
(2012) 10 MAD CK 0176

In the Madras High Court

Case No : Writ Petition (MD) No. 12613 of 2010 and M.P. (MD) No. 1 of 2011

P.T. Chellapandian

APPELLANT

Vs

The Executive Officer and The Assistant Engineer

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Citation : (2013) WritLR 598

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M.V. Venkataseshan, for the Appellant; D. Gandhiraj for Respondent-1 and Mr. S.M.S. Johny Basha for Respondent-2, TNEB, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioner prays for issuance of a Writ in the nature of Certiorari, to quash the impugned order Na. Ka. No. 75/2010-2011, dated 01.10.2010, issued by the first respondent cancelling the Town Planning Permission granted to the petitioner. Before going to the facts of the case, it is necessary to note down the provisions of the Act dealing with the planning permission:

197. Application to construct or reconstruct building:--(1) If any person intends to construct or reconstruct a building other than a but, he shall sent to the (executive authority)-

(a) an application in writing for the approval of the site, together with a site plan of the land; and

(b) an application in writing for permission to execute the work together with a ground plan, elevations and sections of the building and a specification of the work.

(Explanation.-- "Building in this subsection shall include a wall or fence of

whatever height bounding or abutting on any public street.)

(2) Every document furnished under sub-section (1) shall contain such particulars and be prepared in such manner as may be required under rules or by laws.

198. Necessity for prior approval of site;-- The (executive authority) shall not grant permission to construct or reconstruct a building unless and until he has approved of the site on an application made u/s 197.

199. Prohibition against commencement of work without permission:--The construction or reconstruction of a building shall not be begun unless and until the (executive authority) has granted permission for the execution of the work

200. Period within which executive authority is to signify approval or disapproval:-- Within thirty days after the receipt of any application made u/s 197 for approval of a site or of any information or further information required under rules or by-laws, the (executive authority) shall by written order either approve the site or refuse on one or more of the grounds mentioned in Section 203 to approve the site.

201. Period within which (executive authority) is to grant or refuse to grant permission to execute work:-- Within thirty days after the receipt of any application made u/s 197 for permission to execute any work or of any information or of documents or further information or documents required under rules or by-laws, the (executive authority) shall by written order either grant such permission or refuse on one or more of the grounds mentioned in Section 203 to grant it:

Provided that the said period of thirty days shall not begin to run until the site has been approved u/s 200.

202. Reference to council if (executive authority) delays grant or refusal of approval or permission:--(1) If, within the period prescribed by Section 200 or Section 201, as the case may be, the (executive authority) has neither given nor refused his approval of a building site, or his permission, to execute any work, as the case may be, the council shall be bound, on the written order whether such approval or permission should be given or not.

(2) If the council does not, within one month from the receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given; and the applicant may proceed to execute the work, but no so as to contravene any of the provisions of this Act or any rules or by laws made under this Act.

203. Grounds on which approval of site for, or licence to construct or reconstruct building, may be refused:-- The only grounds on which approval of a site for the construction or reconstruction of a building or permission to construct or reconstruct a building may be refused are the following, namely:--

- (1) that the work, or use of the site for the work or any of the particulars comprised in the site plan, ground plan, elevations, sections or specification would contravene some specified order, rule, declaration or by-law made under any law;
- (2) that the application for such permission does not contain the particulars or is not prepared in the manner required under rules or by-laws;
- (3) that any of the documents referred to in Section 197 have not been signed as required under rules or by-laws;
- (4) that any information or documents required by the (executive authority) under rules or by-laws has or have not been duly furnished;
- (5) that streets or roads have not been made as required by Section 175; or
- (6) that the proposed building would be an encroachment upon (Government or municipal land).

Whenever the (executive authority) or the council refuses to approve a building-site for a building or to grant permission to construct or reconstruct a building, the reasons for such refusal shall be specifically stated in the order or resolution

204. Lapse of permission:-- If the construction or reconstruction of any building is not completed within the period specified, the permission shall lapse and a fresh application shall be made before the work is continued.

205. Power of executive authority to require alteration of work:-- (1) If the (executive authority) finds that the work-

(a) is otherwise than in accordance with the plans or specifications which have been approved; or

(b) contravenes any of the provisions of this Act or any by-law, rule, order or declaration made thereunder, he may, by notice, require the owner of the building within a period stated either-

(i) to make alterations as may be specified in the said notice with the object of bringing the work into conformity with the said plans or provisions, or

(ii) to show cause why such alterations should not be made.

(2) If the owner does not show cause as aforesaid, he shall be bound to make the alterations specified in such notice.

(3) If the owner shows cause as aforesaid, the (executive authority) shall, by an order, cancel the notice issued under sub-Section (1), or confirm the same subject to such modifications as he may think fit.

