

(2013) 12 MAD CK 0100

Madras High Court

Case No: Writ Petition No. 34739 of 2012

M/s. Sankranti Hotels Pvt. Ltd.

APPELLANT

Vs

The Government of Tamil Nadu
and T. Praveena

RESPONDENT

Date of Decision: Dec. 18, 2013

Citation: (2013) 5 LW 864 : (2014) 1 MLJ 1

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

Bench: Division Bench

Advocate: V. Prakash, for Ojas Law Firm, for the Appellant; T.R. Rajagopalan, for B.S.G. Firm for Respondent 3, Mr. K.V. Dhanapalan, A.G.P. for R-1 and Mr. C. Johnson for R-2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

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

Introductory:--

Though there are stringent provisions under the Tamil Nadu Town and Country Planning Act, 1971, to discourage construction of unauthorized buildings and in spite of several actions taken by Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA") to demolish the illegal constructions and various orders passed by the High Court and Supreme Court, condemning such violations, the builders like the third respondent herein, continue to flout the building regulations with impunity. The facts:--

The petitioner entered into a lease agreement with the third respondent on 11 February 2011 to conduct hotel business in the building constructed in R.S. No. 3680/48, D. No. 552, T.T.K. Road, Alwarpet, Chennai. The building comprising stilt and 5 floors with a terrace was constructed by the third respondent on the strength of the permit issued by the CMDA. The petitioner, after executing the lease,

completed the interior work and made it fit for running a hotel.

2. While so, the Chennai Corporation issued a notice dated 15 July 2011, informing the petitioner and the third respondent that the building was constructed in total deviation of the approved plan and called upon them to stop the construction work with immediate effect. The petitioner took up the matter with the third respondent. Since there was a dispute and taking into account the arbitration clause, as contained in the lease agreement, the petitioner filed an application in O.A. No. 737 of 2011 for appointment of an Arbitrator. The parties have unanimously agreed to appoint Mr. Justice A. Gopala Rao, former Judge of Andhra Pradesh High Court, as Arbitrator. The Arbitrator passed an award dated 30 March 2013 directing the petitioner to vacate the premises and deliver vacant possession to the third respondent. The Arbitrator observed that the building was not given occupancy certificate by the Local Planning Authority and as such, there is no question of permitting the tenant to continue the restaurant business. The petitioner was directed to deliver possession of the building on or before 30 June 2013 to the third respondent. The petitioner appears to have challenged the award before the Andhra Pradesh High Court.

3. While the matters stood thus, CMDA issued Locking and Sealing and De-occupation notice dated 26 October 2012 indicating the details of violation, and with and a direction to discontinue the usage of the building forthwith to secure compliance with the approved plan within 30 days, failing which, it was indicated that the building would be locked and sealed under the provisions of Section 56 and 57 of the Town and Country Planning Act, 1971. The petitioner appears to have filed an appeal against the said order before the Government invoking Section 80-A of the Town and Country Planning Act, 1971. The petitioner, now seeks a direction to the first respondent to consider and dispose of statutory appeal, on merits.

4. The Chennai Metropolitan Development Authority filed a counter affidavit in answer to the contentions raised in the affidavit filed in support of the writ petition. According to CMDA, permission was granted on 15 May 2008 for construction of Stilt floor + 3 floors + 4th floor, with clinic at 1st floor + residential building with 5 dwelling units. However, the third respondent has built a multistoried commercial building comprising basement floor + ground floor + 4 floors in the site at Old D. No. 135, New D. No. 552, T.T.K. Road, Mylapore, Chennai. Since the building was constructed in total violation of the planning permission, further proceedings were taken and ultimately, the impugned notice was issued directing the builder as well as the tenant to discontinue the usage of the building. According to the CMDA, the appeal filed against the impugned notice is not maintainable. CMDA further contended that even the usage was changed from residential to commercial and as such, action was correctly taken against the builder.

5. The third respondent filed a counter affidavit indicating that it was only after issuing show cause notice dated 26 October 2012, the petitioner proceeded to

provide interior to the building. The third respondent has taken up a contention that the petitioner is liable to vacate the building in view of the award passed by the Arbitrator.

Submissions:--

6. The learned Senior Counsel for the petitioner contended that the CMDA colluded with the third respondent to evict the petitioner and that was the reason for issuing the impugned notice dated 26 October 2012. According to the learned senior counsel, the petitioner has already filed an appeal u/s 80-A of the Tamil Nadu Town and Country Planning Act and as such, a direction should be issued to dispose of the said appeal on merits.

7. The learned counsel for CMDA contended that the building was not locked, and as such, no appeal u/s 80-A would lie before the Government. The learned counsel further submitted that the third respondent constructed the building in total deviation of the planning permit and as such, there is no question of regularizing the construction.

8. The learned senior counsel for the third respondent submitted that the third respondent is prepared to comply with the directions given by CMDA. Since the petitioner is occupying the premises, it is not possible to undertake the process to comply with the notice. The learned senior counsel contended that the petitioner is now occupying the premises without allowing the third respondent to take further action to preserve the part of the building constructed in accordance with the plan.

