

(1975) 01 MAD CK 0006
In the Madras High Court
Case No : W.A. No. 311 of 1972

Commissioner, Pattukottai Municipality, Thanjavur Dt. APPELLANT
Vs
Chandrasekaran, represented by his guardian and father RESPONDENT
Natanam Chettiar

Date of Decision : 31-01-1975

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 197, 197, 198, 199, 199

Citation : AIR 1976 Mad 50 : (1975) 2 MLJ 251

Hon'ble Judges : Varadarajan, J; Kailasam, J

Bench : Division Bench

Advocate : G. Ramaswami for Mr. R. Balasubramaniam, for the Appellant; K. Alagiriswami, for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—This appeal is preferred by the Commissioner of Pattukottai Municipality against the judgment of Ramaprasada Rao, J. in

W.P. 148 of 1972. The writ petition was filed by minor Chandrasekharan, represented by his father and guardian Natanam Chettiar for the issue

of a writ in the nature of Mandamus or any other appropriate writ directing the respondent-Municipality to forbear from demolishing the

petitioner's building in S. No. 68/A-5 of Pattukottai village. The respondent herein commenced putting up a construction in S. No. 68/A-5 within

the Municipal limits of Pattukottai village. On 4th December, 1970 he applied to the Municipality for permission to put up a godown over the land

and submitted building plans for the purpose. Before sanction of the plan, the respondent started construction on 4th December 1970, and a door

frame on the site was fixed on 15th December 1970. As the respondent had

commenced building without getting a sanction, a notice under S. 216

(1)(i)(a) of the Tamil Nadu District Municipalities Act, dated 19th December 1970, was served on him calling on him to demolish the unauthorised

construction. This notice was acknowledged by him on 22nd December 1970. On 3rd December 1971 the first plan submitted for consideration

was rejected on the ground that there was a violation of the specific building requisition. The respondent applied for a second time for approval of

the site and for further construction and forwarded fresh plans. The second application was made on 5th April 1971. On 21st April 1971, the

provisional order issued under S. 216(1)(i)(a) of the Act calling upon the respondent to demolish the construction was confirmed under S. 216(3).

The second plan submitted by the respondent on 5th April 1971, was also rejected on the ground that the respondent proceeded to construct

without permission and he did not obey the provisional order made under S. 216(1)(i)(a) of the Act. The rejection of the first plan was

acknowledged by the respondent on 24th April 1971. The respondent filed a third plan for sanction of the building plan and approval of the site

and furnished fresh plans on 27th April 1971, but the third plan was returned on 30th April 1971, on the ground that the building would be an

encroachment upon the Government land.

2. It is not in dispute that the site in which the building was sought to be built was kottai poromboke and is Government land. Proceeding for non-

compliance with the direction of the Municipality was taken and the provisional order under S. 216(1) was confirmed under S. 216(3) of the Act.

The respondent was then prosecuted before the Special First Class Magistrate, Pattukottai for an offence under S. 216(1), (2) and (3) and S.

317 of the Act and the case is pending. An appeal was filed by the respondent but no order was passed by the Municipal Council. In the writ

petition the respondent contended that after the Municipality initiated the criminal proceedings as contemplated under the Act, the Municipality is

not entitled to pull down the building as it had no jurisdiction to demolish it by itself. According to the respondent the only course open to the

Municipality for the non-compliance of the direction under S. 216 is to prosecute for an offence under S. 317.

3. Before the learned Judge and before us it was contended that a direction

under S. 216 (1) to (3) to demolish an unauthorised construction, if not complied with, can only be dealt with as an offence punishable under S. 317 and the Municipality cannot on its own force demolish the unauthorised construction. The learned Judge held that the Municipality had the power to prosecute a delinquent person but had no power to enforce the demolition of that building because they did not sanction the plan and in the particular case they could not sanction the plan as the building was sought to be put up in a kottai poromboke. The learned Judge was also of the view that if the Municipality intended to demolish a construction put up within its precincts then it should initially possess the authority to permit such a construction or in the alternative be of the view that the construction is not in accordance with the content of the permission granted by it to build and if it has no power to give such permission to construct then it follows that it has equally no power to direct a demolition of such a structure unless the Act specially empowered it to do so. The learned Judge further observed that as the land in which a building was put up is kottai poromboke, it is not for the municipality to feel aggrieved about it whatever rights the Government may have as against the encroacher and the Municipality cannot take proceedings.