206. Stoppage of work endangering human life:-- Notwithstanding anything contained in any one of the preceding sections, the (executive authority) may, any time, stop the construction or reconstruction of any building if in his opinion

the work in progress endangers human life.

Wells

207. Application of certain sections to wells:-- The provisions of Section 197, Section 198, Section 199, Section 204, Section 205 and Section 206 shall (not apply to water works and sewerage works within the meaning of the (Chennai) Metropolitan Water Supply and Sewerage Act, 1978)(Tamil Nadu Act 28 of 1978)

Huts

208. Application to construct or reconstruct butts:--(1) Every person who intends to construct or reconstruct a but shall sent to the (executive authority)-

(a) an application for permission to execute the work; and

(b) a site-plan of the land.

(2) Every such application and plan shall contain the particulars and be prepared in the manner required by rule or by-law

209. Prohibition against commencement of work without permission:-- The construction or reconstruction of a hut shall not be begun unless and until (executive authority) has granted permission for the execution of the work on an application sent to him u/s 208.

210. Period within which executive authority is to grant or refuse to grant permission to execute the work:-- Within fourteen days after the receipt of any application made u/s 208 for permission to construct or reconstruct a hut or of any information or plan or further information or fresh plan required under rules or by-laws, the (executive authority) shall by written order either grant such permission or refuse on one or more of the grounds mentioned in Section 212 to grant it.

211. Reference to council if (executive authority) delays passing orders:--(1) If, within the period prescribed by Section 210, the (executive authority) has neither granted nor refused to grant permission to construct or reconstruct a hut, the council shall be bound on the written request of the applicant, to determine by written order whether such permission should be granted or not

(2) If the council does not, within thirty days, from the receipt of such written request, determine whether such permission should be granted or not, such permission shall be deemed to have been granted, and, the applicant may proceed to execute the work but not so as to contravene any of the provisions of this Actor any rules or by-laws made under this Act.

212. Grounds on which permission to construct or reconstruct but may be refused:-- The only grounds on which permission to construct or reconstruct a hut may be refused are the following, namely:--

(1) that the work or use of the site for the work would contravene some specified

provision of any law or some specified order, rule, by-law or declaration made under nay law:

(2) that the application for permission does not contain the particulars or is not prepared in the manner required under rules or by-law;

(3) that any information or plan required by the (executive authority) under rules or by-laws has not been duly furnished;

(4) that street or roads have not been made as required by Section 175; and

(5) that the proposed building would be an encroachment upon (Government or municipal land).

Whenever the (executive authority) or the council refuses to grant permission to construct or reconstruct a hut, the reasons for such refusal shall be specifically stated in the order or resolution.

213. Lapse of permission:-- If the construction or reconstruction of any hut is not completed within the period specified, the permission shall lapse and a fresh application shall be made before the work is continued.

214. Maintenance of external walls in repair:-- The owner or occupier of any building adjoining a public street shall keep the external part thereof in proper repair with lime-plaster or other material to the satisfaction of the (executive authority)

215. Applications of provisions to alterations and additions:-- (1) The provisions of this Chapter and of any rules or by laws made under this Act relating to construction and reconstruction of buildings shall also be applicable to any alteration thereof or addition thereto;

provided that works of necessary repair which do not affect the position or dimension of a building or any room therein shall not be deemed an alteration or addition for the purposes of this section.

(2) If any question arises as to whether any addition or alteration is a necessary repair not affecting the position or dimensions of a building or room, such question shall be referred to the council whose decision shall be final.

(215-A. Provision of Rain Water Harvesting Structure:-- (1) In every building owned or occupied by the Government or a statutory body or a company or an institution owned or controlled by the Government, rain water harvesting structure shall be provided by the Government or by such statutory body or company or other institution, as the case may be, in such manner and within such time as may be prescribed.

(2) subject to the provisions of sub-section (1) every owner or occupier of a building shall provide rain water harvesting structure in the building in such manner and within such period as may be prescribed.

Explanation:-- Where a building is owned or occupied by more than one person, every such person shall be liable under this sub-section

(3) where the rain water harvesting structure is not provided as required under sub-section (2), the executive authority or any person authorised by him in this behalf may, after giving notice to the owner or occupier of the building, cause rain water harvesting structure to be provided in such building and recover the cost of such provision along with the incidental expense thereof in the same manner as property tax.

(4) Notwithstanding any action taken under sub-section (3), where the owner or occupier of the building fails to provide the rain water harvesting structure in the building before the date as may be prescribed, the water supply connection provided to such building shall be disconnected till rain water harvesting structure is provided.)

