

(2016) 03 MAD CK 0033

In the Madras High Court

Case No : W.P. No.8530 of 2016 and W.M.P. No.7584 of 2016

Parameswari

APPELLANT

Vs

Commissioner, Coimbatore Corporation Coimbatore District
and others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Coimbatore City Municipal Corporation Act, 1981 — Section 296
Tamil Nadu Town and Country Planning Act, 1971 — Section 49, 56, 79

Citation : (2016) 2 CWC 123 : (2016) 3 MLJ 385

Hon'ble Judges : Satish K. Agnihotri;M. Venugopal, JJ.

Bench : Division Bench

Advocate : K. Doraisamy, Sr. Counsel and P. Saravana Sowmiyan, Advocate, for the Appellant; K. Magesh, Standing Counsel, S.K. Rameshwar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J. - Mr. K. Magesh, learned Standing Counsel, accepts notice for respondents 1 and 2. Mr. S.K. Rameshwar, learned Standing Counsel, accepts notice for the third respondent.

2. The second respondent, viz., the Assistant Commissioner, Coimbatore Corporation, issued notice dated 01 March 2016 to the petitioner, whereby and where under, the petitioner has been called upon to demolish the building in question as the same has been constructed without any permission. The instant writ petition is filed seeking a writ of mandamus forbearing the respondents, their officials and subordinates from initiating any coercive action in respect of the premises bearing Door No.124, DPF Street, Ramasamy Layout, Pappanaickenpalayam, Coimbatore 641 037, till the disposal of the revised plan to be submitted by the petitioner to the first respondent.

3. The learned Senior Counsel appearing for the petitioner, referring to Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 (for short TandP Act,

1971"), would submit that if the building in question has been constructed without permission, the petitioner is entitled to make an application for approval of the plan. Thus, time be granted to the petitioner to submit a revised plan for approval. In the meantime, the notice dated 01 March 2016 be not given effect to.

4. The learned Standing Counsel for the respondent-Coimbatore Corporation would submit that the petitioner is not entitled to submit any revised plan, particularly, when the building was constructed without any permission. In the event, there is any modification in the building which is constructed after proper planning permission, the application is permissible for revised approval. In the case on hand, the entire premises has come up without any approval.

5. We have heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

6. The indisputable facts as evinced from the pleadings and submissions are that the petitioner has constructed a building bearing No.124, DPF Street, Ramasamy Layout, Pappanaickenpalayam, Coimbatore to an extent of 3800 sq.ft, comprising of ground plus two floors and let out the same on lease for commercial purpose. According to the petitioner, the building was constructed in the year 2007 and is also assessed to property tax. On inspection, it was found that the building in question, which was let out for commercial purpose, was never granted any permission. Accordingly, the second respondent has served a notice dated 1st March, 2016, in exercise of power under the provisions of Section 296(1), (2) and 281(1), (2) of the Coimbatore City Municipal Corporation Act, 1981, seeking correction of the building. The petitioner was also called upon to lock and seal the building in question as required under Section 56(2-A) of the TandP Act, 1971, as the petitioner had failed to obtain prior permission as required under the provisions of law. The first respondent Commissioner informed the third respondent that the premises in question was never assessed to any property tax and the building was fully unauthorised.

7. To appreciate the controversy involved in this case, it is proper to extract the relevant rules as under:

"Section 56 of the Tamil Nadu Town and Country Planning Act, 1971:

Power to require removal unauthorised development:

(1) Where any development of land or building has been carried out-

(a) without permission required under this Act; or

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land or building has been duly revoked; or

(d) in contravention of any permission which has been duly modified, the appropriate planning authority may within three years of such development, serve on the owner, a notice requiring him within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice--

(i) in cases specified in clause (a) or (c) above, to restore the land to its condition before the said development took place;

(ii) in cases specified in clause (b) or (d) above, to secure compliance with the permission or with the conditions of the permission, as the case may be.

(2) In particular, any such notice may, for the purposes aforesaid, require,--

(i) the demolition or alteration of any building or works;

(ii) the carrying out on land, of any building or other operations;

(iii) the discontinuance of any use of land or building :

Provided that in case the notice requires the discontinuance of any use of land or building, the appropriate planning authority shall serve a notice on the occupier also.

(2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under sub-section (1) within the time specified therein, the appropriate planning authority if prima facie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under section 49 or appeal under section 79 or any litigation before court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under Section 49 for the retention of the land, or any buildings or works or for the continuance of any use of the land or building to which the notice relates.

(4) (a) The notice (except the cases covered by clause (iii) of sub-section (2) shall not be of any effect pending the final determination or withdrawal of the application

(b) (i) The foregoing provisions of this Chapter shall so far as may be apply to an application made under sub-section (3).

