

**(2000) 11 MAD CK 0070**

**In the Madras High Court**

**Case No : Writ Petition No. 18316 of 2000**

V. Arunshanker, represented by father and Power Agent, Mr. S. Venkatraman APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

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**Date of Decision : 14-11-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 213, 243WZEF, 245  
Tamil Nadu Town and Country Planning Act, 1971 — Section 113(A), 56(2)  
Tamil Nadu Urban Local Bodies Act, 1998 — Section 201(1)

**Citation : (2001) 1 MLJ 215**

**Hon'ble Judges : K. Govindarajan, J**

**Bench : Single Bench**

**Advocate :** Mr. K.M. Vijayan, for Mr. La Law, for the Appellant; Mr. Thamizhmani, Special Government Pleader and Mr. A.L. Somayaji, for Mr. J. Ravindran, for the Respondent

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## Judgement

1. This writ petition is filed seeking to issue a writ of declaration declaring the demolition notice issued by the 2nd respondent dated 12.6.2000 u/s

56(2) and 113(A) of the Town and Country Planning Act, 1971 and the Application, Assessment and Collection of Regularisation Fee (Chennai

Metropolitan Area) Rules, 1999 read with Tamil Nadu Ordinance 5 of 2000, dated 23.8.2000 is ultra vires to Articles 213, 243W, 243ZE,

243ZF read with XII Schedule of the Constitution of India amended by Constitution 74th amendment and violative of Article 14 and liable to be

quashed for excessive delegation and illegal, defunct and inconsistent with Tamil Nadu Urban Local Bodies Act, 1998 read with Tamil Nadu

Urban Local Bodies Rules, 2000.

2. According to the learned Senior Counsel appearing for the petitioner, the

impugned notice to demolish the building in question has been issued u/s 56(2) of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter called the Act 1971) to the petitioner, who is the purchaser of the building in question in 1996. The learned Senior Counsel has submitted that the said notice, after coming into force of the Tamil Nadu Urban Local Bodies Act, 1998, (hereinafter called the Act IX of 1999) which came into effect from 1.8.2000, cannot be enforced as the Act 1971 has become defunct. The learned Senior Counsel has also submitted that the Application, Assessment and Collection of Regularisation fee (Chennai Metropolitan Area) Rules, 1999 cannot be sustained in law on the ground that after coming into force of the Act IX of 1999, the said Rules cannot be enacted and implemented. He has also challenged the Ordinance 5 of 2000 under which the Act IX of 1999 has been suspended in view of the fact that the question of suspending an enactment which came into force will not arise, and, for which there cannot be any ordinance as has been done in this case.

3. Even according to the learned Senior Counsel appearing for the petitioner, the cause of action for filing the writ petition is the impugned notice dated 12.6.2000, and the ultimate grievance of the petitioner is only on the notice dated 12.6.2000. He has also submitted that the petitioner is not willing to make application to regularise his building under the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999.

4. The existence of deviation in the building is not in dispute. The learned senior counsel appearing for the petitioner has submitted that the petitioner is not the person who deviated the plan, but he is only the purchaser of the building in 1996. Even from the impugned notice, I am able to see that the plan was sanctioned as early as on 25.8.1994, and even during construction, the vendor of the petitioner (builder) has made deviation and so the demolition notice was issued to him on 22.1.1996. A show cause notice for forfeiture of security deposit amount was also issued and the security deposit also was forfeited on 28.6.1996. Since the petitioner is the occupier of the said building with the deviation from sanctioned plan, the impugned notice u/s 56(2) of the Act 1971 has been issued- It is relevant to mention that the said notice was not issued u/s 113(A) of the

Act 1971 as set out by the petitioner.

5. The learned senior counsel tried to submit that after implementation of the Act IX of 1999, the respondent cannot proceed with the impugned

notice to demolish the petitioner's building. First of all, the said Act has already been suspended. Even if ultimately the case of the petitioner that

the suspension of the Act IX of 1999 is not valid, is accepted, according to Section 201(1)(c) of the Act IX of 1999, any notice issued by the

Government or Municipality concerned immediately before the date of commencement of the said Act, shall, sofaras it is not inconsistent with the

provisions of the said Act, continue to be in force, and has to be deemed to be issued, framed or sanctioned under the provisions of the said Act,

until it is suspended or modified or re-issued under the provisions of the said Act. So, the submission on the basis that after the implementation of

the Act IX of 1999, the impugned notice has become non-est in law, because it has been issued u/s 56(2) of the Act 1971, cannot be sustained in

law. The said notice is valid even if the Act IX of 1999 is taken as suspended or even if it is taken as suspended or even if it is taken that the Act

IX of 1999 is valid and can be enforced in accordance with law.

6. Further, the learned senior counsel has not pointed out as to how the action taken by the respondents by issuing the impugned notice is

inconsistent with the provisions of the Act IX of 1999, as, even u/s 145 of the Act IX of 1999, similar procedure has been contemplated.

