

**(1992) 11 MAD CK 0065**  
**In the Madras High Court**

Mina Parikh

APPELLANT

Vs

Pondicherry Planning Authority and Others

RESPONDENT

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**Date of Decision :** 30-11-1992

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1993) 1 MLJ 550

**Hon'ble Judges :** Srinivasan, J

**Bench :** Single Bench

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**Judgement**

Srinivasan, J.—The parties in both the cases are the same. The petitioner's husband is the Chairman of a Public Limited Company by name East Coast Steel Limited having factory at Pondicherry. The petitioner applied for planning permission to build a farm house in the outskirts of Pondicherry. The application was made to the first respondent on 23.7.1990. A receipt was issued on the same date for acknowledging the receipt of charges, by the first respondent. On 10.1.1991, the petitioner received an order passed by the first respondent that the Pondicherry Tourism and Development Corporation had clarified that the land is situated in an area earmarked for Tourism Development and the application of the petitioner could not be considered. Immediately, the petitioner sent a reply on 17.1.1991, bringing to the notice of the authority that the building had almost been completed and it would not in any manner obstruct the scenery in the area and it has adequate drainage facilities. He also said that the building was to be used as a farm house where Horticulture operations had commenced and it would not hinder any proposed tourism activity. He completed the building thereafter and was writing to the Pondicherry Tourism Development authority to consider the grant of "no objection". The first respondent issued a notice to the petitioner on 2.9.1991 to the effect that the petitioner's construction was unauthorised and contrary to Section 47(3) of the Pondicherry Town and Country Planning Act and that she should dismantle the same within one month from the date of receipt of the notice caused u/s 44 of the Act. The petitioner sent a reply on 7.9.1991 informing the first respondent that the construction was not

unauthorised as the application for permit was deemed to have been sanctioned because of the relevant Rules. As the petitioner was threatened with another order dated 11.9.1992 by the first respondent u/s 44 of the Act that the building would be demolished, the petitioner filed W.P. No. 14858 of 1992. She prayed for the quashing of the earlier order dated 10.1.1991 made by the first respondent in No. 690/RA/PPA/90-91 and also to issue a writ forbearing the demolition of superstructure.

2. The first respondent filed a counter affidavit and contended that the Rule relating to the deemed sanction of the permit would not apply to this case. According to the respondents, a reply was sent to the petitioner on 10.8.1990, calling upon her to accompany the authorities for a joint inspection of the premises, and for attending to some correction in the plan submitted by the petitioner. It is also stated in the counter affidavit that another letter was issued on 30.10.1990 to make some corrections in that plan, in response to which the petitioner had collected the plans from the respondent's office on 2.11.1990. It is specifically alleged in the counter-affidavit that the plans taken back by the petitioner's representative were not represented after making the corrections. Several other objections are raised by the respondents in the counter affidavit. It is not necessary to refer to all of them at this stage.

3. The petitioner was obliged to file the second W.P. No. 15703 of 1992 on 13.10.1992, on receipt of a notice issued by the first respondent dated 8.10.1992 in No. 690/PDA/RA-II/EC/92-93. In that notice, the first respondent purported to act u/s 45(1) of the Pondicherry Town and Country Planning Act and called upon the petitioner to discontinue the construction of the premises and threatened the petitioner that if she did not comply with the same, the first respondent would with the aid of Police, remove all the persons and the materials from the land. It is the contention of the petitioner that the construction had already been completed and only flooring, painting and compound wall work remained.

4. The first question to be considered is whether the petitioner's application for permit is deemed to have been sanctioned by virtue of Rule 13(2) of the relevant Rules. The said Rule represents the old Rule which was numbered as 15(2). But the language in both the Rules is the same.

5. As per the said Rule, if the planning authority/local authority fails to intimate in writing to the persons, who have given the notice, within 30 days of the receipt of the application of its refusal or sanction the application, plan and specifications shall be deemed to have been sanctioned. However, there is a proviso to the effect that nothing shall be construed to authorise any person to do anything in contravention or against the terms of lease or title of the land or against any other bye-laws or Act operative on the site of the work.

6. It is the contention of the first respondent that on 10.8.1990, a communication was sent to the petitioner herein. The petitioner has categorically

denied receipt of any such communication. Admittedly, the said communication was sent by Ordinary Post. In order to prove the issue of such communication learned Counsel for the first respondent has produced a "thapal" register. The relevant entry relied on by the first respondent in the Register gives the reference number of the communication as No. 690/RA/PPA/90-91. But the copy of communication said to have been issued by the first respondent is a printed card. It bears reference No. 690/Z/RA/90. There is no explanation whatever by the first respondent as to how the difference in the reference number occurred between the copy of the postal register and the copy of the communication. There is absolutely no evidence on record to show that such a communication was issued by the first respondent excepting the card which is printed and which is produced by the first respondent themselves. Apart from that, the next communication which is said to have been issued by the first respondent is 10.1.1991. That letter does not make any reference to the alleged communication of 10.8.1990. If really, the first respondent had issued a communication on 10.8.1990, the first respondent would certainly have referred to the same in the letter dated 10.1.1991. It is not the case of the first respondent that pursuant to the letter dated 10.8.1990, the petitioner attended the first respondent-office for the purpose of joint inspection on making corrections. On the other hand, the stand taken by the first respondent in the communication dated 30.10.1990 is that the petitioner was directed to attend the office of the first respondent to make certain corrections in the plan. The receipt of that communication has been admitted by the petitioner and it is stated by the petitioner that her representative attended the office of the first respondent and rectified the defects pointed out by the first respondent. It is now clearly stated in the reply affidavit filed by the petitioner that the plans which were taken back by the petitioner for rectification were represented in the office of the first respondent on 5.11.1991.

