(2006) 03 MAD CK 0296

In the Madras High Court

Case No : Writ Petition No. 7904 of 2005 and W.P.M.P. No. 8545 of 2005 and W.V.M.P. No. 433 of 2005

K.Ve.M. Geeva APPELLANT

Vs

The Commissioner, Kodaikanal Municipality and Another RESPONDENT

Date of Decision : 15-03-2006

Acts Referred:
Tamil Nadu District Municipalities Act, 1920 — Section 217A, 217D, 217J, 217K, 217L

Citation : (2006) 2 MLJ 542

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : AR. L. Sundaresan for G.R. Swaminathan, for the Appellant; G. Sankaran, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyaothimani, J.—Heard the learned Senior Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

2. This writ petition is filed challenging the notice issued by the first respondent dated 16.7.2005. The said notice is issued u/s 217-J of the Tamil Nadu District Municipalities Act. The petitioner has purchased a property in T.S. No. 2, Block No. 27, Ward B, bearing Door No. 11/201, Kodaikanal Town from one Abubackar and his wife Mumtaj through an unregistered sale deed on 4.4.2000.

3. According to the petitioner, the property is a revenue land not vested with the first respondent. The predecessors in title of the petitioner have been paying penalty under the Land Encroachment Act, 1905 and were in continuous possession followed by the petitioner.

4. Further, the case of the petitioner is that the predecessors in title of the petitioner have been in occupation and enjoyment of the property for 30 years along with a house situated therein. Since, the house was very old the petitioner has carried out certain repairs. The case of the petitioner is that he was not

putting up a new house. While so, the first respondent has issued the impugned notice for removal of the additional construction alleged to have been put up by the petitioner on the ground floor to the extent of 7.00m x 2.00m and 4.80m x 3m. Before the impugned demolition notice issued, the persons from the first respondent-municipality have come to the work spot and removed the stones. What was an old building was repaired by the petitioner. The petitioner has not put up a new house. Therefore, there was no question of demolition under the provisions of the Tamil Nadu District Municipalities Act. The petitioner has alleged mala fide against the respondents especially against the second respondent. That apart, it is the case of the petitioner that the respondents have no jurisdiction to issue the said order.

5. The respondents have filed counter affidavit denying the allegations raised by the petitioner. It is the case of the respondent that admittedly, the property is a revenue land and not vested with the first respondent municipality. Eventhough it belongs to Revenue Department, the Government have vested the powers relating to building activities in Kodaikanal Municipal limit to the respondent under Chapter X-A of the Tamil Nadu District Municipalities Act.

6. According to the decision of the Full Bench of this Court any property which is encroachment is liable to be removed. As per Section 217-A of the Tamil Nadu District Municipalities Act which applies to construction in the hilly areas no person can construct or reconstruct a building, etc., within the areas of hill station without a licence granted by the appropriate authority. As per Section 217-J, the Revenue Authority can stop unauthorised construction of building or other allied operation put up in the hill area without proper licence. As per the land survey records, the unauthorised construction of the petitioner is comprised in Ward B Block No. 27, T.S. No. 2 and classified as lake water catchment area. A notice was issued on 16.7.2005 through a registered post to stop unauthorised construction and demolish within three days. The notice served on the petitioner on 28.7.2005 and even after serving it the petitioner has not stopped the construction work. The petitioner has made allegation of mala fide against the second respondent due to the reason that he was also one of the candidates contested for the Election of Municipal Chairman.

7. T.S. No. 27 lies within the area of lake called Gymkhana ground in Kodaikanal and is classified lake water catchment area. Because that in the said area building construction is prohibited as per Kodaikanal Master Plan approved by the Government in G.O. Ms. No. 170, Housing and Urban Development Department on 4.3.1993 and the Kodaikanal lake belongs to Fisheries Department.

8. The construction proceeded by the petitioner was without licence as required u/s 217-D of the Act. As per the Kodaikanal Master Plan, the Tamil Nadu Hill Stations Building Rules, 1993 and Tamil Nadu District Municipalities Act 1920, the respondent municipality is having jurisdiction relating to the building activities in the hill station.

