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W.P.No.35225 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

**W.P.No.35225 of 2023
and W.M.P.No.35208 of 2023**

V.Vijaya

...Petitioner

vs.

- 1.The Union of India,
Rep. by the Chief Secretary to Government,
Government of Puducherry,
Puducherry.
- 2.The Chief Town Planner-cum-Member Secretary,
Town and Country Planning Board,
Town and Country Planning Department,
Government of Puducherry,
Puducherry.
- 3.The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.
- 4.R.Jagadesan
*(R4 impleaded as respondent vide
order of this Court dated 02.04.2024
in W.M.P.No.1220 of 2024)*

...Respondents

Prayer in : Writ Petition filed under Article 226 of Constitution of India,
to issue a Writ of Certiorarified Mandamus to call for the records on the



file of the 3rd respondent relating to the impugned demolition notice dated 20.09.2019 bearing Ref.No.458/PPA/Z(VCP)/2018-19/6192 and order of the 2nd respondent dated 31.10.2023 bearing Ref. No.5232/TCP/Board/JTP(1)/2022-23/990 and the consequential order of the 3rd respondent dated 18.11.2023 bearing Ref.No.458/PPA/Z(VCP)/2018-23/3933 quash the same and consequently direct the 2nd respondent Board to reconsider the appeal of the petitioner and to grant building plan approval to the property situated at R.S.No.229/89, Cadastre No.698Pt, of Villianur Revenue Village, East Sannathi, Villanur Commune Panchayat, Villianur, Puducherry.

For Petitioner : Mr.T.Sai Krishnan

For Respondents : Mr.A.Tamilvanan for R1 to R3
Additional Government Pleader (Pondy.)
Mr.S.P.Sudalaiyandi for R4

ORDER

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

This Writ Petition is filed by the petitioner to quash the impugned notices dated 31.10.2023 and 18.11.2023 respectively passed by the 3rd respondent and to direct the second respondent/Board to reconsider the appeal of the petitioner and to grant building plan approval to the property situated at R.S.No.229/89, Cadastre No.698Pt, of Villianur Revenue Village, East Sannathi, Villianur Commune Panchayat, Villianur, Puducherry.



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2.The petitioner states that she is the absolute owner of the property in R.S.No.229/89, Cadastre No.698Pt, of Villianur Revenue Village, East Sannathi, Villianur Commune Panchayat, Villianur, Puducherry, which is the subject matter of this Writ Petition, by virtue of a registered Settlement Deed dated 01.02.2018 executed by her husband viz., Vaithiyanathan.

3.It is the case of the petitioner that there was a building in the property and her husband executed the Settlement Deed after demolishing the construction and the site was vacant when the Settlement Deed was executed by her husband. Thereafter, the petitioner applied for permission and approval for the plan. However, the petitioner appears to have proceeded with construction even before the building plan approval was granted by the third respondent. It is in the said circumstances, the third respondent issued a demolition notice dated 22.03.2018. Thereafter, the petitioner filed an appeal before the second respondent and the second respondent Board by proceedings dated 29.06.2018 allowed the appeal with a direction to the third respondent to grant approval for the single storeyed residential building in favour of the petitioner after compounding the offence of excess coverage, setback deviation and unauthorized construction as per the Puducherry Building

Bye-laws and Zoning Regulations.

<https://www.mhc.tn.gov.in/judis>



4.The petitioner, pursuant to the order passed by the second respondent dated 29.06.2018, appears to have completed the construction of course with floor violation. The third respondent once again issued a demolition notice dated 20.09.2019 as the construction put up by the petitioner is a three storey building which is unauthorized and is contrary to the planning permission obtained by her. As against the order, the petitioner once again preferred an appeal before the second respondent. When the appeal was pending before the second respondent, the fourth respondent filed a Writ Petition for a direction to direct the official respondents to take appropriate demolition action against the illegal construction made by the petitioner herein.

5.This Court by its order dated 02.08.2022 disposed of the Writ Petition No.579 of 2022 with the following direction:

“Taking note of the fact that an appeal filed by the fifth respondent on 11.04.2018 is pending for consideration before the Chief Town Planner-cum-Member Secretary, Town and Country Planning Board from the year 2018, we hereby direct the official respondents to take up the appeal and to dispose of the same and pass appropriate orders, on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. With the above direction, this writ petition stands disposed of. No costs.”



