
(2014) 01 MAD CK 0101

In the Madras High Court

Case No : Writ Petition Nos. 30649 and 33451 of 2013

Mulberry Restaurants Pvt. Ltd.

APPELLANT

Vs

Member Secretary, Coimbatore Local Planning Authority

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Tamil Nadu Town and Country Planning Act, 1971 — Section 56(ii)(a), 57

Citation : (2014) 5 MLJ 77

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

Bench : Division Bench

Judgement

Satish K. Agnihotri and K.K. Sasidharan, JJ.

Introductory:

1. The City of Coimbatore was famous for textile industry before the bifurcation and formation of Tiruppur District. The city is now very much in news for another reason viz., mushroom growth of unauthorized buildings.

The writ petition filed by the developer in W.P. No. 33451/2013 is a classic example of illegal construction inasmuch as the builder who obtained planning permission for constructing 7075 sq. ft. actually constructed an area of 22,275 sq. ft., without leaving open spaces and providing sufficient parking space.

The facts:

2. The petitioner in W.P. No. 33451/2013 (hereinafter referred to as the "builder") obtained planning permission from the local planning authority, Coimbatore, to construct a building at D. No. 15/432, Mettupalayam Road, Coimbatore. The builder, in total deviation of the sanctioned plan, constructed a commercial building without any set back or parking space and entered into a lease agreement with the petitioner in W.P. No. 30649 of 2013 (hereinafter referred to as "tenant"). The tenant took the building for conducting a hotel on a monthly rent of Rs. 5 lakhs, with periodical revision.

The tenant undertook interior decoration work and even before opening the hotel, the building was sealed by the Local Planning Authority, Coimbatore. The order dated 28 October 2013 was initially challenged by the tenant. After hearing the arguments on the side of the tenant and the Planning Authority, we have reserved the matter for judgment on 4 December 2013. It was only thereafter, and more particularly on 10 December 2013, the builder filed the writ petition in W.P. No. 33451 of 2013.

3. The learned counsel for the builder as well as the tenant contended that it was only on account of the fire accident that occurred in a commercial complex at Coimbatore, the Local Planning Authority initiated enforcement action. The learned counsel submitted that the builder constructed only 18,000 sq. ft. The Local body assessed the property and only thereafter, the impugned proceedings were initiated.

Factual Analysis:

4. The building in question was inspected by the Planning Authority and found that as against the sanctioned area of 7075 sq. ft. the builder has constructed 22,275 sq. ft. This only made the Corporation to issue notice dated 2 November 2012 and the impugned notice dated 28 October 2013.

5. The builder has come up with a specific contention that it was only on account of the fire accident at Coimbatore in April 2013, the impugned notice was issued by the Local Planning Authority on 28 October 2013. The said submission is nothing but false in view of the notice issued by the Coimbatore Corporation on 2 November 2012.

6. The Assistant Commissioner, Corporation of Coimbatore, inspected the building. The Corporation found that the construction was made in violation of the building permit and as such, the builder was directed to remove the unauthorized construction within a period of thirty days failing which, it was indicated that action would be taken under Section 56A and 57 of the Town and Country Planning Act. The builder somehow managed to keep the proceedings pending. It was only during the currency of the action taken by the Local Planning Authority, the builder entered into a lease agreement with the tenant. The tenant cannot be heard to say that they were not aware of the illegal construction made by the builder. The tenant should have verified the Completion Certificate issued by the Corporation before taking the building on lease.

7. The property tax assessment made by the Corporation would not amount to regularization of construction. The builder should be in a position to prove that the Corporation inspected the building after completion of construction and issued occupancy certificate and thereafter, assessment was made. The builder managed to keep the enforcement of proceedings pending for months together and obtained an order of assessment in the meantime. That would not go to show that the building was constructed in accordance with the permit.

8. The notice issued by the Corporation dated 28 October 2013 clearly shows the extent of violation. The building permit given to the builder was to construct stilt, first, second and third floor with a total area of 7075 sq. ft. However, the builder constructed a multi-storied building with an area of 22,275 sq. ft. The builder failed to provide the required parking space.

9. The notice was issued on 28 October 2013. The builder wanted to conduct a proxy litigation through the tenant. It was for the said purpose, the builder made the tenant to file the writ petition in W.P. No. 30649 of 2013. It was only when we indicated to the learned counsel for the tenant as to how a writ petition challenging the order under Section 56(ii)(a) is maintainable at the instance of tenant, the builder has filed W.P. No. 33451 of 2013. Therefore, it is very clear that the builder was sitting on the fence awaiting the outcome of the writ petition filed by the tenant.

10. The affidavit filed in support of the writ petition in W.P. No. 33451 of 2013 does not contain any statement that the factual finding recorded by the Local Planning Authority was not correct. The builder has stated that she has constructed a building having an area of 18,000 sq. ft. The builder failed to realize the fact that permission was given only for construction 7075 sq. ft. The violation alleged by the Planning Authority has not been denied. Similarly, the builder failed to produce the building plan and the planning permit before this Court. This shows that the builder is taking the Court for a ride.

11. The building regulations are made only for compliance and not for violation. The Court is concerned only with the decision making process. The parties have no case that the Local Planning Authority was not having the jurisdiction to take action against the builder for gross violation. The materials available on record very clearly shows that the builder flouted the building laws and constructed a massive commercial building in her eagerness to make undue gain. The builder has no concern to the safety and security of the building or the lives of the people.

12. The Fire Service Department, Coimbatore, also has no concern to the security aspect and the same is found from the license given by the Divisional Officer, Fire-Rescue Services, Coimbatore, to the builder, vide order dated 29 December 2012. The authorities under the Tamil Nadu Fire and Rescue Department should first verify the building permit and only thereafter, they should issue fire license. In case the building was constructed in violation of the building permit and there was no completion certificate, fire license should not be issued. Unfortunately, the Divisional Officer, Fire and Rescue Service, Coimbatore, failed to obtain a copy of the planning permit from the developer and the same resulted in issuing fire license on 29 December 2012. We are not in a position to approve the conduct of the Divisional Officer, Fire and Rescue Service, Coimbatore, in issuing fire service license without verifying the approved plan issued by the Local Planning Authority.

13. 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.

14. 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 multistoreyed 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.

15. The builder has no regard to the law of the land. She constructed the building on her own with a firm belief that there would be no opposition from the local body at any point of time. Such builders are not entitled to claim any kind of indulgence from this Court.

16. We are, therefore, of the view that the Local Planning Authority was perfectly correct in issuing the impugned order dated 28 October 2013. It is open to the Corporation to take appropriate follow up action pursuant to the order dated 28 October 2013. In the upshot, we dismiss the writ petitions. No costs. Consequently, connected miscellaneous petitions are dismissed.