4. Chapter X of the Act deals with building regulations and Ss. 197 to 206 deal with buildings other than huts. S. 197 provides that if any person intends to construct or reconstruct a building other than a hut, he shall send to the executive authority an application in writing for the approval of the site, together with a site plan of the land and an application in writing for permission to execute the work together with a ground plan, elevations and sections of the building, and a specification of the work. S. 199 provides that the construction or reconstruction of a building shall not be begun unless and until the executive authority has granted permission for the execution of the work. S. 216 confers powers on the executive authority to take certain action if the construction or reconstruction of the building had been commenced without obtaining the permission or carried out or completed contrary to the permission granted or any alternative made contrary to the notice issued. He, the authority, may make a provisional order requiring the owner of the building to demolish the work done in order to bring the construction work in conformity with the Act, by-laws or

rules. S. 216(2) requires the executive authority to serve a copy of the provisional order made under sub-S. (1) on the owner of the building

together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

Under sub-S.(3) if the owner fails to show cause to the satisfaction of the Executive authority, the Executive authority may confirm the order with

any modification he may think fit to make, and Such order shall then be binding on the owner. This section, as is seen, enables the executive

authority to require the owner to demolish the work done.

5. S. 317 of the Act enables the Executive Authority to take action against a person who had failed to obey the direction given to him under S.

216 and prosecute him. The person who failed to obey may be fined by the Criminal court upto a sum of Rs. 500 in the case of a building as also a

sum of Rs. 100 for each day during which the offence is proved to have continued after the first day. Thus in addition to action taken under S.

216 by passing an order directing the owner to demolish the work done, criminal prosecution can also be taken.

6. S. 339 which comes under Chapter XVI and relates to power to enforce licensing provisions orders etc., and sub-S.(1) provides that whenever

by any notice, requisition or order under this Act, or under any rule, bylaw or regulation made under it, any person is required to execute any work

or to take any measures or do anything a reasonable time shall be named in such notice, requisition or order within which the work shall be

executed, the measures taken, or the thing done. Under sub-S.(2), if such notice, requisition, or order is not complied with within the time so

named the executive authority may cause such work to be executed or may take any measures or do anything which may, in his opinion, be

necessary for giving due effect to the notice, requisition or order as aforesaid.

7. S. 339 is a general provision which refers to any notice that may be given under the Act or any rule by law regulation to execute any work or to

take any measure or do anything within a reasonable time to be named in such notice. If such notice, requisition or order is not complied within the

time so named, the executive authority may cause such work to be executed or may take any measures or do anything which may, in his opinion,

be necessary for giving due effect to the notice, requisition or order as aforesaid.

S. 339 (2) confers the power on the executive authority to cause such work to be executed or to take measures or do any thing which may, in his opinion, be necessary for giving due effect to the notice etc.

8. Under S. 339a notice and order under the Act was given and reasonable time was also given requiring the respondent to enable him to carry out

the work. The provision of S. 339 has been satisfied; and under S. 339 (2) the executive authorities have the right to cause work to be executed or

to take any measures or do anything which may, in their opinion, be necessary for giving due effect to the notice. The attack of the learned counsel

for the respondent against the legality of the order is that the rules relating to building are found under S. 216 which are special provisions and as the

special provisions always override the general provisions resort could not be made to the general provisions when there are special provisions in

regard to a matter. This contention overlooks the fact that while S. 216 provides for a provisional order requiring the owner to demolish the work

done followed by a final order confirming the provisional order, S. 339 provides steps to be taken when the owner does not comply with the

notice. When the owner neglects to obey the order under S. 216 (3) there could be no further obstruction to the executive authority for taking

action under S. 339. S. 317 relates to prosecution for failure to comply with the order under S. 216. But that does not in any way affect the right of

the executive authority to take action under S. 339 (2).

9. The learned counsel for the respondent relied on a decision of the Bench of this court in *Mayandi v. Madura Municipality* AIR 1941 Mad. 259.