Analysis:--

9. The factual matrix indicates that the third respondent obtained planning permission from CMDA vide proceedings dated 15 May 2008. CMDA permitted the petitioner to construct stilt floor + 3 Floors + 4th Floor, with clinic at 1st floor + residential building with 5 dwelling units. However, in utter disregard of the planning laws and the conditions of permit, the third respondent constructed a marriage hall comprising basement floor + ground floor + 4 floors in the site at Old Door No. 135, New Door No. 552, T.T.K. Road, Mylapore. CMDA found that the builder has deviated from the approved plan with respect to the change in category of building from special building to multistoried building besides change of use from residential to commercial. There were other violations regarding Floor space index, car parking and safety measures. The major deviations made by the third respondent appears to be the reason to issue notice by CMDA on 15 July 2011. CMDA wanted all further works to be kept in abeyance and to restore the property to its original position.

10. The petitioner is claiming that the company is a member of a hotel chain running hotels in Dubai and Singapore. The petitioner failed to take reasonable care to verify the plan sanctioned by the CMDA or completion certificate. The petitioner has come

up with a contention that immediately after executing the lease agreement dated 11 February 2011, they have undertaken major interior work and incurred huge expenditure to the tune of Rs. 5.40 crores. CMDA is not concerned with the interior decoration made by the petitioner or the amount spent for such work. CMDA is concerned only with the enforcement of building regulations. The petitioner has no case that the construction was made in accordance with the sanctioned plan. In fact, the third respondent has very clearly admitted the violations and she wanted the petitioner to vacate the premises so as to enable her to comply with the direction given by CMDA.

11. The dispute between the petitioner and the third respondent has nothing to do with the proceedings initiated by CMDA alleging violation of planning permit. The show cause notice was issued as early as on 15 July 2011 and it was only on account of the failure to remove the unauthorized construction, CMDA issued the impugned notice dated 26 October 2012. The petitioner, immediately approached this Court and obtained an interim order restraining the CMDA from sealing the premises.

12. The petitioner now wanted the Government to consider and dispose of the appeal u/s 80-A of the Town and Country Planning Act, 1971. CMDA has taken a technical objection that an appeal against the impugned notice dated 26 October 2012 is not maintainable.

13. Section 56(2-A) of the Tamil Nadu Town and Country Planning Act, 1971, permits the planning authority to seal and lock the premises in case the owner or occupier failed to comply with the notice issued earlier u/s 56(1) of the Act. The planning authority is empowered to invoke Section 56(2-A) notwithstanding the pendency of application u/s 49 or appeal u/s 79 of Act 35/1972 or any litigation before Court of law. Section 80-A provides for filing revision petition before the Government against the orders passed by the appropriate planning authority in respect of sealing of the premises under sub-section (2-A) of section 56 or u/s (4) of section 57 of the Act. This is not essentially an appeal. It is only a revisional power to examine the records of the planning authority and to take a decision either to modify, annul, reverse or remit the matter for reconsideration. Therefore, a valid order passed u/s 56(2-A) or sub section 4 of section 57 is a mandatory requirement for exercising revisional power u/s 80-A of the Act.

14. The notice dated 26 October 2012 shows that the third respondent was directed to discontinue the use and vacate the premises within 30 days so as to enable the Department to lock and seal the premises. Though a reference is made to section 56(2-A) of the Act, the fact remains that notice was only a preliminary notice issued to enable the occupier to discontinue the use and vacate the premises. The law is therefore very clear that only in case the occupier failed to discontinue use and vacate the premises, within the prescribed period, further action would be taken to seal the premises u/s 56(2-A) of the Act.

15. The impugned notice was not issued under sub Section 2-A of Section 56 of the Act. It was essentially a notice under sub Section 2(iii) of Section 56 of the Act, requiring the owner or occupier to discontinue the usage of building. The proceedings initiated by the petitioner before the Government u/s 80-A is clearly not maintainable.

16. The materials available on record very clearly prove that the third respondent flouted the material terms and conditions of the planning permit issued to her and constructed a multistoried building. Even though she obtained planning permission for a special building, what was constructed was a multistoried commercial building. Neither the builder nor the occupier are entitled to any kind of indulgence on account of the large scale violation and deviation. Therefore, we are of the view that the petitioners are not entitled to any kind of equitable relief from this court. CMDA should be permitted to exercise its statutory function. The High Court would not be justified in exercising judicial review in respect of an action taken by the statutory authority on the ground of violation of building regulations.

17. The illegal construction is no more an affair between the developer and the Planning Authority. The unauthorized constructions, without adherence to the Planning regulations, would affect the planning development of the city. The mushroom growth of illegal and unauthorized structures would cause an adverse impact on the ecology. This would also affect the overall development, besides sewerage and sanitation system of the city. The Courts must be sensitive to such issues. The developers who have no concern to the building laws are not entitled to equitable relief from Courts.

18. The Supreme Court in [Esha Ekta Apartments Co-operative Housing Society Ltd. and Others Vs. Municipal Corporation of Mumbai and Others](#), expressed its concern with regard to large scale violation of Planning regulations. The Supreme Court said:

In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.

19. Since the Government is not having jurisdiction to entertain a petition u/s 80-A against a notice u/s 56(2)(iii) of the Town and Country Planning Act, there is no question of directing the Government to consider the matter at the instance of the occupier. In the upshot, we dismiss the writ petition. No costs. Consequently,

connected miscellaneous petitions are also dismissed.