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W.P.No.14085 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **N.SENTHILKUMAR**

W.P.No.14085 of 2017
and
W.M.P. Nos.15298 and 15299 of 2017

A.P.Shivradja (deceased)

2.Anusuya
3.Premalatha
Petitioners

...

(Petitioners 2 and 3 substituted as LRs
of the deceased sole petitioner vide order
dated 30.08.2023 made in W.M.P.No.22596
of 2023 in W.P. No.14085 of 2017)

Vs.

1.The Government of Pondicherry,
Town and Country Planning Department,
Puducherry.

2.The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomiyampet,
Puducherry.

3.The Pondicherry Town and Country
Planning Board rep. By its
Secretary,
Puducherry Town and Country Planning
Dept., Puducherry.

4.R.Vimala

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent culminating in impugned order dated 15.02.2016 contained in the minutes of the 56th meeting of the third respondent dated 15.02.2016 compounding the deviations and permitting the regularization of the illegal and unauthorised building at Door No.8, 9th Cross Street, Brindavanam, Puducherry, quash the same and direct the respondents 1 to 3 to demolish the deviations and restore the building in accordance with the sanctioned plan.

For Petitioners :	Mr.C.A.Diwakar	
For Respondents :	Mr.J.Kumaran,	
	Addl. Govt.	Pleader
(Puducherry)		
	for R1 to R3	
	Mr.K.Surendranath for R4	
	R5 – left	

ORDER

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

Challenging the order of the third respondent dated 15.02.2016 contained in the minutes of the 56th meeting of the third respondent dated 15.02.2016 compounding the deviations and permitting the regularization of the illegal and unauthorised building at Door No.8, 9th Cross Street, Brindavanam, Puducherry and for a consequential direction to respondents 1 to 3 to demolish the deviations and restore the building in accordance with the



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sanctioned plan, the present writ petition has been filed.

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2. Brief facts that are necessary for the disposal of this writ petition are as follows:

2.1 The second petitioner/wife of the deceased petitioner purchased a plot measuring 1800 sq.ft. and obtained planning permission for construction of two storied residential building. It is stated by petitioner that due to boundary dispute, the deceased petitioner restricted the construction only to ground floor. The fourth respondent in the writ petition is the neighbour of petitioners. The deceased petitioner constructed the house in accordance with the building plan except the new stair case portion which according to the petitioners is on account of the offending construction put up by fourth respondent.

2.2 Fourth respondent who is the neighbour of petitioners appears to have started construction which is being opposed by the petitioners as the construction proposed was without adhering to the rules relating to providing set back. It is the grievance of the petitioners that despite several representations submitted by the deceased petitioner regarding offending construction made by the fourth respondent without leaving any space (side set back), no action has been taken. Therefore, the deceased petitioner filed



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an application under Right To Information Act, 2005 in April 2015 and obtained information that the fourth respondent has put up construction without any approval. Later, the deceased petitioner submitted a representation on 01.07.2015 to the second respondent with a request to take action against the unauthorised construction put up by the fourth respondent. Pursuant to the representation submitted by the deceased petitioner, notice had been issued to the fourth respondent stating that the unauthorised construction should be demolished. However, the fourth respondent continued the construction. It is seen that the fourth respondent has not provided sufficient space as set back. In the representations, the deceased petitioner has pointed out the violation of building regulations. Ultimately, the deceased petitioner's grievance was redressed by the Member Secretary, Puducherry Planning Authority and by proceedings dated 21.07.2015, the second respondent passed an order directing the fourth respondent to demolish the unauthorised construction and restore the building as per approved plan dated 07.10.2014. It was also made clear that in case the fourth respondent fails to demolish the building, further action will be initiated against the fourth respondent as per the Puducherry Building Bye Laws and Zoning Regulations, 2012 and as per the Provisions of the



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Puducherry Town and Country Planning Act, 1969.

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2.3 The order passed by the second respondent was challenged by the fourth respondent before the third respondent/ Board which is the appellate authority. The third respondent after referring to the violations in the construction put up by the fourth respondent has passed a resolution in the following terms:

Extract of the minutes of the 56th Meeting of the Puducherry Town and Country Planning Board held in the conference hall of the Commercial Tax Department, Puducherry on 15-02-2016 at 10.00 A.M.

Case No.53	Tmt.R.Vimala	Building Parameters			
	R.S.No.317/1/A/1, Plot No.25, Door No.8, 9 th Cross Street, Brindavanam, Saram Revenue Village, Oulgaret Municipality, Puducherry	Extent of the site – 167.45 Sq.m.			
		Sl.No.	Parameters	Provided	Permissible/ Required
		1	Coverage	88%	70%
		2	FAR	249.31	180
		3	Height	10.05 m	15 m
		4	Front setback	Nil/0.8 m	3.0 m
		5	Rear setback	Nil	1.5 m
		6	Sides set back	0.47 m 1.15/0.72 m	1.00 m
		7	Parking	30 sq.m.	60 sq. m.

