

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.33929 of 2013

&

M.P.Nos.1 and 2 of 2013 and 2 of 2014

1. Mr.P.Abdul Azeez
2. Mr.K.Sathick Basha .. Petitioners
Vs.

1. The Executive Officer,
Muthupettai Town Panchayat,
Muthu Pettai,
Thiruthuraipoondi Taluk,
Thiruvarur District.
2. H.Haroon
(Second respondent impleaded as per
order dated 06.10.2017 in M.P.No.1 of 2014
in W.P.No.33929 of 2013.) .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the first respondent bearing Na.Ka.No.315/2013/A2, dated 12.08.2013 and quash the same as illegal, unjust and against the settled principles of natural justice and to direct the first respondent to permit the petitioner to continue the construction work in accordance with the planning approval, dated 07.06.2013.

For Petitioner : No appearance

For Respondents: Mr.Akhil Akbar Ali, Govt. Advocate for
Mr.V.Jayaprakash Narayanan,
Special Government Pleader for R-1
Mr.T.Ayyasamy for R-2

ORDER

The petitioner has come forward with above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the first respondent bearing Na.Ka.No.315/2013/A2 dated 12.08.2013 and quash the same as illegal, unjust and against the settled principles of natural justice and to direct the first respondent to permit the petitioner to continue the construction work in

accordance with the planning approval dated 07.06.2013.

2. The first petitioner is the President of the Tamil Nadu Thavheed Jamath Muthupettai Branch and the second petitioner is the Treasurer of the same. Representing the Jamath, the petitioners have purchased the property comprised in Survey Nos.114/9 and 114/9Q, measuring an extent of 2400 Sq.Ft. situated in Muthupettai Town, Thiruthuraipoondi Taluk, Tiruvarur District, vide Document No.1317/2012 on the file of the Sub-Registrar Office, Muthupettai. Since the petitioners intended to erect a superstructure for the welfare of the Jamath, they submitted application before the first respondent for necessary approval on 21.05.2013 and paid charges in a sum of Rs.14,290/- for the same. On 07.06.2013, the first respondent gave sanction for constructing the building in accordance with the plan appended to it.

3. It is the further case of the petitioners that by availing the said sanction, the petitioners commenced the construction work and invested amount on the construction. The basement work was completed and the elevation work for erecting ground floor was in process. At this stage, the first respondent issued notice, dated 02.08.2013 calling upon the petitioners to stop further construction and the said notice was issued without any enquiry and without hearing the petitioners and it referred that complaints were received by the first respondent regarding the said construction. The inspection was made by the first respondent on 31.07.2013 and the said stop work notice indicated that the first respondent inspected the premises and found that the building to be constructed is to be used for office purpose of Jamath. In spite of request, the particulars regarding the said complaints have not been given to the petitioners. It is further stated by the petitioners that the first respondent informed that he will conduct enquiry and inform the further course of action. Subsequently, the impugned order dated 12.08.2013 had been passed, cancelling the sanction without even hearing the petitioners. The impugned order indicates that since the building was to be used for office purpose, the stop construction order is being passed. The impugned order further refers to the inspection conducted and that the first respondent has cancelled the sanction of construction stating that the proposed construction is going to be used for worshiping purpose. According to the petitioners, the impugned order cancelling the building approval, referred to Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, which is not applicable to the case of the petitioners and the impugned order is issued based on surmises.

4. According to the petitioners, there is no violation of the construction and the same had been done in accordance with the plan approval and that the first respondent has not carried

out any enquiry and that the petitioners have invested huge amount for constructing the building. It is the further case of the petitioners that the impugned order dated 12.08.2013 has to be interfered with by this Court and thereby, this Court may permit the petitioners to continue with the construction in accordance with the approved plan, dated 07.06.2013.

5. The first respondent has filed counter affidavit stating that the petitioners, in individual capacity and not as representative of the Tamil Nadu Thavheed Jamath Muthupettai Branch, submitted the application on 21.05.2013 to construct ground and first floor on the land in S.Nos.114/9 and 114/9Q, for which planning permission was granted by proceedings, dated 07.06.2013. As there were representations received from the locality objecting to the construction, the Assistant Director of Town Panchayat, Thanjavur Zone and the first respondent have inspected the site on 31.07.2013 and noticed that the construction was designed as prayer hall to offer Namaz and run Madrasa, and hence, stop work notice, dated 02.08.2013 was issued stating that the construction may be continued thereafter and non-compliance would result in cancellation of the building planning permission granted on 07.06.2013. Despite the said stop work notice, the petitioner continued the construction, resulting in passing the impugned order, dated 12.08.2013.

6. It is further stated by the first respondent in the counter that as per Rule 6(4) of the said Rules, prior approval of the District Collector is necessary in case of a site to be used for construction of a building intended for public worship or religious purpose and the District Collector may refuse such approval, if in his opinion the use and purpose of the site and the building are likely to endanger public peace and order and appeal will lie to the Government against the decision of the District Collector. The impugned order is issued inasmuch as the building is designed to offer Namaz (prayer) and run Madrasa. The facts emerged that the petitioners jointly issued communication in the name of the said Jamath, asking for contribution towards the construction of prayer hall at a cost of Rs.50 lakhs. Since the ongoing construction was meant for religious purpose, the first respondent issued the impugned order cancelling the building planing permission granted on 07.06.2013. By interim order dated 16.12.2013 in M.P.No.2 of 2013, this Court granted interim stay for a period of four weeks and taking advantage of the same, the petitioners carried on the construction work in deviation of the approved plan, without even adhering to the stop work notice. The petitioners should have filed an appeal to the District Collector, Tiruvarur, who will decide the issue as per Rule 6(4) of the said Rules.

