



W.P.No. 15775 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
And
THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 15775 of 2020

and

WMP.Nos.19609, 19611 of 2020 and 34599 of 2023

M/s. Melur Meadows Alternative Lifestyle Private Limited
Represented by its Director P. Sathyanarayanan,
New No.5, Old No. 24, 1st Main Road,
Kalaimagal Nagar, Ekkattuthangal,
Chennai – 600 032.

...Petitioner

Versus

1. The Deputy Director of Town and Country Planning,
Coimbatore Region, Dr. Nanjappa Road
Coimbatore - 600 018.

2. The President,
Vadavalli Panchayat,
Coimbatore North Taluk,
Coimbatore - 641 697.

...Respondents



W.P.No. 15775 of 2020

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Writ Petition is filed under Article 226 of the Constitution of India prays to issue Writ of Certiorari calling for the records pertaining to the impugned Notice Roc.No.3283/2015CR-4, dated 30.09.2015 of the 1st respondent and quash the same. The additional prayer in the writ petition is to declare that building permit given by second respondent/Panchayat alone is sufficient for the construction put up by petitioners.

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Mrs.S. Anitha
Special Government Pleader

ORDER

[Order of the Court was made by **S.S.SUNDAR, J**]

This Writ Petition is filed for issuance of Writ of Certiorari to quash the impugned Notice in Roc.No.3283/2015CR-4, dated 30.09.2015 issued by the first respondent.

2. Brief facts necessary for disposal of this Writ Petition are as follows:-

The petitioner-Company acquired the property in Vadavalli Village, Coimbatore, comprised in SF No. 204 measuring total extent of



W.P.No. 15775 of 2020

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8.26 acres. The petitioner decided to develop the property by putting up group of residential houses and put up construction after obtaining building plan permit, vide No.6/2008-2009, dated 19.11.2008. The planning permission was issued by the second respondent. According to the petitioner, as per Panchayat Resolution No. 23, dated 18.11.2008, the said building planning permission was issued by the 2nd respondent, pursuant to G.O.(Ms).No. 255, dated 18.08.1997. The petitioner has also stated that he had paid all the necessary charges including the licence fee to the Vadavalli Panchayat before the commencement of the construction.

3. The petitioner has sold the property and most of the buyers are senior citizens. It is the case of the petitioner that they have also applied for renewal of building planning permission which was given in the year 2008, and valid for the period of two years. After commencement of construction in and around 2010, the petitioner states that the building was completed in the year 2010-2011 without any deviation or violation and strictly in adherence to the building plan approval and the conditions appended therein. After constructing about



W.P.No. 15775 of 2020

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100 houses in the property, the petitioner sold most of the units and most of the units are occupied. While so, the President of Panchayat received a communication from Deputy Director of Town and Country Planning, dated 18.04.2011 to the effect that the Panchayat approval without prior approval and technical approval of Town and Country Planning authorities is not valid. Following the same, the Local Body advised the petitioner to apply for plan approval from Town and Country Planning authorities. The petitioner received locking, sealing and demolition notice, dated 25.05.2012, under the pretext that the development is not according to the planning permission and therefore, it is unauthorized. It is the grievance of petitioner that the impugned order does not refer to specific violations of Building regularization or the previous approval granted to the petitioner by the second respondent before developing the land as housing units. It is seen that the second respondent has treated the development unauthorized on the ground that the construction put up at the site is without permission required under Section 47-A of Town and Country Planning Act, 1971. It is contended by the petitioner that the impugned order is in violation of the principles of natural justice. The petitioner has raised a specific ground that the impugned order is



W.P.No. 15775 of 2020

WEB COPY

passed, relying upon Section 47-A of Tamil Nadu Town and Country Planning Act, which is introduced in the year 2011. Stating that the construction put up by the petitioner was pursuant to the building plan approval and permission granted to the petitioner in 2010 and that the construction of the building was completed in terms of approved plan before Section 47-A of the Tamil Nadu Town and Country Planning Act was introduced, the learned counsel for the petitioner states that the impugned order suffers from total non-application of mind, apart from legal *mala-fides*. Despite the fact that the writ petition is pending from 2020, no counter affidavit is filed by the respondents.

4. After hearing the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents, this Court finds that the impugned order is liable to be quashed on the short ground that it is in violation of the principles of natural justice. The fact that the impugned order has been passed even without issuing any show cause notice, would render the impugned order arbitrary and against the principles of natural justice.



W.P.No. 15775 of 2020

WEB COPY

5. Having regard to the facts submitted by the petitioner in the affidavit filed in support of this petition and the submission made by the learned counsel for the petitioner by relying upon under Section 47-A of the Tamil Nadu Town and Country Planning Act, this Court is convinced that the impugned order is not only in violation of the principles of natural justice, but also on the ground that it does not contain the required facts or basis to conclude that action is warranted for violation of Section 47-A of the Tamil Nadu Town and Country Planning Act.

6. It is to be noted that Section 47-A of the Tamil Nadu Town and Country Planning Act, was inserted by way of amendment by Act 46 of 2010. The amendment which came into effect on the publication of the amendment in Tamil Nadu Government Gazette, dated 13.06.2010 is prospective in nature. The statutory requirement and procedure prescribed under Section 47-A will render every construction unauthorized, if it is given retrospective effect. In the present case, the petitioner had applied for permission and obtained plan approval much prior. When the petitioner's application for permission for development



W.P.No. 15775 of 2020

WEB COPY

was in the year 2008, there is no question of applicability of Section 47-A of the Tamil Nadu Town and Country Planning Act.

7. Be that as it may. Under Section 47-A of the Act, every development of land in an area other than planning area, can also be by an application in writing to the local body with the permission in such form containing such particulars accompanying such documents, as prescribed. When the construction was commenced before introduction of Section 47-A, the first respondent may consider as to whether prior approval from the Director of the Town and Country Planning Act, is required. The decision of the respondents should be based on certain facts. This is also possible only when show cause notice is issued and opportunities are granted to the petitioner before taking any coercive action. Therefore, this Court is unable to sustain the impugned order, which is only relying upon Section 47-A of the Tamil Nadu Town and Country Planning Act, 1971, which came into effect after commencement of project.



W.P.No. 15775 of 2020

WEB COPY

8. In view of the facts and circumstances, indicated above, on the short ground that the impugned order is in violation of principles of natural justice and it is arbitrary and unconstitutional, the impugned order is liable to be quashed.

9. As a result, the impugned Notice in Roc.No.3283/2015CR-4, dated 30.09.2015 of the first respondent is hereby quashed. However, it is open to the respondents to initiate proceedings if the development of the project undertaken by the petitioner, is not in adherence to the Regulations or the Rules in force, which are applicable but by observing principles of natural justice.

10. Accordingly, the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R., J] [N.S., J]
10.01.2024

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No



W.P.No. 15775 of 2020

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To

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W.P.No. 15775 of 2020

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and
N. SENTHILKUMAR, J

MSM

W.P.No. 15775 of 2020

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