*The Board after detailed deliberations decided to **allow the appeal**. Puducherry Planning Authority may issue approval for three storeyed residential building after compounding the offences of excess coverage/FAR, setback deviation and unauthorized construction of second floor as per the Puducherry Building Bye Laws and Zoning regulations. Board also directed the appellant to remove the balcony projection over the road portion. PPA may ensure the same before issue of building permit.*



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3. The order of the appellate authority viz., third respondent is put to challenge by the petitioner on the ground that the third respondent has passed an order without application of mind and ignoring the fact that the fourth respondent has put up construction without obtaining planning permission. Learned counsel for the petitioner relied upon the judgment of Division Bench of this Court in the case of **Mariadassou Philomene Dominique Marie Anthoinette Vs. Member Secretary, Town and Country Planning Board and Others** reported in **(2019) 2 MLJ 354**, wherein it has been held as follows:

'Disposition:

120. In the light of detailed qualitative and quantitative discussions aforesaid and notwithstanding the plea taken on behalf of the Respondents 1 and 2 that Section 70 (1) of the Puducherry Town and Country Planning Act, 1969 [Act 13 of 1970) permits 'Composition of Offences' either before or after the institution of the proceedings in respect of any offence made punishable by or under this Act etc., this Court is of the considered view that in Law, when an offence is compounded either by an arrangement or settlement, the same will result in an Acquittal of the offender/Accused and as per Section 70(2) of the Puducherry Town and Country Planning Act, 1969, when an offence was compounded and when an offender is in custody, he shall be discharged and that no further proceedings shall be taken against him in respect of an offence compounded. In other words, the Composition/Compounding of an Offence under the Puducherry Town and Country Planning Act, 1969 will restrain a person from being prosecuted, since he had paid the necessary charges. But, in the present case, as regards an Unauthorised Development/Building Violation made or committed by the 3rd Respondent, this Court keeping in mind of the dictum laid down by the Hon'ble Supreme Court between M.I. Builders (P)



Ltd. v. Radhey Shayam Sahu in [\(1999\) 6 SCC 464](#) = [\(1999\) 6 SCC 464](#) : [AIR 1999 SC 2468](#), the unauthorised construction in the subject matter in issue being an illegal one cannot be compounded by any means whatsoever. Even the Puducherry ByeLaw Zoning Regulations, 2012 issued under Section 47 of the Puducherry Town and Country Planning Act, 1969 cannot come to the rescue of Respondents 1 and 2 as well as the 3rd Respondent. If an unauthorised construction/development made by the 3rd Respondent is given the seal of approval by the Respondents 1 and 2 in passing the Impugned Order dated 25.10.2017 and the consequential order 21.11.2017 respectively, then, the same will result in encouraging an illegality or perpetuating illegality and the Court of Law cannot encourage the same in a Democratic Polity, based on the 'Principle of Rule of Law'. Looking at from any angle, the Impugned Order dated 25.10.2017 and the consequential order dated 21.11.2017 do not stand scrutiny in the eye of Law, since they are per se illegal. Viewed in that perspective, the Writ succeeds.

4. Learned counsel for the petitioner submitted that since the construction is unauthorised and the development is also unauthorised even according to the official respondents, there is no scope of regularisation or compounding unauthorised development by fourth respondent.

5. This Court may not concur with the view taken by the Hon'ble Division Bench. If this principle is followed, there is no scope for regularisation even if a Scheme is framed by State Government in public interest. Learned counsel for the fourth respondent submitted before this Court that the second respondent may be directed to consider the building plan



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permission submitted by the petitioner and to pass appropriate orders. He submits that there is a provision for regularisation of unauthorised building. However, learned counsel for the petitioner states that violation regarding adherence to set back cannot be condoned without hearing the objections of the petitioner.

6. Having regard to the submission of learned counsel appearing for the petitioner and the fourth respondent, the **writ petition is disposed of** in the following lines:

6.1 The impugned order passed by the third respondent insofar as the direction to the Puducherry Planning Authority to issue approval for three storied residential building after compounding the offence of excess coverage/FAR, set back deviation and unauthorised construction of second floor as per the Puducherry Building Bye Laws and Zoning Regulations, after compounding the offences or deviations is set aside. However, a direction is issued to the planning authority viz., the second respondent to consider the planning permission submitted by the petitioner strictly in accordance with the building bye laws and regulations applicable to the Union Territory of Puducherry.



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6.2 The petitioner's objections as a neighbour pointing out the violation relating to set back adjacent to his building particularly on the side adjacent to the petitioner's building shall also be considered. In case, there is objection by the petitioner, the same shall be considered strictly in adherence to the regulations and building bye laws without compounding any offence. The second respondent shall pass appropriate orders within a period of twelve weeks from the date of receipt of objections by the petitioner.

No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
29.01.2024

Index : Yes / No
Neutral Citation : Yes / No
mmi

To

- 1.The Government of Pondicherry,
Town and Country Planning Department,
Puducherry.
- 2.The Member Secretary,
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Jawahar Nagar, Boomianpet,
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- 3.The Secretary,
Pondicherry Town and Country
Planning Board,



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**S.S. SUNDAR, J.
and
N.SENTHILKUMAR, J.**

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and

N. SENTHILKUMAR, J.

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

The matter is listed under the caption “for being mentioned”.

2.It is represented that, in the last sentence of the paragraph in Para No.6.1 of the order made in W.P.No.14085 of 2017, dated 29.01.2024, this Court has directed the 2nd respondent to consider the planning permission submitted by the petitioner, instead of 4th respondent.

3.Having regard to the admitted facts, this Court finds that there is an inadvertent mistake. Hence, Para No.6.1 of the order in W.P.No.14085 of 2017, dated 29.01.2024, shall read as follows :

“6.1. However, a direction is issued to the planning authority viz., the second respondent to consider the planning permission submitted by the 4th respondent strictly in accordance with the building bye laws and



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*regulations applicable to the Union Territory of
Puducherry.”*

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S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

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4.Registry is directed to issue fresh copy of the modified order to
the parties.

(S.S.S.R., J.) (N.S., J.)
15.02.2024

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