

(2014) 02 MAD CK 0160
In the Madras High Court
Case No : W.P. No. 12473 of 2011

Kondumuri Ganikamma

APPELLANT

Vs

Member Secretary, Yanam Planning Authority and Another

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Citation : (2014) 1 LW 946 : (2014) 2 MLJ 385

Hon'ble Judges : Satish K. Agnihotri, Acting C.J.;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. This case is a classic example as to how buildings are constructed in the Union Territory of Puducherry either without proper planning permission or in violation of the planning permit, and the subsequent hectic action to regularize the construction by approaching the Puducherry Town and Country Planning Board (constituted under the Chairmanship of the Minister-in-charge of Town and Country Planning Department), constituted by the Government of Puducherry as an appellate authority u/s 44(2)(B) of the Puducherry Town and Country Planning Act.

The facts:

The petitioner purchased the land in T.S. No. 8/4/1 at Francetippa Village, Yanam, in the Union Territory of Puducherry, by way of a Document No. 146/2010 of Sub-Registrar's Office, Yanam.

2. According to the petitioner, Bhoomipooja was conducted on 2 August 2010. Thereafter, application was preferred for building permit on 17 August 2010 before the Yanam Planning Authority.

3. While so, the Yanam Planning Authority issued a notice dated 9 August 2010 u/s 45(1) of the Town and Country Planning Act, directing the petitioner to stop the work forthwith. Thereafter, the planning authority passed an order of demolition on 23 August 2010. The order was challenged before the Puducherry Town and

Country Planning Board. The appeal was rejected by order dated 4 April 2011. The said order is under challenge in this writ petition.

4. The Member Secretary, Puducherry Town and Country Planning Board in the counter affidavit filed in response to the contentions taken by the petitioner stated that she has constructed a two storied RCC building, after submitting application for construction of a single level AC Shed. The land was earmarked as a park and playground in the master plan. The area is a flood prone area and as such construction activities are permitted. Accordingly, the second respondent justified the enforcement action.

Submissions:

5. The learned counsel for the petitioner contended that there is a serious dispute with regard to the identity of property. The petitioner has constructed only a godown with RCC Roof. Even before passing orders on the application for planning permit, enforcement action was taken by the authorities. The learned counsel wanted the third respondent to conduct survey to decide the identity of property.

6. The learned Government Advocate, Puducherry, submitted that the petitioner has completed the construction without proper planning permit, in a flood prone area. The Planning Authority had therefore rightly taken action for demolition.

Analysis:

7. The petitioner purchased a land in Yanam region. The sale deed contain a statement that there was a shed with asbestos roof in the said land. The affidavit filed in support of the writ petition shows that the petitioner wanted to construct a residential cum commercial building. The petitioner very clearly admitted that the construction activities commenced even before the submission of application for planning permit.

8. The order passed by the Planning Authority and the counter affidavit filed by the Board clearly shows that the petitioner has completed the construction of a commercial building.

9. The Puducherry Legislative Assembly has enacted the Puducherry Town and Country Planning Act, 1969, to provide for the planned development of rural and urban land in the Union Territory of Puducherry. Section 37 of the Act prohibits development without planning permission issued by the appropriate planning authority. Section 38 provides for an appeal to the Town and Country Planning Board against the refusal of permission or grant of permission subject to conditions. Section 44 provides for taking enforcement action for demolition of illegal construction. Section 44(2)(b) provides for a statutory appeal to the Board against the order directing demolition of building.

10. Section 3 of the Act provides for the constitution of Board. The Minister-in-charge of the Town and Country Planning shall be the Chairman of the Board.

The Secretary of the Town Planning Department would be the Vice Chairman. The Board shall consist of five officers including the Senior Town Planner. Rule 4 of the Puducherry Town and Country Planning Rules provide for the qualification and disqualification of membership of the Board. The Board being the creature of the statute has to function within the four corners of the Act and more particularly, u/s 5, which deals with the functions and powers.

11. The Government of Puducherry has notified the Puducherry Building Bye-Laws and Zoning Regulations, 2012. The regulations deal with various types of development and statutory requirements to be complied with before such development.