7. The petitioner's grievance has to be decided only on the basis whether the impugned notice can be enforced in accordance with law or not. The

enforceability of the impugned notice is not on the basis of the validity of Tamil Nadu Ordinance 5 of 2000, dated 23.8.2000, and the Application,

Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999. When the impugned notice can be enforced under

either one of the said Acts, the petitioner cannot challenge the impugned notice under the guise of challenging the Application, Assessment and

Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999, read with Tamil Nadu Ordinance 5 of 2000, dated 23.8.2000. The

petitioner has challenged the Ordinance 5 of 2000, dated 23.8.2000, under which the Act IX of 1999 has been suspended.

8. Since the said notice is valid and enforceable as stated above, this Court need

not go into the validity of the Application, Assessment and

Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999, as the petitioner does not invoke the same, and so he is not aggrieved

by the existence of the same.

9. According to the learned Senior Counsel appearing for the petitioner, when the Act IX of 1999 came into force after getting the assent from the

President, the State Government has no jurisdiction nor power to suspend the said Act. I am not able to accept the said submission.

10. It cannot be denied that the Act IX of 1999 is a State Act, under Article 245 of the Constitution of India, subject to the provisions of the

Constitution, the legislature of a State may make laws for the whole or any part of the State. Exercising that power, the Act IX of 1999 had been

enacted. Under Article 213 of the Constitution, if the Legislative Assembly of a State is not in session, the Governor after satisfied that

circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear

to him to require. Exercising this power, Ordinance 5 of 2000 was promulgated.

11. From the above, it is clear that there cannot be any doubt about the competence of the Governor to issue such Ordinance. While considering

the constitutional validity of a Statute, there is always a presumption in favour of the constitutionality of a Statute and the burden is upon him who

attacks it to show that there has been a clear transgression of the constitutional principles and the presumption is said to be so strong that in order

to sustain the Courts are entitled to take into consideration matters of common knowledge, matter of common report, the history of the times and

may even assume every state of facts which can be conceived to be existing at the time of legislation. In this case, the learned Senior Counsel for

the petitioner has not projected his argument to substantiate the ground that the Ordinance is unconstitutional, except that the Governor has no

power to suspend the existing legislature.

12. While dealing with the Court's power to deal with constitutionality of a Legislature, the Division Bench of this Court in the decision in Ashok

Leyland Employees Union and another Vs. Union of India and others, , has held as follows:-

Courts were held to be obliged to view with greater latitude laws relating to

measures for economic and social policy than laws touching fundamental human rights since it is for the State to decide what economic and social policies the legislature should prefer to effectuate and the preference in favour of a chosen system cannot be questioned on the ground of lack of legislative wisdom, appropriate need or necessities of time, or that the method adopted is not the best or that there are better ways and means of adjusting the competing interests and claims. Courts were cautioned and advised to feel more inclined to give judicial deference to legislative judgment in such areas since it is by now well settled that lack of perfection in a legislative measure alone does not necessarily imply its constitutionality as no economic or social measure has so far been discovered which is free from uncertainties, crudities and inequities and in such complex and sensitive areas as no fool-proof device can be said to exist and, therefore, Courts should be slow in imposing strict and rigorous standard of scrutiny by reason of which all economic and social schemes involving complicated experimentation may be subjected to criticism under the equal protection clause. Every legislation particularly in economic and social matters is essentially based on experimentation too or what may be called as trial and error method and if any inequities or abuse in practical application come to light the legislature can always step in and enact suitable amendatory legislation.

13. In the present case, the Governor has promulgated the said Ordinance suspending the existing Act. The power of legislature has to be construed in both ways, namely, positive and negative. The positive power is to make law. The negative power is to repeal a law or making the law inoperative. In either case, the power of legislature is only with the power given under the Constitution. As the legislature is having such power, the Ordinance 5 of 2000, dated 23.8.2000, making the Act IX of 1999 inoperative cannot be assailed on the ground that the Governor has no power to suspend the said Act cannot be countenanced.

14. Moreover, merely on the basis that the petitioner is having some advantage, and if he wants to take consequential proceedings under the Act IX of 1999, he cannot now challenge the Tamil Nadu Ordinance 5 of 2000 dated 23.8.2000, on the basis that if the said Act IX of 1999 is in existence, it is beneficial to him.

15. While testing the power of legislature, the Apex Court in the decision in State of U.P. and Others Vs. Hindustan Aluminium Corpn. and

Others, , has held as follows:-

66. It has to be appreciated that the power of legislate is both positive in the sense of making a law, and negative in the sense of repealing a law or

making it inoperative. In either case, it is a power of the Legislature, and should lie where it belongs. Any other view will be hazardous and may

well be said to be an encroachment on the legislative field. In an extreme and clear case, no doubt, an antiquated law may be said to have become

obsolete-the more so if it is a penal law and has become incapable of user by a drastic change in the circumstances. But the Judge of the change

should be the Legislature, and Courts are not expected to undertake that duty unless that becomes unavoidable and the circumstances are so

apparent so as to lead to one and only one conclusion. This is equally so in regard to the delegated or subordinate legislation.

In view of the abovesaid decision, I do not find any valid ground to hold that the Ordinance 5 of 2000, dated 23.8.2000 is unconstitutional.

16. For the foregoing reasons, I do not find any merits in this writ petition. Accordingly, the same is dismissed. No costs. Connected W.M.Ps. are

also dismissed.