

(2003) 01 MAD CK 0105

In the Madras High Court

Case No : Writ Petition No's. 7069, 7070, 9111, 9112, 9970, 9971, 10006, 12396, 12397, 13481, 13482, 14047 and 14048 of 1995 and 663 and 2142 of 1996

P. Sridhar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2003 Mad 216 : (2003) 1 CTC 385 : (2003) 2 LW 220 : (2003) 1 MLJ 583

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : C. Sundaravadivel, B. Ramamoorthy, P. Seshadri and V. Rangarajan, for the Appellant; T. Kokilavani, G.A. for R1 and P. Srinivas, for R2 and R3, for the Respondent

Judgement

V.S. Sirpurkar, J.—This judgment shall dispose of all the writ petitions mentioned above. The petitions have been mostly filed in pair. While

in W.P. Nos.7070, 9111, 14048, 9970, 10006, 13482 of 1995, the constitutional validity of Chapter X-A of the Tamil Nadu District

Municipalities Act (in short "the Act"), consisting of Sec.217-A to 217-Q, and the Tamil Nadu District Municipalities (Hill Stations) Building

Rules, 1993 (in short "the Rules") was challenged on the ground of the provisions being discriminatory and arbitrary and, therefore, contravening

Art. 14 of the Constitution of India; in the other writ petitions, viz. W.P. Nos.7069, 9971, 12396, 14047, 9112, 13481 of 1995 and 663 and

2142 of 1996, the notices issued by the Collector (2nd respondent) for demolition or as the case may be for initiating the enquiry into the legality

or otherwise of the constructions were challenged and a simple Writ of Mandamus was sought for. Since all the writ petitions pertain to the constitutional validity of Chapter X-A of the Act and the challenge to the notices sent by the Collector depends mainly on the question of the constitutional validity of Chapter X-A of the Act, we propose to dispose of all these writ petitions by this common judgment.

2. Chapter X-A, consisting of Secs. 217A to 217Q, was introduced by the Tamil Nadu Act VIII of 1992. This chapter particularly deals with the building regulations in the hill areas. Realising that the ecology and the aesthetic of the hill stations was being marred because of the indiscriminate construction activities, the State Government has introduced this chapter, creating stringent conditions for construction of buildings in the hill areas as also the regulation of the construction activities in hill areas. Various authorities have been created and the powers of those authorities have been defined under the provisions of various sections of the said Act. Even after the introduction of Chapter X-A, the State Government went on to amend the Act and included by that amendment a new provision Sec.217DD. It also amended Sec.217J by the Amendment Act X of 1998.

3. At the out set, learned counsel appearing on behalf of the petitioners, M/s. C. Sundaravadivel, B. Ramamoorthy, P. Seshadri and V. Rangarajan contended that even after the challenge was made to the constitutional validity of Chapter X-A in the year 1995, when most of these petitions were filed, the State Government had come out with an amendment vide Sec.217DD which empowered the Executive authority to deal with the construction or reconstruction of any residential building on any land within the area of the hill station having the plinth area not exceeding 250 sq.mts. in the ground floor or not exceeding 250 sq.mts. in the ground floor and in the first floor in aggregate or in case of improvement or enlargement of the existing residential building, the construction of which does not exceed 250 sq.mts. All the learned counsel were unanimous in their submission that they were not interested in challenging the constitutional validity of Chapter X-A generally or of any of the provisions therein in particular. They have, however, contended that the notices which have been issued by the Collector should be quashed and fresh notices should be ordered to be issued under Sec.217DD of the Act as the power in respect of the residential building not exceeding the area of 250 sq.mts. now

lies with the Executive authority, i.e. the Municipal authorities.

4. Since we do not have to deal with the constitutional validity of Chapter X-A of the Act in view of the submission made by the learned counsel

for the petitioners, we will concentrate only on the contention of the notices issued by the Collector being bad and, therefore, the necessity of those notices being quashed.

5. The contentions of the learned counsel for the petitioners were that in almost all the petitions, the constructions were residential constructions

and were not exceeding the area of 250 sq.mts. and, therefore, such constructions should be dealt with only by the Executive authority, i.e.

