act, which is applicable to the construction in hill stations.

6. Having regard to the fact that the petitioner has put up the building in a hill station, the petitioner is governed by the special provision, namely, Section 217-J of the Tamil Nadu District Municipalities Act. Without an application being made for permission as required under the statute, the petitioner has filed the above writ petition when the respondents have taken



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appropriate action for stopping the construction and to demolish the construction which is in violation of the statutory provisions. Though this Court has no reason to entertain the writ petition, having regard to the fact that the petitioner has spent substantial money in putting up construction, this Court is of the view that the petitioner's construction, if it is in adherence to the building rules, can be permitted. Though this Court has declined to entertain the plea that several other constructions were permitted without building plan, applying the principle that there can be no equality in illegality, this Court is inclined to dispose of the writ petition in the following lines:-

(i) The petitioner is directed to submit requisite application and seek approval for the building constructed by her with a building plan as per the building put up on the ground within three weeks from the date of receipt of a copy of this order.

(ii) It is also open to the petitioner to file requisite application for regularisation, if the construction is in violation of the building rules, but can be condoned either under the regularisation scheme or as may be permitted under the relevant rules.



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(iii) In case the petitioner fails to make the application as required within a period of three weeks from the date of receipt of a copy of this order, the respondents shall proceed further with the impugned order as if this writ petition is dismissed on merits.

(iv) Till such time the application is processed by the respondents in accordance with law, they shall maintain status quo.

Consequently, W.M.P.No.10355 of 2020 is closed. There shall be no order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
09.01.2024

SS

To

1. The Commissioner
Coonoor Municipality
Coonoor, The Nilgiris
2. The Building Inspector
Coonoor Municipality
Coonoor, The Nilgiris



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S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

SS

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