



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.11.2016**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**
W.P. [MD].No.21503 of 2016
and
W.M.P. (MD)Nos.15360 to 15362 of 2016

S.Baskar : Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Commissioner,
Tirunelveli Corporation,
Tirunelveli District.

3.E.Sankaran : Respondents

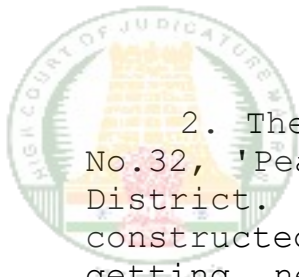
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in his proceeding in Pa.Mu.No.E2/36711/2015, dated 15.10.2015 and consequential impugned order in Na.Ka.No.3736/2015/TP2, dated 01.11.2016 passed by the second respondent and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel
For Mr.J.Ashok
For Respondent No.1: Mr.S.Chandrasekar,
Government Advocate
For Respondent No.2: Mr.Aayiram K.Selvakumar,
Government Advocate
For Respondent No.3: Mr.S.Balamurugan

O R D E R

[Order of the Court was made by **S.NAGAMUTHU, J.**]

Challenge in this Writ Petition is to the order of the District Collector, Tirunelveli, by his proceedings in Pa.Mu.No.E2/36711/2015, dated 15.10.2015 and also the order of the second respondent dated 01.11.2016, passed in Na.Ka.No. 3736/2015/TP2.



2. The dispute is in respect of a building constructed in Plot No.32, 'Pearl Avenue', K.T.C.Nagar, Palayamkottai Taluk, Tirunelveli District. The petitioner is the owner of the land. He has constructed a house on the said property with ground floor alone by getting necessary planning permission from the Local Planning Authority for housing purpose. According to the District Collector, unauthorizdly, the petitioner has constructed a first floor on the said property and he has been conducting religious prayers both in the first floor as well as in the ground floor by gathering innumerable persons on regular basis. This is causing, according to the District Collector, nuisance to the public. Therefore, the District Collector issued the impugned order, directing the removal of the unauthorized construction and the second respondent also issued the consequential order of removal. Those orders are under challenge in this Writ Petition.

3. We have heard Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner, Mr.S.Chandrasekar, learned Government Advocate appearing for the first respondent, Mr.Aayiram K.Selvakumar, learned Government Advocate appearing for the second respondent and Mr.S.Balamurugan, learned counsel appearing for the third respondent. We have also perused the records carefully.

4. From the records available before this Court, it is crystal clear that the plot, over which the building has been constructed, has been earmarked as per the plan only as a house site. The petitioner has obtained building licence to construct a house on the said property with only ground floor. The petitioner, thereafter, constructed the house with ground floor, regarding which, there is no controversy. But, it is also seen that subsequently, the petitioner has constructed the first floor, where he has been conducting religious prayers. Even now, it is not the case of the petitioner that he has obtained any building licence from the competent authority for making the construction of the first floor. Thus, the first floor, which has been constructed by the petitioner, is unauthorized.

5. However, the learned Senior Counsel appearing for the petitioner would submit that the first floor is only a temporary shed and it is not a pucca building.

6. From the photographs filed before us, which are not in dispute, it is crystal clear that what is constructed over the ground floor is not a mere temporary shed, but it is a permanent structure and thus, it is an unauthorized construction of the first floor. Therefore, the same needs to be removed.

7. The learned Senior Counsel appearing for the petitioner submitted that as undertaken before this Court on 09.11.2016, the petitioner has stopped conducting any prayer meeting either in the first floor or in the ground floor of the building. The learned



Senior Counsel would further submit that the petitioner shall not conduct any prayer meeting in the ground floor also, except making prayer by the family members, without using loud speaker thereon. The said undertaking is recorded.

8. So far as the first floor is concerned, the District Collector has now reported to this Court, after personal inspection, by his proceedings in Na.Ka.C2/7972/2016, dated 23.11.2016, that after the undertaking given before this Court on 09.11.2016, the petitioner has stopped conducting any prayer meeting on the first floor. However, he has reported that the first floor is unauthorized.

9. When this was pointed out, the learned Senior Counsel appearing for the petitioner submitted that the petitioner may be permitted to submit a revised plan to the Local Planning Authority seeking approval for the above first floor constructed already. Of course, the petitioner has got right to do so. At the same time, the petitioner should not use the first floor. The learned Senior Counsel Mr. Isaac Mohanlal submitted that the petitioner himself would keep the first floor under lock and key and he shall not use the same for any purpose. The said undertaking is also recorded. In order to ensure that the first floor is not used by the petitioner for any purpose, the Tahsildar, Palayamkottai, shall verify, by periodical visit, as to whether the first floor is kept under lock and key and if there is any violation, he shall lock it. Meanwhile, the petitioner is permitted to submit a revised plan to the Local Planning Authority under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971. The further course of action regarding the first floor of the building, which has already been constructed, shall be subject to the outcome of the order to be passed by the Local Planning Authority.

10. The Writ Petition is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.



2.The Commissioner,
Tirunelveli Corporation,
Tirunelveli District.

+1 cc to THE SPECIAL GOVERNMENT PLEADER, SR.72702

+1 cc to Mr.J.ASHOK, Advocate, SR.72273

+1 cc to Mr.AAYIRAM K.SELVAKUMAR, Advocate, SR.72249

+2 cc to Mr.S.BALAMURUGAN, Advocate, SR.72208

Order made in
W.P. [MD] .No.21503 of 2016
Dated:**24.11.2016**

SML

SH/SK:21.12.2016:4P/8C