9. A mere payment of property tax and provision of water connection or electricity charge cannot be construed to authorise an unauthorised construction as per the order of the Full Bench of this Court in W.P. No. 1964 of 2005. As per the said order of this Court, the unauthorised construction and encroachment has to be removed. That apart the entire Gymkhana ground area is declared as a Prohibitory Zone and therefore, the additional illegal construction put up by the petitioner is required to be demolished u/s 217-J of the Act.

10. In fact, after the order of this Court in another Division Bench dated 27.2.2004 in W.P. No. 268/2004 directing the removal of encroachment wide publicity was given to all the people when the said publication is in effect, the petitioner has proceeded to put up the construction-unauthorisedly which also amounts to act committed against the Court order.

11. According to the respondents, the impugned notice is within the jurisdiction of the respondent-municipality. It is also when this matter came up in the miscellaneous petition stage, this Court by order dated 27.2.2004 has directed, the Revenue Divisional Officer, Kodaikanal Municipality to inspect the spot and submit a report before this Court after inspecting the building in question in the presence of the petitioner as well as the authorised officers and Commissioner of Municipality. That order was passed due to the reason that there has been a dispute between the petitioner and the respondent-municipality in respect of the construction in question. Accordingly, the Revenue Divisional Officer, Kodaikanal has submitted a report before this Court in R.O.C. No. 4637/2005/A2, dated 15.11.2005, the copy of which is directed to be given to both the learned Counsel appearing for the petitioner as well as the respondents. The report which states that the Revenue Divisional Officer has conducted an enquiry on 14.11.2005 in the presence of the petitioner on the spot and also the Commissioner of Kodaikanal Municipality along with the Town Planning Inspector apart from Town Surveyor and Assessment Inspector. That apart the Tahsildar, Kodaikanal Taluk, and the Village Administrative Officer, Kodaikanal were also present. However, the second respondent Mr. K.C.A. Kuriyan Abraham was not present.

12. According to the report, there is a building with construction situated in T.S. No. 2 in Block 27, Ward B lying in Kodaikanal Municipal limits. It is classified as Government Poramboke with Aeri (lake). The report also says that the building lies at the south Western corner of the above said land, adjoining to the Gymkhana Roads. The report also states that a new basement using rough stones has been laid with two divisions on the front side and with four divisions on left side of the building and the entire building is irregularly covered with tin sheets, which are not intact. The new basement have been filled with mud. Disconnected wiring are also seen near the E.B. metre/main. Ultimately, the report gives the following conclusion:

(i) an old building existed in a corner of T.S. No. 2 of Block 27 of Ward B and the building was having E.B. Service connection bearing No. V. 159 from 27.10.1999.

(ii) All the old walls built with rough stones, except a portion on which the E.B. main/metre is connected have been demolished and new walls with bricks and cement are being built.

(iii) New foundation/basement with rough stones have been laid outside the existing old building.

13. Therefore, the said report in clear terms shows that even though it is an old building prima facie in one portion it was demolished and new walls with bricks and cements are being built and the foundation with rough stones have been laid outside the existing old building. The report prima facie proves that there was an attempt to build up in a portion by the petitioner and therefore the dispute in that regard has been resolved by the report.

14. In the presence of these documents I have heard Mr. A.R.L. Sundaresan, learned Senior Counsel appearing for the petitioner as well as Mr. G. Sankaran, learned Counsel appearing for the respondents.

15. Eventhough, the learned Senior Counsel for the petitioner would not deny the genuineness of the report and admittedly as seen in the report itself the inspection, was conducted by the Revenue Divisional Officer in the presence of the petitioner himself but in any event the learned Senior Counsel would submit that the report could be construed as only effecting repair especially when the building has become very old.

16. The learned Senior counsel would submit, now that the Revenue Divisional Officer''s report has been filed before this Court, the petitioner could be directed to approach the appropriate authority u/s 217-K of the Tamil Nadu District Municipalities Act by filing a review. The learned Senior Counsel would also submit that even as against the review, the petitioner has a right of revision u/s 217-L of the Act and that revision lies to the High Court.