(ii) If such permission applied for is granted on that application, the notice shall not take effect, or if such permission applied for is not granted, the notice shall have full effect, or if such permission is granted for the retention only of some buildings or works, or for the continuance of use of only a part of the land or building, the notice shall not take effect regarding such buildings or works or

such part of the land or building, but shall have full effect regarding other buildings or works or other parts of the land or building, as the case may be.

(5) If within the period specified in the notice or within such period after the disposal or withdrawal of the application for permission, the notice or so much of it as continues to have effect, is not complied with, the appropriate planning authority may,--

(a) prosecute the owner for not complying with the notice; and in case where the notice requires the discontinuance of any use of land or building, any other person, who uses the land or building or causes or permits the land or building to be used in contravention of the notice; and

(b) (i) in the case where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations itself cause the restoration of the land to its condition before the development took place and secure the compliance with the conditions of the permission or with the permission as modified by taking such steps as the appropriate planning authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations; and

(ii) the appropriate planning authority concerned may recover the cost of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

Section 296 of the Coimbatore City Municipal Corporation Act, 1981:

Demolition or alteration of building or well-work unlawfully commenced, carried on or completed.

(1) If the Commissioner is satisfied-

(i) that the construction or reconstruction of any building or well-

(a) has been commenced without obtaining the permission of the Commissioner or where an appeal or reference has been made to the standing committee, in contravention of any order passed by the standing committee; or

(b) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based; or

(c) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or by-law made under this Act or of any rule or by-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or by-laws; or

(ii) that any alterations required by any notice issued under section 282 have not been duly made; or

(iii) that any alteration of, or additions to, any building or any other work made or done for any purpose, in to or upon any building has been commenced or is being carried on or has been completed in breach of Section 295, he may take a

provisional order requiring the owner or the builder or the occupier to demolish the work done, or so much of it, as in the opinion of the Commissioner has been unlawfully executed, or to make such alterations as may, in the opinion of the Commissioner be necessary to bring the work into conformity with the provisions of the Act, rules, bylaws, direction or requisition as aforesaid or with the plans or particulars on which such permission or order was based, and may also direct that until the said order is complied with the owner or builder or the occupier shall refrain from proceeding with the building or well.

(2) The Commissioner shall serve a copy of the provisional order made under sub-section (1) on the owner or the occupier of the building or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner or the occupier fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order with any modifications he may think fit to make such order shall then be binding on the owner or the occupier."

8. On perusal of the afore-stated provisions, it is evident that Section 56 of the TandP Act, 1971 read with Section 296 of the Coimbatore City Municipal Corporation Act, 1981 contemplate prior permission before commencement of construction. In the event there is slight deviation or modification, the owner of the building, who has obtained permission to commence construction, may make an application under the provisions of Section 56(1)(d)(ii) of the TandP Act, 1971. Sub Section (2-A) of Section 56 of TandP Act, 1971 provides that if the owner or occupier of the land or building has not been discontinued within the time specified, the appropriate planning authority may take action to discontinue the use of such land or building by locking and sealing the premises irrespective of pendency of any application under Section 49 or an appeal under Section 79 of TandP Act, 1971. Section 56(3) of TandP Act, 1971 provides that any person aggrieved by such notice may apply for permission under Section 49 of the TandP Act, 1971 for retention of the land or any building or works. All these provisions are applicable only in a case where there is slight modification or deviation in the building already constructed with prior permission of the competent authority under law.

9 The Supreme Court in Friends Colony Development Committee v. State of Orissa and others, (2004) 8 SCC 733, held as under :

"21.The conduct of the builder in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built-up area on each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorised. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one. Probably he was under the impression that he would

be able to either escape the clutches of the law or twist the arm of the law by some manipulation. This impression must prove to be wrong.

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

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25. Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

10. The Supreme Court in *Shanti Sports Club v. Union of India*, (2009) 15 SCC 705 observed that the executive must take stringent action to curtail the menace of illegal construction and it was held as under :

"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."

11. In *Priyanka Estates International (P) Ltd v. State of Assam*, (2010) 2 SCC 27, the Supreme Court once again sounded a note of caution, taking into account large scale unauthorised construction and it was observed as under :

"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 invades the public rights leading to public inconvenience, therefore, it is to be curtailed to

that extent."

12. The Senior counsel appearing for the petitioner has failed to point out any provision of law, which permits commencing, completion of construction, leasing out of the building without permission and then, seeking for approval of the unauthorised building subsequently after a long period. Indisputably, the entire construction is fully unauthorised, illegal, dehors the planning regulations and permission and without sanction of law. It appears that the petitioner has no regard to the law of the land, as, for construction of a building in any planned area, proper permission is required. In such event, the petitioner does not deserve any sympathy to continue with the illegal construction.

13. The petitioner has been given a notice to bring the land in question to its original condition within 30 days. If the same is not done within 30 days, it is open to the respondent Corporation to demolish the construction being illegal and bring the land to its original position.

14. Resultantly, the writ petition stands dismissed with the afore-stated direction. Costs made easy. Connected W.M.P. is closed.