

Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10425 OF 2014

The Madurai Corporation

...Appellant.

Versus

P. Kayalvizhi & Anr.

...Respondents.

JUDGMENT

A. M. KHANWILKAR, J.

Application for early hearing is allowed.

2. The respondent no.1 had filed a writ petition under Article 226 of the Constitution of India bearing Writ Petition (MD) No.9854 of 2012, which was allowed by the learned Single Judge on the following terms:

“6. In view of the above, this Court is of the view that since the petitioner is not inclined to put up further construction, there is no need for the petitioner to get permission from the Local Planning Authority. Under such circumstances, recording the undertaking given by the petitioner, this Court is inclined to give a direction to the respondents to grant renewal of permission for the construction, so that the petitioner can complete the building work which was already constructed. The affidavit of undertaking given by the petitioner is placed on record. The respondents are directed to grant renewal of permission so that the petitioner can finish the building which was already constructed by her, within a period of two weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition is disposed of No costs.”

The appellant - Corporation filed a Writ Appeal being Writ Appeal (MD) No.763 of 2013. That was dismissed by the Division Bench vide order dated 21.8.2013. These decisions are the subject matter of the present appeal filed by the Corporation.

3. The principal issue considered by the learned Single Judge of the High Court was whether the appellant was the Competent Authority to grant an extension of time to the respondent no.1 for completing the construction of the building, which was commenced on the basis of a sanction given by the Local Planning Authority, Madurai on 25.04.2009. The sanction given by the said Authority was attached with a condition that the construction of the proposed building upto 11 floors, should be completed by the respondent no.1 within two years therefrom. The respondent no.1 within such period could construct only upto 6 floors. As the respondent no.1 was unable to comply with the condition of completing the construction as per the sanctioned plan within two years, he submitted an application on 11.04.2011 to the appellant - Corporation for an extension of time. The respondent no.1 was called upon to submit an application in Form 8, which requirement

was compiled by him. The appellant, however, affixed a notice on the construction site purported to be under Sections 282, 296(1) and 296(2) of the Madurai City Municipal Corporation Act, pointing out that the respondent no.1 had deviated from the original plan in respect of (a) lift (b) stair case to the building and (c) instead of a swimming pool open to the sky, a hall was constructed on the first floor of the building under construction. Based on the said proceedings, the Corporation rejected the application submitted by respondent no.1 for extension of time to complete the construction, vide order dated 21.06.2012. The respondent no.1 challenged that order by way of writ petition. During pendency of the said writ petition, the respondent no.1 filed an affidavit cum undertaking assuring the Authority that he would complete the construction of the building only up to Ground floor + 6 floors + (1 light roofing ceiling) and would take corrective steps to remedy the deviations pointed out in the notice affixed on the construction site. The appellant, however, contended that it was not the Competent Authority to grant extension of time as the sanction was originally granted by the Authority under the Town and Country Planning Act. This contention did not find favour with the learned Single

Judge. As a result, the learned Single Judge allowed the writ petition filed by respondent no.1 in terms of order dated 21.08.2013. The operative part of the said order has been reproduced in paragraph 2 above. For the same reason, the Division Bench of the High Court declined to interfere in the writ appeal filed by the appellant.

4. The respondent no.1 in the present appeal has reiterated the plea taken before the High Court that he would not carry on any further construction beyond Ground Floor + 6 floors. The respondent no.1 also asserts that the construction of the building upto 6 floors has been substantially completed. Further, the building can be put to use if the Corporation was to favourably consider his application for extension of time to complete such construction. It is contended that on grant of extension, the construction will be completed upto 6 floors in all respects including by curing the deviations within the extended time, in conformity with the original sanction given by the Town Planning Authority in that behalf. In other words, the respondent no.1 was not interested in carrying on with construction of additional floors,

though sanctioned by the Local Planning Authority of Madurai. In this backdrop, the appellant was called upon to give its response. The Corporation has now taken an informed stand that it will consider the request of the respondent no.1 for grant of extension of time to complete the stated construction of the building as per the Rules and provisions as may be applicable. This stand of the Corporation has been communicated in writing to the counsel appearing for the Corporation before this Court.

5. The respondent no.1 through counsel submits that the respondent no.1 will abide by the undertaking already given by him before the High Court and also such terms and conditions as may be specified by the Corporation. That assurance is accepted.

6. In view of the above, it is unnecessary for us to examine the wider question involved in the present appeal. This appeal, therefore, can be disposed of in the following terms:

- (1) The respondent no.1 shall forthwith submit a formal application in writing addressed to the competent Authority of the appellant Corporation reiterating the assurance given in the undertaking filed before the High Court; and also to abide by such terms and conditions as

may be imposed by the Corporation in lieu of acceptance of the proposal for extension of time to complete the construction in conformity with the original plan sanctioned by the Local Planning Authority upto ground floor + 6 floors. The respondent no.1 must also assure the Corporation that he will take corrective measures to remedy the deviations mentioned in the notice dated 16.05.2012 given by the Corporation and also any other or further deviations noticed or indicated by the Corporation within the time specified in that behalf.

(2) On receipt of such written request cum commitment from the respondent no.1, the competent Authority of the Corporation may examine the proposal and after conducting a survey of the building, record its satisfaction that the construction completed by the respondent no.1 is in conformity with the original sanction granted by the Local Planning Authority on 25.04.2009 in respect of ground floor + 6 floors + (1 light roofing ceiling) and also conforms to the applicable Rules and provisions. If the Authority is satisfied in that behalf, may pass an appropriate order including to specify additional terms and conditions to be fulfilled by the respondent no.1 as a condition precedent for grant of extension of time to complete the construction. That decision be taken within 8 weeks from the receipt of the written request from the respondent no.1.

(3) Only after a formal order is passed by the competent Authority of the Corporation to grant extension of time to complete the construction and thereafter issuance of a completion certificate upon removing all the deviations, respondent no.1 will be free to effectively use and occupy the building for the purpose for which it has been allowed by the Local Planning Authority.

7. We once again reiterate that all other questions raised in this appeal by the appellant Corporation are left open, to be considered if and when necessary.

8. Accordingly, this appeal is disposed of in the above terms with no order as to cost.

.....CJI
(T.S.Thakur)

.....J.
(A.M.Khanwilkar)

New Delhi,
Dated: 7th October, 2016