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6.After the disposal of the Writ Petition, the second respondent by proceedings dated 30.09.2022, passed an order in the appeal in the following lines:

“Kindly refer to the above. In this regard, it is to be informed that all the pending appeal cases with TCP Board including the above said appeal were placed before the TCP Board in its meeting held on 5.8.2022 and after detailed deliberations decided that all the appeal cases and appeals filed as on date & appeals received henceforth may be kept in abeyance and to take up all these appeal cases for scrutiny/disposal after formulation of Scheme for Regulation and Penalisation of Unauthorisedly Constructed buildings and building constructed in deviation to the sanctioned plan.”

Therefore, the appeal for regularizing the building at R.S.No.229/89, East Sannadhi street, Villianur Revenue Village, Villianur Commune, Puducherry will be taken after formulation of Scheme for Regulation and Penalisation of Unauthorisedly Constructed buildings and building constructed in deviation to the sanctioned plan. This may be apprised to the Hon'ble High Court, Madras.”

7.However, the fourth respondent herein probably after taking note of the order passed by the second respondent, filed a Contempt Petition in



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Cont.P.No.2221 of 2023 alleging that the second Respondent has wilfully disobeyed the order passed by this Court in W.P.No.529 of 2022 dated 02.08.2022. After receiving notice in the Contempt, ignoring the earlier order dated 30.09.2022, the second respondent dismissed the Appeal, by passing the order dated 31.10.2023 which reads as follows:

“Your appeal was placed in the meeting of the Puducherry Town and Country Planning Board held on 26.10.2023. The Puducherry Town and Country Planning Board examined the issues and you were also heard during the meeting. The Board after detailed deliberations ordered that the appellant Tmt. V. Vijaya shall vacate the building and the Puducherry Planning Authority shall seal the premises within two months time from 26.10.2023.

You are therefore ordered to comply the above order of the Puducherry Town and Country Planning Board.”

8.After passing the above order dated 31.10.2023, the second respondent and other respondents in contempt addressed a letter to the Government Pleader for the Government of Puducherry for reporting compliance of the order, by citing their order dated 31.10.2023. The second order dated 31.10.2023 is impugned in the present Writ Petition



filed by the petitioner.

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9.Learned counsel appearing for the petitioner submitted that the fourth respondent in the Writ Petition is none else than the brother-in-law of the petitioner. While acknowledging the dispute between the petitioner and the fourth respondent who is her brother-in-law, learned counsel for the petitioner stated that the fourth respondent is behind the impugned proceedings referred to above.

10.This Court may not go into the issues between the parties. However, the fact remains that the fourth respondent has a rival claim and has some issues with the petitioner. Even though, we are unable to find fault with the representations or the submissions made by the learned counsel for the fourth respondent before this Court, we cannot ignore the fact that the second respondent, contrary to the spirit of the earlier order to keep the Appeal pending on account of proposed regularisation, has suddenly passed the impugned order which does not go well with the earlier order. In the present case, we are unable to see any change of circumstances except the filing of contempt petition by the fourth respondent. The petitioner is not made as a party in the Contempt



Petition.

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11. When the second respondent passed the previous order, it is to be noted that there is a reference to the scheme for regularisation, regularizing unauthorized constructions in deviation to the sanctioned plan. Since the formulation of scheme for regularization and penalisation of unauthorized constructions are under process, the second respondent in their wisdom had taken a decision that all the appeals filed as on date in respect of unauthorized constructions should be kept in abeyance and to be taken up only after the formulation of new scheme which is yet to be finalised. However, the impugned order passed ignoring the proposed scheme is unfair and the contentions of the petitioner that the order was passed only in the wake of the contempt petition filed by the fourth are acceptable.

12. Learned Additional Government Pleader (Puducherry) fairly submitted before this Court that the statute itself is amended to introduce a new regularization scheme for regularizing unauthorized constructions.

13. As on date, it is possible for the petitioner to save a substantial



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portion of the construction, on account of the regularization scheme that is likely to be introduced by the Government of Puducherry. Therefore, we are of the view that the impugned order is unfair and it is passed only with a fear of facing contempt at the instance of the fourth respondent. Therefore, this Court allows this Writ Petition and set aside the impugned orders with a direction to the respondents to take appropriate action within a period of three months from the date of finalizing the regularization scheme that is proposed. No costs. Consequently, connected miscellaneous petition is closed.

14.It is open to the fourth respondent to make fresh representation to the respondents if no scheme is introduced within a period of six months. Liberty is also given to the petitioner to approach the Civil Court if he has a rival claim to the land.

(S.S.S.R.,J.) (N.S.,J.)
02.04.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
pam



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To

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2. The Chief Town Planner-cum-Member Secretary,
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S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

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