



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.P. (MD) No.20436 of 2017
and**

W.M.P (MD) No.16710 of 2017

Abdul Rahim

: Petitioner

.vs.

1. The Government of Tamil Nadu,
Rep. by the Commissioner,
Commissioner of Town and Country Planning
Department of Municipal Administration and
Water Supply,
Chennai.

2. The Kodaikanal Local Planning Authority,
Kodaikanal,
Dindigul
District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus directing the First Respondent to dispose of the exemption application submitted by the Petitioner under Section 113-C of Tamil Nadu Town and Country Planning Act, 1971, dated 26.07.2017, within the time that may be stipulated by this Honourable Court and to consequently forbear the Respondents from taking any coercive action against the Petitioner's property in T.S.No.37, Block No.18, Laws Ghat Road, Kodaikanal, pending disposal of the exemption application in the light of the judgment of this Honourable court in Amanullah vs. Government of Tamil Nadu, W.P (MD) No.9064 of 2017 dated 17.05.2017.

For Petitioner : Mr.M.Mahaboob Athiff for
M/s.Ajmal Associates

For R-1 : Mr.G.Muthukannan,
Government Advocate

**O R D E R***********

[Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in directing the First Respondent to dispose of the Exemption Application submitted by the Petitioner under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, dated 26.07.2017, within the time to be prescribed by this Court and to forbear the Respondents from taking any coercive action against the Petitioner's property in T.S.No.37, Block No.18, Laws Ghat Road, Kodaikanal, pending disposal of the Exemption Application in the light of the judgment of this Court in W.P(MD)No.9064 of 2017 dated 17.05.2017 (Amanullah vs. Government of Tamil Nadu).

2.Heard both sides.

3.By consent, the main Writ Petition itself is taken up for final disposal.

4.According to the Petitioner, an extent of 38.14 cents in T.S.No.37, Block No.18, Laws Ghat Road, Kodaikanal, together with built-up structure in 4000 sq. ft., belongs to his father Mr.Haji.M.Abbas by means of a registered sale deed dated 18.08.2005. Later, his father vested the said property to and in favour of his name by means of registered Hiba dated 03.12.2007 and 07.08.2014. In fact, the said structure was constructed about 90 years ago and was greatly in a dilapidated condition. Since it was necessary to construct a new building, a Petition/Application was submitted to the Second respondent on 05.05.2008 and 20.02.2009 and a building approval and permission was granted by virtue of proceedings dated 21.11.2011. Only after obtaining requisite permission, a new building was constructed in the afore stated land. It appears that the Petitioner is in occupation of the said land till date.

5. When that be the fact situation, a notice under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, came to be issued on 24.06.2015 alleging that the structure constructed by the Petitioner is in deviation of the planning permission granted and as such, it is an unauthorised construction.

6. The Petitioner assailed the notice dated 24.06.2015 issued by the Second Respondent in W.P(MD)Nos.13061 and 13062 of 2015 on the file of this court, which came to be disposed of by means of an order dated 07.10.2015, whereby and whereunder, he was directed to file a Petition under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the Government and



till the disposal of the same, the Planning Authorities were restrained from taking any coercive action. As a matter of fact, he filed an Application before the First Respondent/Government of Tamil Nadu on 18.01.2016 and the same was rejected as per order dated 26.02.2016.

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7. Not resting with the same, the Petitioner filed an Application seeking exemption under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, seeking to exempt his premises from the purview of the Act, having regard to the fact that his building was constructed much prior to coming into force of the Act. The said Application was filed on 26.07.2017 and the same was received on 28.07.2017. It appears that the said Application is pending on the file of the First Respondent till date without any progression in the subject matter in issue. Hence, the Petitioner has filed the present Writ Petition seeking to dispose of the Exemption Application submitted by him in terms of the ingredients of Section 113-C of the Act, 1971, dated 26.07.2017 within the time adumbrated by this Court etc.

8. Per contra, it is the submission of the Learned Counsel for the Second Respondent/Local Planning Authority that the records show that there were total deviation of building plan approval and the Petitioner had managed to put up a commercial building with a huge deviation and because of that, the Petitioner was issued with the notices under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 by the Municipality. In fact, it is the version of the Second Respondent that the Petitioner later filed an Appeal before the First Respondent/Government under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971 and the same was rejected. Therefore, the Petitioner's deviation is to be removed in the eye of Law.

9. It is represented on behalf of the Second Respondent that as on date, the Application of the Petitioner (filed under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971), is pending and the said Application from the purview of the Second Respondent is not maintainable in the eye of Law.

10. On behalf of the First Respondent, it is represented before this Court that the Petitioner's Application seeking exemption under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, is pending as on date and if this Court prescribes a time limit to the First Respondent, then, the same will be followed in a true letter and spirit and without any deviation whatsoever.

11. It is not in dispute that Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 was inserted by Tamil Nadu Act 36 of 2012, with effect from 16.07.2012. Indeed, the State Government had framed the Guidelines for Exemption of Buildings



2017 and the Tamil Nadu Assessment and Collection of Amount for Exemption of Building Rules 2017, under Section 113 - C of the Act in G.O.Ms.Nos.110 and 111 dated 22.06.2017.

12. Inasmuch as on date, admittedly, the Application filed by the Petitioner (under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971), is pending before the First Respondent ever since 26.07.2017. Therefore, this Court deems it fit and proper to direct the First Respondent to take up the Petitioner's Application, dated 26.07.2017 (filed under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971) and to dispose of the same by passing a reasoned speaking order on merits by assigning necessary qualitative and quantitative reasons, of course after adhering to the principles of natural justice by providing an opportunity of hearing/personal hearing as the case may be within a period of five weeks from the date of receipt of a copy of this order.

13. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The the Commissioner
Government of Tamil Nadu,
Commissioner of Town and Country Planning
Department of Municipal Administration and Water Supply,
Chennai.

2. The Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.

+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 91374
+ 1 cc TO Mr.T.S.Mohammed Mohideen , Advocate in SR No. 91280
+ 1 cc TO The Special Government Pleader in SR No. 91476

pm

AE/MR KKR/SAR3/26.12.2017/4P/6C

**ORDER MADE IN
W.P. (MD) No. 20436 of 2017
05.12.2017**