Powers of the (executive authority)

216. Demolition or alteration of building work unlawfully commenced, carried on or completed:--(1) If the (executive authority) is satisfied-

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

(a) has been commenced without obtaining the permission of the (executive authority) or (where an appeal or reference has been made to the council) in contravention of any order passed by the councilor

(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 direction or requisition lawfully given or made under this Act or such rules or by-laws, or

(ii) that any alteration required by any notice issued u/s 205 have not been duly made; and

(iii) that any alteration of or addition 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 215.

he may make a provisional order requiring the owner or the builder to demolish the work done or so much of it as, in the opinion of the (executive authority) be necessary to bring the work into conformity with the Act, by-laws, rules, direction or requisition as aforesaid, or with the plans and particulars on which such permission or order was based, any may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building or well.

(2) The (executive authority) shall serve a copy of the provisional order made under sub-section (1) on the owner 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 fails to show cause to the satisfaction of the (executive authority), the (executive authority) may confirm the order with any modification he may think fit to make, and such order shall, then, be binding on the owner.

Exemptions

217. Exemptions:--(1) Any building constructed and used, or intended to be constructed and used, exclusively for the purpose of a plant-house (not being a dwelling-house), poultry-house or aviary, shall be exempted from the provisions of this Chapter other than, Section 196 provided the building be wholly detached from, and situated at a distance of at least ten feet from the nearest adjacent building.

(2) The (executive authority) may grant permission at his discretion on such terms as he may decide in each case to erect for a specified period temporary huts or sheds for stabling, for watching crops for storing tools or materials, or for other similar purposes. On expiry of the period specified, the (executive authority) may, by notice, require the owner of such hut or shed to demolish it.

The facts pleaded in the affidavit read as under:

The petitioner purchased a land measuring 3120 sq. ft from Thiru. A. Vadivel Murugan bearing Plot Nos. 15 and 16 in S. No. 236/2A at Thathampatti Village, Vadipatti Taluk.

2. The petitioner applied for planning permission for construction of one-storied show-room. After due verification of title deeds and spot inspection, the first respondent issued planning permission to the petitioner on 23.07.2010 on receipt of Rs. 10,010/- (Rupees ten thousand and ten only) as Planning Permission Fee.

3. The petitioner completed the construction of show room in the last week of September 2010. The petitioner also obtained temporary electric connection (The dispute with regard to cancellation of temporary connection is the subject-matter in another Writ Petition).

4. Thereafter, vide order, dated 01.10.2010, the petitioner was informed that Planning permission was wrongly granted for unapproved lay out, Therefore his plan permission stands cancelled. The Petitioner was also directed to demolish the building.

5. The impugned order is challenged by the petitioner by submitting

(i) That the Planning Permission was granted to the petitioner after due verification by the respondent. It was therefore not open to respondents to cancel the planning permission by taking advantage of their own wrong in not confirming whether the layout planning was sanctioned to original owner or not.

(ii) That the impugned order is without jurisdiction as there is no provision to cancel the planning permission after construction is complete.

(iii) That the impugned order is passed in violation of principles of natural justice as no notice was issued to the petitioner before the cancellation of the planning permission, though the petitioner had already completed the construction of show room which is ready for occupation.

6. The writ Petition is opposed by the learned counsel appearing for the respondents, by contending that as per the provisions of the Tamil Nadu District Municipalities Act, 1920, both lay out permission and planning permission is necessary. However, in this case before planning permission is granted, the lay out plan was not sanctioned, therefore planning permission is rightly cancelled.

7. In support of his contention, the learned counsel for the respondent placed reliance on a judgment of this Court in A.M. Kandasamy Vs. Corporation of Madras, The Madras Metropolitan Development Authority and State of Tamil Nadu, . holding that both the Planning permission and building permission are necessary before construction is raised. This judgment has no application to the facts of this case, as it is not a case of refusal of planning permission, but of cancellation. The Act does not give jurisdiction to the respondents to cancel planning permission after it is acted upon.

8. On consideration, I find that the Writ Petition deserves to succeed.

9. Admittedly, the petitioner was granted the planning permission after due verification. It was for the respondent to see whether lay out permission was sanctioned or not. The petitioner is subsequent purchaser of a part of land from the previous owner.

10. It is well-settled law that nobody can take advantage of his own wrong. The cancellation of the planning permission of the petitioner therefore is totally arbitrary. If the respondents were negligent in not looking into as to whether the lay out permission was sanctioned or not, it is not permissible now to cancel the lay out plan already sanctioned after the building is completed.

11. The impugned order also suffers from vice of violation of principles of natural justice as the cancellation of Planning permission affects the civil rights of the petitioner, therefore no order adverse to the petitioner could be passed without complying with the principles of natural justice. The impugned order is also without jurisdiction as there is no provision under the Act to cancel the planning permission after it is acted upon and construction is raised.

12. Consequently, this Writ Petition is allowed and the impugned order is set aside. Connected Miscellaneous Petition is closed. No costs.