



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2015

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.8220 of 2011

and

M.P (MD) No.1 of 2011

S.Krishnan

... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District,
Collectorate, Nagercoil.
- 2.The Executive Officer,
Kappiyarai Town Panchayat,
Kappiyarai Post,
Kanyakumari District.
- 3.Tmt. D.Rajabai

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the second respondent to cancel the Building Plan Approval made in Building Plan Permission No.57/10-11 dated 08.07.2010.

For Petitioner : Mr.M.Saravanakumar
For R1 : Mr.M.Murugan Government Advocate
For R3 : Mr.M.R.Sreenivasan
For R2 : No appearance

ORDER

The petitioner has come up with this writ petition to direct the second respondent to cancel the Building Plan Approval made in Building Plan Permission No.57/10-11 dated 08.07.2010.

2.The petitioner and his brother Mr.Muthukumar are the owners of the property situated in S.No.427/6 of Kappiyarai Town Panchayat. The adjacent property belongs to third respondent in S.No.427/5. The third respondent submitted a Building Plan to the second respondent to construct a shop and the same was approved by the second respondent in Building Plan Permission No.57/10-11 on 08.07.2010. Contrary to the Approved Building Plan, the third respondent constructing the building causing inconvenience to the General Public. Immediately, the petitioner made a representation to the second respondent stating that the third respondent constructed the building contrary to the Building Rules and approached the second respondent to take action against the third respondent. The second respondent did not take any action. Therefore, the petitioner's brother filed O.S.No.410/2010 before the District Munsif Court, Padmanabhapuram for permanent injunction and the



said suit is pending. The District Munsif Court, Padmanabhapuram granted interim injunction by the order dated 27.02.2010 in I.A.No.835/2010. In pursuant to the injunction, the second respondent issued a notice in his letter No.57/2010-11 dated 16.11.2010 to the third respondent as to why building plan approval should not be cancelled. In spite of the same, the third respondent is continuing his construction in a hurried manner. The second respondent refused to furnish any particulars with regard to the approval of the building plan on the representation given by the petitioner dated 20.11.2011. Therefore, the petitioner has filed the present writ petition for the relief stated supra.

3.The third respondent filed the counter affidavit denying the averments made by the petitioner. The third respondent has stated that the suit filed by the petitioner and the third respondent for permanent injunction is pending before the Civil Court and therefore, the writ petition is not maintainable and prayed for dismissal of the writ petition.

4. Heard Mr.M.Saravana Kumar, learned counsel for the petitioner, Mr.M.Murugan, learned Government Advocate for the first respondent and Mr.M.R.Sreenivasan, learned counsel for the third respondent.

5.From the pleadings and materials it is seen that the second respondent has issued a show cause notice dated 16.11.2010 and 14.01.2011 to the third respondent. But no further order was passed. In view of the same, the second respondent is directed to pass further orders on the show cause after giving opportunity to the petitioner, third respondent and other parties concerned on merits and in accordance with law. It is open to the third respondent to file all the necessary documents before the second respondent.

6. With the above observation and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition also closed.

Sd/-
Assistant Registrar

/True Copy/

Sub- Assistant Registrar

To

- 1.The District Collector, Kanyakumari District,
Collectorate, Nagercoil.
 - 2.The Executive Officer, Kappiyarai Town Panchayat,
Kappiyarai Post, Kanyakumari District.
- + 1 CC to Mr.M.Saravanakumar, Advocate in sr.no.4551
+ 1 CC to Mr.R.Nandakumar, Advocate in Sr.No.4588

am

W.P. (MD) No.8220 of 2011
02.02.2015