Municipal authorities as prescribed in Sec.217DD. Learned counsel pointed out that this section has come by way of an amendment, which has

been introduced during the pendency of the present writ petitions.

6. Learned Government Advocate, however, pointed out that even when the notices were issued by the Collector, the Collector had the authority

to issue such notices as that action was taken under Sec.217J of the Act which could be done only by the State Government then and the State

Government had delegated the powers in favour of the Collector vide Sec.217P. Learned Government Advocate as also the learned counsel

appearing for the Municipal Council pointed out that there was no dearth of authority in the Collector in issuing such notices because of the express

language of Sec.217J under which the Collector is empowered to issue notice to stop the construction/reconstruction activity or to stop the user of

any building or land or to alter or demolish any building or the part thereof or to stop the user of any agricultural land for non-agricultural purpose

or to stop the building, engineering, mining or other allied operations if in the opinion of that authority the construction or reconstruction of the

building or the part thereof, the user of the building or land or the user of any agricultural land for non-agricultural purposes or the carrying out of

the building, engineering, mining or other allied operations was in contravention of any of the provisions of the Act. Learned Government Advocate

points out that in all the notices, the Collector had used this power under Sec.217J and, therefore, there was nothing wrong if the Collector had

issued those notices. It is also pointed out that the order of the Collector can be reviewed by the State Government under Sec.217K and further,

the order of the State Government can be revised under Sec.217L by this Court. From all these, learned Government Advocate points out that

there is no necessity to quash the notices merely because Sec.217DD has been introduced by way of an amendment, empowering the Executive

authority to take action in case of the buildings not exceeding 250 sq.mts. in area.

7. The contention raised by the learned Government Advocate appears to be a correct contention. Merely because Sec.217DD has been

introduced by way of an amendment, it does not divest the Collector of the power if the power of the State Government has been delegated to

him. It will be seen that all the notices pertain to the buildings which are already in existence. The Collector has issued those notices because the

Collector finds prima facie that it is necessary to stop the construction/reconstruction activities or to stop the user of the building or of altering or

demolishing the existing building, etc. However, Sec.217DD operates in a very limited sphere. It pertains to the buildings which are essentially the

"residential buildings" and which do not exceed 250 sq.mts. in plinth area. The purpose of the section is only to empower the Executive authority

for the grant of licence to construct the buildings, which are residential in nature and which are not to exceed 250 sq.mts. in plinth area. There is no

power to deal with an existing building under that provision. If any existing building or any building, the construction of which is in progress, is in

contravention of the norms then, the State Government or the Executive authority, as the case may be, would alone have the power under

Sec.217J. Up to the amendment, which was introduced in the year 1998, this power was only concentrated in the State Government; now that

power is also given to the Executive authority but, that is under Sec.217J. The essential difference between Sec.217DD and Sec.217J, at least in

so far as it concerns the buildings, is that Sec.217DD is in respect of grant of licence to construct the building while Sec.217J is for the purposes of

controlling the constructions already in existence, fully or partly. Therefore, there is nothing wrong if the Collector, in whose favour there is a valid

delegation of power of the State Government, exercises the power under Sec.217J. In all these petitions, the buildings are in existence and,

therefore, in our opinion, there is nothing wrong if the notices are issued by the Collector who had the necessary authority to do so.

8. Learned counsel, however, express that the petitioners were bound to be given the opportunity to be heard by the Collector before acting upon

the show cause notices issued. Learned Government Advocate assures that the Collector shall not proceed unless the Collector gives a full

opportunity to the petitioners to justify their contentions. The Collector shall give such opportunity to the petitioners and would not proceed to

demolish the buildings unless a proper opportunity of being heard is given to the petitioners and if necessary to lead evidence, etc. In pursuance of

the notices issued by the Collector, the petitioners shall report to the Collector on the 1st of March, 2003.

9. With these observations, we dispose of all the writ petitions. Connected W.M.P. Nos.11361, 14494. 11361, 19793, 21620, 22352 of 1995

and 14094, 1093, 3319 of 1996 are closed. No costs.