7. The first respondent disputes the representation of the plans. It is stated in the counter affidavit that the plans which were taken by the petitioner's representative were never represented. The said statement is not correct for the following reasons. If the plans had not been represented by the petitioner, there was no necessity for the first respondent to send a communication dated 10.1.1991 that objections had been taken to the application by the Pondicherry Tourism Development Corporation. The first respondent would have simply kept quiet without sending any communication whatever to the petitioner if the latter had not represented the plans. If the petitioner had made any enquiry thereafter it would have been informed that the plan not having been represented there was no valid application to be considered by the first respondent. On the other hand, the communication dated 10.1.1991 proceeds as if the application for permit was very much alive which had to be considered by the first respondent. Apart from that, the communication dated 10.1.1991 did not refer to the return of the plans to the petitioner and the failure of the petitioner to represent the same. If the petitioner had not represented the plans, the first respondent would

have definitely stated in the communication dated 10.1.1991 that the plans had not been represented by the petitioner. Hence, I do not accept the contention of the first respondent that the plans had been taken back by the petitioner's representative and not represented.

8. It is very unfortunate that a statutory authority should rely upon certain documents and claims that communications were sent to the petitioner and, therefore, the petitioner will not be entitled to the benefit of Rule 13(2) of the Rules. In the absence of any proof of such communication having been issued by the first respondent, I have to accept the statement of the petitioner that there was no communication whatever after the filing of the application of the petitioner within the period set out in the Rule. Hence, the rule will apply to the petitioner's application and in law, the petitioner's application is deemed to have been granted. Once the statutory fiction is applied and the petitioner's plan is deemed to have been sanctioned, there is nothing which prevents the petitioner from proceeding with the construction. The only condition imposed by the Rule is that it shall not be in contravention of any terms of lease or title of the land or against any other bye-laws or Act operative on the site of the work. It is not the case of the first respondent that any other bye-laws or Act had been violated or that the terms of lease or title of the land had been violated.

9. It is contended by learned Counsel for the first respondent that the petitioner had not applied for permission for development as required by the rules. According to learned Counsel, even before applying for permission to build, it is the duty of the petitioner to apply for development, but for which there could not have been any application for erecting the building. There is no substance in the contention. It was never the case of the first respondent that the petitioner ought to have in the first instance applied for Development. In none of the communications the first respondent pointed out that in the absence of any communication, the petitioner's application for building permit could not be entertained. If really that was the position, the first respondent would have immediately returned the application stating that without the petitioner getting permission for development of the land, he could not maintain the application for building permit. Once the statutory fiction is applied and in the eye of law, the application for building permit is deemed to have been granted, it implies that all the prior requirements of law have been satisfied. There is no question of first defendant contending that there was no prior permission for development of the land and it is also implied in the grant of permission to erect the building, Hence, there is no substance in the contention.

10. It is next argued that the petitioner ought to have filed an appeal before the appellate authority as per the Rules against the order dated 10.1.1991 in which it was pointed out that the application could not be considered as the land fell within the area earmarked for development under tourism sector by the Pondicherry Tourism Development Corporation. The order dated 10.1.1991 has come into existence long after the statutory fiction has come into force. Once the

permit for building is sanctioned then there is no question of first respondent passing an order stating that the land falls within the area earmarked for development under tourism sector and, therefore, the permission cannot be granted. The permission having already been granted by the statutory fiction, it is not open to the first respondent thereafter to reject the application. Hence, the communication dated 10.1.1991 is, on the face of it unsustainable and it is not necessary for the petitioner to file an appeal in this case. Just because the Rules provide against such an order, the petitioner cannot be prevented from invoking the jurisdiction of this Court under Article 226 of the Constitution of India. The existence of the alternative remedy could only be availed for the purpose of exercising discretion of this Court and it is not a bar to the filing of the petition.

11. It is next contended that the petitioner ought to have filed an appeal against the order directing demolition based on the communication dated 2.9.1991 by the first respondent. Whatever has been stated above with regard to it, the order dated 10.1.1991 will apply to the communication dated 2.9.1991. The order is unsustainable on the face of it as there is statutory sanction under Rule 13(2) of the Act for the application filed by the petitioner.

12. The contention that the petitioner has satisfactorily established that the construction had been completed except for flooring, painting and compound wall work by the time the notice dated 8.10.1992 was issued was received by the petitioner on 10.10.1992 and the construction part of the building was already over. Hence, the notice dated 8.10.1992 is really infructuous. In fact, the first defendant is aware of the proceedings pending in W.P. No. 14858 of 1992 when the notice dated 8.10.1992 was, issued. The first respondent instead of issuing such a notice could have waited for the decision of this Court and issue of such a notice necessitated the filing of the second writ petition.

13. I am convinced that the petitioner has acted lawfully in erecting the superstructure and there is no warrant for notices issued by the first respondent directing demolition of the building. The writ petitions are allowed. The orders passed by the first respondent set out and referred to in the petitions are quashed. There will be no order as to costs.