7. It is also stated in the counter affidavit of the first respondent that one Mrs.Raviyath and Mrs.Sharfunnissa residing

in Muthupettai Town, have jointly filed O.S.No.113 of 2013 before the District Munsif Court, Thiruthuraipoondi, in which they have also sought for direction to refrain the defendants from making use of the building for offering Namaz and in the said suit, the petitioners herein and the first respondent herein are the defendants, and the said suit is still pending. Hence, for the above reasons, the first respondent prayed for dismissal of the Writ Petition.

8. In spite of the matter being listed under the caption "for dismissal", there is no representation for the petitioners either in person or through counsel.

9. Heard the learned Government Advocate appearing for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

10. It has been categorically stated in the stop work notice, dated 02.08.2013 that the planning permission was obtained for construction of residential house and not for any Jamath/prayer hall/Madrassa. When there is specific plan accorded for construction of residential house, the petitioners cannot construct the said Jamath/prayer hall/Madrassa, and hence, the first respondent is right in issuing the stop work notice and thereafter passing the impugned order of cancellation of planning approval. If any construction is subsequently made after obtaining the interim order from this Court, and thereafter contending that the huge amount has been invested, the same cannot be a ground to permit the construction of the superstructure to stand there, when admittedly the planning permission has been sought for and approval has also been given only for construction of residential house, and hence, the construction of prayer hall/Jamath/Madrassa is not permissible. It is stated by the learned Government Advocate appearing for the first respondent that on 12.02.2015, interim injunction was granted in I.A.No.380 of 2013 in O.S.No.113 of 2013 against the petitioners restraining them from performing any prayer in the property. It is vehemently contended by the learned Government Advocate Mr.Akhil Akbar Ali, appearing for the first respondent that the structure in question has to be razed to the ground. Hence, the first respondent is directed to demolish the construction so made forthwith, as I find much substance in the contention of the learned Government Advocate appearing for the first respondent. If no action is taken by the first respondent for demolishing the construction made, disciplinary action shall be taken against the person(s) who is/are responsible for taking steps to demolish the building construction and any major punishment shall be imposed on those person(s), which shall be reflected/entered in his/their service records as a black mark. If no action is taken against those persons responsible for demolishing the construction, the person who is liable to take

disciplinary action shall be dismissed from service.

11. Hence, the Writ Petition is dismissed not only for default on account of non-appearance of the petitioners, but also on the merits of the matter on the above lines. No costs. The Miscellaneous Petitions are closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

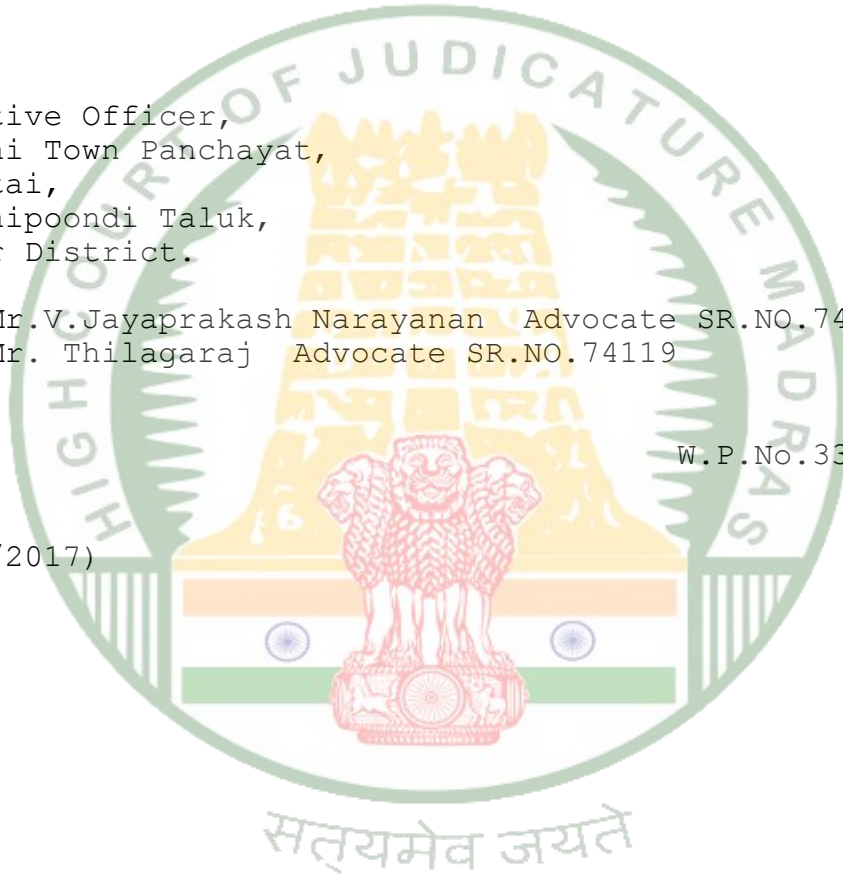
The Executive Officer,
Muthupettai Town Panchayat,
Muthu Pettai,
Thiruthuraipoondi Taluk,
Thiruvarur District.

+1 CC to Mr.V.Jayaprakash Narayanan Advocate SR.NO.74221

+2 CC to Mr. Thilagaraj Advocate SR.NO.74119

W.P.No.33929 of 2013

SS(CO)
VC (17/11/2017)



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