

(2013) 12 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 17579 of 2013 and M.P. No. 1 of 2013

A. Nithyanandan

APPELLANT

Vs

The Commissioner, Gobichettipalayam Municipality, Dr. D.
Kamaleswari and K. Rajamani

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 1 MLJ 641 : (2014) WritLR 9

Hon'ble Judges : Sathish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : M. Saravanakumar, for the Appellant; P.S. Shivashanmughasundaram, Spl. G.P. for R. 1, Mr. R. Krishnamurthy, for Mr. V. Ayyadurai for R. 2 and Mr. V. Balamurugane for R. 3, for the Respondent

Final Decision : Disposed Off

Judgement

Sathish K. Agnihotri and K.K. Sasidharan, JJ.—The petitioner challenges the notice issued by the Gobichettipalayam Municipality under

sub-sections (1) and (2) of Section 216 of Tamil Nadu District Municipalities Act, directing removal of unauthorised construction, failing which it

was indicated that action would be taken for demolition besides launching prosecution before the Court of law.

The facts:

The property bearing Door Nos. 51 and 53, Modachur Road, Gobichettipalayam, Erode originally belonged to Thiru G.D. Andadurai, father of

the petitioner. The father of the petitioner constructed a building in the year 1971 after obtaining permission from the statutory authority. The

ground floor of the building was given on lease to Canara Bank. Subsequently, in the year 2002, Thiru Andadurai had proposed to construct a

building in the rear portion of the property. The proposal was dropped on account of financial difficulties. The property was later settled in the name of the petitioner.

2. There was a litigation between the petitioner and the Municipality on account of the inaction of the local body and its failure to demolish the illegal construction put up by the second respondent, who is none other than his paternal aunt. Since the Commissioner of the Municipality failed to comply with the order in W.P. No. 31719 of 2012, the petitioner initiated Contempt proceedings in Contempt Petition No. 1246 of 2013. The Commissioner and the second respondent wanted to take revenge and for the said purpose issued the impugned notice to the petitioner alleging construction of a building without planning permission. The petitioner therefore wanted to quash the notice.

3. The Commissioner, Gobichettipalayam in his counter affidavit contended that the plan submitted earlier clearly shows that there was no first floor at that point of time. The present building was constructed after 2002 without obtaining permission. According to the Commissioner, the earlier writ proceedings or the related contempt petition have nothing to do with the action now initiated against the petitioner.

Submissions:

4. The learned counsel for the petitioner contended that the subject construction was put up only in accordance with the sanctioned plan. It was only on account of the litigation initiated by the petitioner against the local body and the second respondent, they have initiated the present proceedings. The learned counsel therefore wanted this Court to impose cost on the first respondent for issuing the illegal notice.

5. The learned Senior Counsel for the second respondent contended that the second respondent was not instrumental in taking action by the first respondent against the petitioner.

6. The learned counsel for the third respondent submitted that the petitioner has constructed the building in violation of the building regulations and as such the Municipality was perfectly correct in taking action.

Analysis:

7. The petitioner has come up with a contention that the existing building bearing Door Nos. 51 and 53 were constructed on the strength of

building permit issued by the Municipality. However, the counter affidavit filed by the local body clearly shows that the father of the petitioner

submitted a plan for approval in the year 2002 to put up additional construction. There was no first floor to the building at that point of time. This

material fact goes against the stand taken by the petitioner. The Commissioner, Gobichettipalayam Municipality has relied on the plan submitted by

the father of the petitioner to disprove his contention. The said contention being one based on documents, cannot be brushed aside easily. Nothing

prevented the petitioner from providing the approved plan before the Municipality so as to enable the authority to inspect the building with

reference to the plan and to satisfy about the legality of the construction.

8. The counter affidavit filed by the Municipality further shows that the second respondent has also constructed a building without planning

permission. The revised plan submitted by her was rejected by the Municipality. The appeal was also rejected. The pendency of prosecution

would not prevent the Municipality from taking action for demolition.

9. The illegal constructions are source of danger to the public at large. It is no longer an individual problem. There should be orderly development

of the Town or City. In case of mushroom growth of buildings without planning permission. It would cause adverse effect on the ecology and the

overall development.

10. The Court cannot be a silent spectator in matters relating to unauthorised construction.

The precedent:-

11. In Friends Colony Development Committee Vs. State of Orissa and Others, , the Supreme Court indicated the need to adhere to the building

regulations. The Supreme Court held:

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of

height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to

pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy

places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place

to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

12. The Supreme Court in *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, observed that illegal constructions have done irreparable harm to the concept of planned development of cities and urban areas.

75. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

13. In case it is proved that the construction put up by the petitioner was unauthorised, necessarily it should be demolished. The construction made by the second respondent is admittedly an illegal construction and the same is evident from the counter affidavit filed by the Municipality. It is to be pointed out here that in spite of the order dated 28 November 2012 in W.P. No.

31719 of 2012, the Commissioner is yet to demolish the construction made by the second respondent. The Commissioner, Gopichettipalayam Municipality is directed to take further action against the construction made by the second respondent pursuant to the order dated 11 June 2013 and complete the process on or before 31 December 2013, failing which, suo motu contempt proceedings would be initiated against the Commissioner. The Commissioner is directed to file a report indicating the steps taken pursuant to our direction before the Registry of this Court by 10 January 2014.

14. The petitioner is given liberty to produce the sanctioned plan before the first respondent. If any such plan is produced on or before 20 December 2013, necessary inspection should be conducted to ascertain the true position. In case, the Commissioner is of the view, after considering the plan and inspecting the construction already made, that the building was constructed without planning permission, he should proceed further in accordance with law. The writ petition is disposed of with the above direction. Consequently, the connected MP is closed. No costs.