

(2017) 05 MAD CK 0013

In the Madras High Court

Case No : 9031 of 2017 and WMP(MD)Nos 6896 and 6897 of 2017

Atthiyadi Sri Thalavai Nallamadasamy Charitable Trust

APPELLANT

Vs

The District Collector/President, Thoothukudi Local Planning
Authority, & Ors.

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

Tamil Nadu Town and Country Planning Act, 1971, Section 107, Section 47(a) -
Tamil Nadu Panchayat Buildings Rules, 1977, Rule 25 -
Tamil Nadu Panchayat Buildings Act, 1977,

Citation : (2017) 05 MAD CK 0013

Hon'ble Judges : M.V.Muralidaran, N.Seshasayee

Bench : DIVISION BENCH

Advocate : M.V.Muralidaran, N.Seshasayee

Final Decision : Allowed

Judgement

1. This writ petition has been filed to issue a writ of Certiorari, calling for the records relating to impugned order of 1st respondent in

Na.ka.No.1958/16,Thi.Li.Ma.3 dated 20.04.2017 and quash the same.

2. We heard Mr.H.Arumugam, learned counsel appearing for the petitioner, Mr.T.R.Janarthanan, learned Additional Government Pleader

appearing for the respondents 1 and 2 and Mr.J.Gunaseelan Muthiah, learned Government Advocate appearing for the 3rd respondent.

3. As the issue involved in the writ petition was already covered by the judgment of the Hon"ble Division Bench of this Court, by consent the writ

petition itself taken up for hearing.

4. It is the case of the petitioner that there is an ancient temple, in the village Ramanujamputhur namely Arulmigu Sri Thalavai Nallamadasamy

Thirukovil. The Temple belongs to Yadava community people residing in the village and other four surrounding villages namely Peikulam, Kulathur,

Acchampadu and Karungadu. During festival and other ritual celebrations Annathanam would be given from the Temple administrative committee

and as well as by the varidhars. They used to give Annathanam by putting temporary pandhal in the road side and in the Temple premises. The

Petitioner Trust was registered in Document No.741/16 before the Sub-Registrar, Srivaikundam. Out of the contribution collected from varidhars,

they purchased the land and decided to construct a hall for giving Annathanam, accordingly after obtaining proper building plan approval and

permission from the 3rd respondent Panchayat the Annadhana Mandapam was constructed and it was also assessed to property tax by the 3rd

respondent. Thereafter the building was put in use by the people of the village and varidhars for giving Annathanam and other ritual festivals in the

Mandapam.

5. On the complaint made by the individuals having grievance of administrative committee of the Temple, the 2nd respondent issued notice dated

07.11.2016 stating that the Annathana Mandapam was constructed without getting approval from them under Section 47(A) of Tamil Nadu Town

and Country Planning Act, 1971. Even after explaining the planning permission granted by the 3rd respondent and the same is in existence the 1st

respondent on 18.04.2017 affixed a notice in the Annathana Mandapam informing to vacate the premises as it is going to be sealed for not

obtaining permission. Subsequently by passing the impugned order in Na.ka.No.1958/16,Thi.Li.Ma.3 dated 20.04.2017 sealed the premises only

by affixing the impugned order in the building.

6. Mr.H.Arumugam, learned counsel appearing for the petitioner submitted that the petitioner Trust has constructed the building after obtaining the

proper building plan approval from the 3rd respondent Panchayat as per Section 4 of Tamil Nadu Panchayat Buildings Rules, 1977 as such the

impugned order issued as if the building was constructed without obtaining building plan approval is wrong. Further the 3rd respondent, who is the

competent authority under Panchayat, has granted plan approval and as such the reason given by the 1st respondent for locking the building is

erroneous. He relied upon Rule 25 of Tamil Nadu Panchayat Buildings Act, 1977

and stated that the petitioner has applied for permission and the 3rd respondent has also given the permission. The Proviso to above rule, casts a duty upon the Executive Authority to consult with the 1st respondent before granting the approval. It is an internal one between the respondents 1 and 3 and the failure shall not affect the right of petitioner. He relied upon the judgment of the Hon''ble Division Bench of this Court in the case of District Collector/Chairman, Local Planning Authority - versus- Daniel Thangaraj, reported in 2013 (2) CWC 321, and submitted that this Court has already settled the issue to the effect that even if the planning permission granted by the Local Authority is not valid, so long as it is in force and not set-aside in a manner known to law, the 1st respondent has no jurisdiction to lock and seal the premises and as such the impugned order and the sealing of premises is erroneous and liable to be setaside.

7. We have perused the records and the typed set of papers, wherein the building plan approval granted by the 3rd respondent Panchayat is produced along with receipt for the assessment of property tax.

