

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.19702 of 2017

WMP.No.21253 of 2017

Shanthi

.. Petitioner

vs.

1.The Deputy Director of Town & Country Planning,
Salem Zonal Office, 6, Sannathi Street,
Suramangalam, Salem-636 005.

2.The Member Secretary and Commissioner,
Namakkal Local Planning Authority,
Namakkal Municipality, Namakkal-637 001.

3.Archaeological Survey of India,
Competent Authority (Tamil Nadu) &
Regional Director, (South),
Fort St.George, Chennai-600 009.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent connected with the impugned order bearing Na.Ka.No.779/2017 sema-3 dated 19.07.2017 and quash the same and direct the 2nd respondent to entertain the petition for regularization and exemption for the building Sri Krishna's Lodge, Namakkal situated in Door No.20, Ward-C, Block-1, T.S.No.70, 71, Kottai Anumar Kovil Street, Namakkal Town under Regulation 3 of G.O.Ms.No.111, Housing and Urban Development [UD4(3)] Department dated 22.06.2017.

For Petitioner : M/s.S.Kala

For Respondents : Mr.P.Sanjay Gandhi,
Additional Government Pleader for R1
Mr.P.Srinivas for R2

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner claims that she is the owner of the property in Door No.20, Ward-C, Block-1, T.S.No.70, 71, Kottai Anumar Kovil Street, Namakkal Town and she has decided to start a lodging business in the said premises and applied for building plan approval from the second respondent as early as in the year 2002 and the then Municipal officials orally permitted her to put up superstructure for the purpose of starting a lodge and accordingly, she has constructed the building and commenced business and as on today, the lodge is running.

3. The learned counsel appearing for the petitioner would submit that the deviation is minimal and it is also within the condonable limits and she is entitled to avail the benefits of G.O.Ms.No.111 and 110, Housing and Urban Development [UD4(3)] Department 22.06.2017 and in that regard, she has also submitted an application through on-line and on account of poor internet connectivity, she was unable to submit the application and however, to her shock and surprise, she has been issued with the impugned notice dated 19.07.2017 by the first respondent attempting to initiate action under Sections 56 and 57 of the Town and Country Planning Act, 1971 and therefore, she is constrained to make a challenge by filing this writ petition.

4. Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the first respondent would submit that one Mr.N.Shanmugam has filed W.P.No.28332 of 2013 praying for appropriate direction, wherein the writ petitioner was arrayed as the fourth respondent therein and the said writ petition was disposed of on 15.11.2016 by directing the Commissioner, Namakkal Municipality to carryout inspection of the premises of the petitioner herein within a period of 15 days and if any violations are found, to take action in accordance with law after giving notice to all concerned within a period of two months thereafter and in pursuant to the same only, the impugned notice came to be issued.

5. Mr.P.Srinivas, learned Standing Counsel appearing for the second respondent would submit that the petitioner has put up construction without any planning permission and it also lies very close to archaeological site and as such, the construction violates the provisions of Ancient Monuments and Archaeological sites and Remains Act, 1958 and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and would further add that the representation submitted by the petitioner, in response to the show cause notice, would be considered and disposed of at the earliest possible time.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. Though the petitioner prays for larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in the representation or in the writ petition, directs the first respondent to consider and dispose of the petitioner's representation dated 27.07.2017 and pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till such time, shall defer further decision in terms of the impugned notice dated 19.07.2017. It is also made clear that till the disposal of the representation by the first respondent, the petitioner shall not put up any additional construction and shall not create any third party right in respect of the superstructure in question.

8. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Deputy Director of Town & Country Planning,
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Suramangalam, Salem-636 005.
- 2.The Member Secretary and Commissioner,
Namakkal Local Planning Authority,
Namakkal Municipality, Namakkal-637 001.
- 3.Archaeological Survey of India,
Competent Authority (Tamil Nadu) &
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+1 cc to the Government Pleader sr 56862
+1 cc to M/s.S.Kala Advocate sr

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