

**SUPREME COURT OF INDIA**

The Commissioner, Corporation of Madurai

Vs.

Dr.I Ismail

C.A.No.10002 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

02.08.2017

**JUDGMENT**

**Kurian Joseph, J.,**

SLP(Civil) No.34892/2013

1. Leave granted.

2. The Commissioner, Corporation of Madurai is before this Court, aggrieved by the judgment of the High Court. The issue pertains to the steps taken by the Commissioner by proceeding against respondent No.1 for the alleged construction in violation of the Rules. The stand taken by Respondent No.1 is that the construction is as per the permission granted by the Standing Committee for Town Planning and Development Corporation of Madurai.

3. It is pointed out by Mr. Sanjay R. Hegde, learned senior counsel appearing for the appellant, under the Rules, Standing Committee is only the Appellate Authority in respect of the powers exercised and orders passed by the Commissioner and, therefore, the Appellate Authority cannot be the original authority.

4. Be that as it may, when this matter was pending before this Court, by order dated 4.7.2016, this Court passed the following order:-

"The Commissioner Corporation of Madurai to file an affidavit within four weeks with regard to the status of the building as to the violations. In case there are violations, can those violations be regularized."

5. The Commissioner has filed an affidavit in response to the order referred to above. Paragraph 4 of the affidavit reads as follows:-

"4. It is submitted that these are the violations committed by the 1st Respondents. The Madurai Corporation has powers to grant plan permission for commercial buildings

below 2000 sq.ft. and has no powers to regulate any violations noticed. All the powers to regularise the violations are vested with the Director of Town and Country Planning and the Government as per section 4(3) of development control rule in Tamilnadu Town and Country Planning Act, 1971. Hence the respondent has to submit an application with the plan to the Director of Town and Country Planning through Madurai Corporation and Madurai Local Planning Authority."

6. Since the alleged violation is in excess of 2000 sq.ft., it is submitted by the learned senior counsel for the appellant that the power is only with the Director, Town and Country Planning.

7. Learned counsel appearing for Respondent No.1, however, submits that this is a construction of the year 2012 on a building the ground floor to which was constructed in the year 1964. Therefore, the alleged construction on the said ground floor cannot be taken as a violation in terms of Regulations which have been issued in the year 2010.

8. This and all other contentions are certainly available to the respondents to be taken before the Director, Town and Country Planning. We are informed that the respondent has already approached the Director, Town and Country Planning.

9. We direct the Director, Town and Country Planning to consider the appeal filed by Respondent No.1 after affording an opportunity for hearing to the respondents as well as the Municipal Corporation and pass appropriate orders thereon, in accordance with law, after adverting to all the contentions taken by the parties. We make it clear that none of the observations in the impugned orders shall stand in the way of the Director, Town and Country Planning passing an order on merits. Till the orders are passed by the Director, Town and Country Planning, we restrain the Municipal Corporation from taking any coercive steps against the respondent in respect of the alleged unauthorized construction. We direct the Director, Town and Country Planning to pass orders expeditiously, and in any case within six months from the date of receipt of a copy of this judgment.

10. The appeal is, accordingly, disposed of.

11. In view of the above order passed in the civil appeal, we do not find any need to proceed with the contempt petition.

12. The Contempt Petition No. 441/2014 is, accordingly, dismissed.

13. Pending applications, if any, shall stand disposed of.

14. There shall be no orders as to costs.