17. On the other hand, the learned Counsel for the respondents, Mr. G. Sankaran would vehemently oppose the said course of action submitted by the learned Senior counsel for the petitioner. According to the learned Counsel for the respondents this Court having exercised its power in directing the Revenue Divisional Officer to inspect and submit a report and accordingly when the report has been submitted clearly finding out the real fact, there is absolutely nothing for the petitioner to either to for review or revision. Otherwise such exercise will only be futile.

18. In any event, according to the learned Counsel for the respondents that the records show that it is Aeri (Lake) Poramboke as it is also confirmed by the Revenue Divisional Officer''s report submitted before this Court and no permission could be granted by anyone for the purpose of putting up any construction even if it is for a repair work.

19. According to the learned Counsel for the respondents, what is challenged in this writ petition is only provisional notice dated 16.7.2005. Subsequently, by a

confirmation order dated 8.8.2005 issued u/s 217-J of the Tamil Nadu District Municipalities Act a final order of demolition has been given confirming the provisional order. Inasmuch as the said final order has not been challenged by the petitioner, the writ petition is liable to be dismissed.

20. The learned Counsel for the respondents would also rely upon the judgment of this Court in Salahudeen Babu Vs. P.T. Prabhakar, Mrs. Nalini Prabhakar, Member Secretary, CMDA and Commissioner, Corporation of Chennai, wherein the Division Bench of this Court has held that the practice of constructing buildings illegally and thereafter seeking regularisation should be deprecated and stopped. The Division Bench has further held that a person who has put up unauthorised construction and thereafter raising a technical plea that he should be permitted to file an appeal cannot obstruct the extraordinary jurisdiction of the High Court to enforce the law of land. Placing reliance of the said judgment the learned Counsel for the respondents would submit that the question of permitting the petitioner now to resort to review or revision will only amount to permitting unauthorised construction in a prohibited area to be perpetuated.

21. To this, the learned Senior Counsel appearing for the petitioner would submit that against the said judgment an appeal has been filed and the SLP is allowed by the Apex Court and the Hon''ble Supreme Court has set aside the said order and remanded back the matter, for disposal of the writ petition which is pending. Therefore, reliance cannot be placed on the said judgment. The learned Counsel for the respondent would also rely upon the judgment of the Supreme Court in Friends Colony Development Committee Vs. State of Orissa and Others, , to support his contention that the illegal and unauthorised construction are to be dealt with very seriously fixing liability and accountability. In that judgment, the Hon''ble Apex Court has given certain directions. The said directions also would include the filing of an affidavit for a compliance, to find out as to how much deviation can be regularised and non-compliance of any direction of the Court shall be construed as contempt. Those directions were in respect of construction put up illegally in Cuttack. Therefore, according to. the learned Counsel for the respondents there is no necessity for driving the petitioner for review or revision which will only perpetuate the unauthorised construction further.

22. As stated above, it is true that the petitioner has got a right of review and revision to this Court u/s 217-K and 217-L of the Tamil Nadu District Municipalities Act. It is also true that the petitioner should have resorted to the said remedy either before filing the writ petition or at least before this Court exercised its powers in directing the Revenue Divisional officer to submit a report after inspection by giving opportunity to the parties. But it remains a fact the report of the Revenue Divisional Officer has revealed prima facie that the petitioner was attempting to put up a new construction in the portion of the old residential house. Moreover as correctly pointed out by the learned Counsel for the respondent that a final order has been passed by the respondent on 8.8.2005.

23. As I have stated above, there is certainly a prima facie conclusion on the basis of the Revenue Divisional Officer report that there has been a new construction attempted in one corner of the entire building even though, further particulars are not available.

24. In view of the same, I am not inclined to interfere with the impugned notice and also the confirmation order stated to have been passed by the first respondent dated 8.8.2005. In view of the same, the Writ Petition deserves to be dismissed and the same is dismissed.

25. In the result, the Writ Petition is dismissed. No costs. Consequently, connected W.P.M.P. and W.V.M.P. are also dismissed.