12. The petitioner was expected to make an application u/s 37 of the Act for prior permission to undertake construction activities. The petitioner after commencing the construction, submitted an application for putting up a single level A.C. Shed. However, she constructed a two storied building and that too in an area earmarked for park and playground. Since the area is stated to be flood prone, the construction activities are not permitted.

13. The petitioner has no respect to the building regulations. The local planning authority issued a stop work notice on 17 August 2010. It was only thereafter, the demolition order was passed.

14. It was represented across the Bar that there is a mushroom growth of illegal constructions in the Union Territory of Puducherry, especially in Puducherry Region. The builders have constructed multi-storied buildings without proper planning permit and without even providing parking area. As a result, the roads are now flooded with vehicles parked in an disorderly manner, making it difficult even for pedestrians to move freely. Those who failed to obtain planning permits from the Planning Authority, managed to obtain it by filing appeals.

15. The development plans are prepared for the orderly development of the city/towns. The illegal constructions in violation of the Zoning Regulations would be a threat to the orderly development of the city. It would also cause environmental problems.

16. The Government and Board have no power under the Act to regularize illegal construction. The Government and the Board have to act within the four corners of the Puducherry Town and Country Planning Act. In case the authorities have exempted illegal buildings from the provisions of the Act and building bye-laws or regularized the illegal constructions, such actions are justiciable. The illegal constructions are a source of danger to the society and public at large. Therefore, it is open even to the neighbours and public to challenge such illegal constructions and regularization, which are not permitted by law.

17. In *Royal Parasdis Hotel (P) Ltd. Vs. State of Haryana and Others*, , the Supreme Court observed that authorities should not encourage violation of building regulations. The Supreme Court further observed:

7. It is time that the message goes aboard that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of the High Courts to ensure that such defied of law are not rewarded. The High Court was therefore fully justified in refusing to interfere in the matter. The High Court was rightly conscious of its duty to ensure that violators of law do not get away with it.

8. We also find no merit in the argument that regularisation of the acts of violation of the provisions of the Act ought to have been permitted. No authority administering municipal laws and other laws like the Act involved here, can encourage such violations. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularisation which is not the rule, but a rare exception.

18. The Supreme Court in *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, observed that the executive must take stringent action to curtail the menace of illegal constructions. The Supreme Court said:

75. Unfortunately, despite repeated judgments by this Court and the 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 with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised 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 unauthorised 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.

19. In *Priyanka Estates International Pvt. Ltd. and Others Vs. State of Assam and Others*, , the Supreme Court once again sounded a note of caution, taking into account large scale unauthorized construction. The Supreme Court said:

55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the

sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.

56. Even though on earlier occasions also, under similar circumstances, there have been judgments of this Court which should have been a pointer to all the builders that raising unauthorised construction never pays and is against the interest of society at large, but, no heed has been given to it by the builders. Rules, regulations and bye-laws are made by Corporations or by Development Authorities, taking in view the larger public interest of the society and it is a bounden duty of the citizens to obey and follow such rules which are made for their benefit. If unauthorised constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. An individual has a right, including a fundamental right, within a reasonable limit, it inroads the public rights leading to public inconvenience, therefore, it is to be curtailed to that extent.

20. The petitioner has constructed a building without planning permission. The area is earmarked as a place for park and playground in the comprehensive development plan. There is no question of permitting construction of a building like this in such reserved area. Moreover, it is stated to be a flood prone area. The authorities have, taking into account the environmental issues and violation of the provisions of the Act, rightly initiated enforcement action. The Board considered the issue once again and rejected the appeal. The judicial review in a case of this nature is very limited. The Court should not exercise its equity jurisdiction to assist those who have no respect to the Planning Regulations.

21. The local planning authority vide notice dated 23 August 2010, granted thirty days time to the petitioner to demolish the illegal construction made in T.S. No. D/3/8 part, Ferry Road, adjacent to River Gowthami Godavari. The Board while dismissing the appeal vide order dated 4 April 2011, directed the local planning authority to demolish the building immediately. This Court while issuing notice on 18 May 2011, granted interim stay till 16 June 2011. The interim order was not extended thereafter. We grant the petitioner time till 13 March 2014 to demolish the building. In case the petitioner failed to demolish the building within the said period, Yanam Planning Authority is directed to implement its order dated 23 August 2010, in its letter and spirit without further delay. The writ petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petitions are also dismissed.