The facts of the case are that the owner applied to the Municipality for sanction on 25th June 1931 to erect a building and on 17th July 1931 the

Sanitary Inspector reported no objection to the erection of the building, but without waiting for the sanction of the Executive Engineer, the appellant

owner commenced the building and completed the work. On 20th July 1931, the executive authority called upon the appellant to submit a plan of

the lay-out of the whole survey number. This requirement was, however, not complied with until 9th May 1932. After the Executive Engineer had

on 20th July 1931 called for a plan of the lay-out of the whole survey number, no further communication was addressed to the appellant until 5th

May 1932; when the Special Officer issued a notice purporting to be pursuant to

Ss. 338 and 339, by which he required the appellant to demolish his building within four days on the ground that it had been erected without municipal licence. On 7th June 1932, the Special Officer sent men to the site for the purpose of demolishing the building and this work was carried out in the presence of officials of the municipality. On the facts the Bench after considering the provisions of S. 216 (1), (2) and (3) held that an order passed under S. 216 (3) would be binding on the owner, for if an order under Sub-S.(3) becomes effective, it can be enforced by virtue of the provisions of S. 339. The learned counsel for the respondent relied on the following passage in the aforesaid Bench decision which runs as follows:½

The Act does not direct any special procedure to be followed for remedying breaches of the law with regard to license's, permissions, registrations, apart from that to be found in the chapter relating to building regulations. Therefore, except in the case of buildings, direct action may be taken under Ss. 338 and 339.

10. We do not find this passage, in any way, helps the respondent for what is stated is that except in the case of buildings, direct action may be taken under S. 339; but in the case of buildings, action would be taken under S. 216 before proceedings were taken under S. 339. This is made specific by the observation, "if an order under sub-S.(3) becomes effective, it can be enforced by virtue of the provisions of S. 339." This decision therefore not only does not support the respondent's contention but clearly negatives his contention.

11. The learned counsel for the respondent also relied on the decision of the Andhra Pradesh High Court in *Kakinada Municipality v. Satyanarayana* 1955-1-An. W.R. 384. In that case the court held that the provisions of S. 216 do not enable the municipality to direct demolition

of a building merely because the building ultimately erected is not in accordance with the approved plan. It held that it is necessary for the municipality, and if the matter comes to the court½ for the court, so satisfy itself whether the building is not in conformity with the Act by-laws, rules, direction or requisition as aforesaid. These observations do not help the respondent, for the decision was based on the facts of that case.

12. In *Kallianikutty Amma Vs. State of Kerala*, the court held that Chapter X of

the Act contains what are called building regulations and so long as that chapter contains provisions as to how contraventions thereof should be dealt with, the Municipality cannot have recourse to the general provisions in S. 338, for such contraventions. In coming to the conclusion the learned Judge relied on the decision of the Bench of this court (already referred to). In *Mayandi Chettiar v. Madurai Municipality* AIR 1941 Mad. 259 but the passage which we have underlined, namely, that proceedings under S. 339 can be taken after action was taken under S. 216 (1) to (3) has not been noticed by the learned Judge. We therefore, find that the three decisions cited by the learned counsel for the respondent do not support his contention.

13. It was next urged that when several persons are allowed to put up buildings in kottai poromboke, the respondent was denied permission. The respondent has alleged in Para 6 of his affidavit that the municipality had declined to grant him permission while various owners were given permission to build about 40 houses in S. No. 68½A 5. This allegation was denied in the counter affidavit. But in the reply affidavit, the respondent had given particulars about 40 houses; but as the municipality had no opportunity to deny the specific allegations, nothing was done further. On the allegations on record we are unable to say that the respondent was discriminated against.

14. We feel, therefore, that under S. 339 the executive authority have the right to cause such work to be executed or to take any measures or do anything which may, in their opinion, be necessary for giving due effect to the notice. Having found so, we asked the learned counsel for the Municipality to inform us whether the building rules had in any way been contravened. The learned counsel informed us that the building rules had not been contravened. The only contravention is that the building is put up on a poromboke. As the building rules have not been contravened, we do not think we would be justified (sic-in interfering ?) with the order of the learned Judge to enable the municipality to demolish the building. In the circumstances, while setting out the position of law so far as the powers of the municipality are concerned, we refrain from setting aside the order of the learned Judge granting a writ directing the Municipality to refrain from demolishing the building, as on the facts that step is not called for. The

only objection is that the building is on a poromboke. It will be open to the Government which will be the affected party to take such steps as are

open to it to redress their grievances if any. The prosecution that is filed by the Municipality will go on and will be disposed of according to law.

With these observations, we dismiss the writ appeal. There will be order as to costs.