8. Mr.J.Gunaseelan Muthiah, learned counsel appearing for the 3rd respondent also, on instructions submitted that the Panchayat has granted permission and the building was already assessed to property tax. The impugned order has been passed on the ground that the petitioner Trust has not obtained building plan permission, without considering the approval granted by the 3rd respondent and without taking any legal steps on the same, if the same is not valid.

9. We have gone through the judgment of this Court in the case of District Collector/Chairman, Local Planning Authority -versus- Daniel Thangaraj reported in 2013 (2) CWC 321, referred supra. This Court has already discussed the issue of authority of the locking and sealing the premises when the Local Authority has granted approval and the building constructed on the basis of the same and ultimately held in Para 13 and 14 of the judgment as follows:-

13. In the facts and circumstances pleaded and the materials produced before this Court, we are not persuaded to take a different view than the one taken by the learned Single Judge. It is a well settled principle of law that even if Planning Permissions obtained by

the First Respondents in these Writ Appeals are not granted as per law, as asserted by the Appellants, the same have to be

cancelled/challenged, in the manner known to law. In the decision reported in *Krishnadevi Malchand Kamathia v. Bombay*

Environmental Action Group, 2011 (3) SCC 363, the Hon'ble Supreme Court considered the necessity to challenge the order, even

if the order/Notification is void or voidable. In paragraphs 16 to 19 the Hon'ble Supreme Court held as follows:

16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not

permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K.*

Kunhikannan Nambiar Manjeri Manikoth Naduvil, 1996 (1) SCC 435: AIR 1996 SC 906; *Tayabhai M. Bagasarwalla v. Hind*

Rubber Industries (P) Ltd. 1997 (3) SCC 443: AIR 1997 SC 1240; *M. Meenakshi v. Metadin Agarwal*, 2006 (7) SCC 470; and

Sneh Gupta v. Devi Sarup, 2009 (6) SCC 194, this Court held that whether an order is valid or void, cannot be determined by the

parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

17. In *State of Punjab v. Gurdev Singh*, 1991 (4) SCC 1: AIR 1991 SC 2219, this Court held that a party aggrieved by the invalidity

of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon

him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC*, 1956 AC 736: 1956 (2)

WLR 888: 1956 All ER 855, wherein Lord Radcliffe observed: (AC pp. 769-70)

... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity (on) its

forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise

upset, it will remain as effective for its ostensible purpose as the most impeccable of orders".

18. In *Sultan Sadik v. Sanjay Raj Subba*, 2004 (2) SCC 377: AIR 2004 SC 1377, this Court took a similar view observing that

once an order is declared non est by the Court only then the judgment of nullity would operate erga omnes i.e., for and against

everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent

jurisdiction /competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/Notification is void/voidable, the party aggrieved by the same cannot

decide that the said order/Notification is not binding upon it. It has to approach the Court for seeking such declaration. The order

may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the Court may refuse to

quash the same on various grounds including the standing of the Petitioner or on the ground of delay or on the doctrine of waiver or

any other legal reason. The order may be void for one purpose or for one person, it may not be so far another purpose or another

person.

14. Applying the above decision to the facts of these cases, and as long as the Planning Permissions granted to the First Respondents

in these Writ Appeals are not cancelled, the Appellants are not entitled to direct the First Respondents/building owners to get

planning approval from the District Collector/Chairman, Local Planning Authority, or, having jurisdiction to pass the order of lock and

seal, except on the ground that the building is construction in violation of the planning approval already granted.

10. As stated supra, admittedly in the present case also the 3rd respondent, who is the authority under Section 4 of Tamil Nadu Panchayat

Buildings Rules, 1977 read with Rule 25 has granted building plan approval and the same is in force till date. As such the impugned order passed

and the consequential lock and seal of building is without jurisdiction. If there is any violation or lack of authority on the part of the 3rd respondent

to grant permission, it is for the appropriate authority to initiate proper proceedings in accordance with law, but without resorting to the same and

cancelling the building plan approval granted the sealing of premises is totally erroneous and without jurisdiction. As such the impugned order is

liable to be set-aside and accordingly set-aside.

11. As the building was locked on the same date of affixing the impugned order in the building, even though many grounds raised regarding proper

non-service of notice as per the procedure contemplated under Section 107 of the Tamil Nadu Town and Country Planning Act, 1971, this Court

does not go in to the same as the impugned order was set-aside on the ground of jurisdiction.

12. In view of the above, the writ petition is allowed and the impugned order is set-aside. In view of the fact that the building is locked and sealed

based upon the impugned order, which is set-aside, the respondents 1 and 2 are directed to remove the lock and seal within a week from the date

of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.