



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) Nos.4376, 13531 and 14291 of 2017
and

W.M.P. (MD) Nos.3511, 10585, 10586 and 11191 of 2017

W.P. (MD) No.4376 of 2017:

R.Suresh Babu

: Petitioner

Vs.

1. The District Collector,
Theni District.
2. The Assistant Director of Town Panchayats,
Theni Region,
Theni District.
3. The Executive Officer,
Palanichettipatti Town Panchayat,
Theni, Theni District.
4. Thiru.Udayasuriyan
5. Smt.Murugeswari

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to demolish and remove the unlawful, unauthorized and illegal constructions made by respondents 4 and 5 herein in S.Nos.43 and 44, Kumuli-Periyakulam Road, Theni, Theni District, belonging to the respondents 4 and 5 herein without any further delay and consequently, to direct the respondents 1 - 3 herein to recover the revenue loss caused by the respondents 4 and 5 by under valued assessment of property tax and expenses for demolition of commercial and lodging premises in S.Nos.43 and 44, Kumuli-Periyakulam Road, Theni, Theni District.

For Petitioner

<https://hcservices.ecourts.gov.in/hcservices/>

: Mr.Veera Kathiravan,
Senior Counsel,
For Mr.M.Muthusamy



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For Respondents 1&2 : Mr.M.Govindan,
Special Government Pleader

For Respondent No.3 : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader

For Respondents 4&5 : Mr.M.Ajmal Khan,
Senior Counsel,
For Mr.R.J.Karthick

W.P. (MD) No.13531 of 2017:

Udhayasuriyan : Petitioner

Vs.

1. The Tamil Nadu Local Body Ombudsman,
No.100, Annasalai,
Guindy,
Chennai-32.
2. The Executive Officer,
Palanichettipatti Town Panchayat,
Theni District.
3. A.Mithun Chakarvarthi : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings of the first respondent in Order No.116/2017 dated 20.05.2017 and the consequential impugned proceedings of the second respondent in Na.Ka.No.305/2014, dated 30.06.2017 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel,
For M/s Ajmal Associates

For Respondent No.1 : Mr.D.Shanmugaraja Sethupathi

For Respondent No.2 : Mr.T.S.Mohameed Mohideen,
Additional Government Pleader

For Respondent No.3 : No Appearance

W.P. (MD) No.14291 of 2017:

Udhayasuriyan : Petitioner

vs.

1. The Director,
Directorate of Town and Country Planning,
807, Anna Salai,
Chennai.



2. The Deputy Director,
Directorate of Town and Country Planning,
4, Hakkim Ajmal Khan Road,
Chinna Chokkikulam,
Madurai-625 002.

3. The Executive Officer,
Palanichetti Patti Town Panchayat,
Theni District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to dispose of the petitioner's appeal petition taken on file in proceedings No.12509 of 2017, within a time frame fixed by this Court.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel,
For Mr.R.J.Karthick

For Respondents 1&2 : Mr.M.Govindan,
Special Government Pleader

For Respondent No. 3 : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader

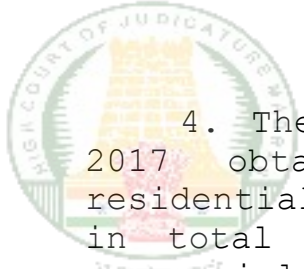
C O M M O N O R D E R

[Order of the Court was made by **K.K.SASIDHARAN, J.**]

The Writ Petition in W.P.(MD)No.4376 of 2017 is filed to direct the District Collector, Theni and the Executive Officer, Palanichettipatti Town Panchayat, Theni, to demolish the unauthorized construction made by Thiru.Udayasuriyan and his wife Smt.Murugeswari in Survey Nos.43 and 44, Kumuli-Periyakulam Road, Theni, Theni District.

2. The challenge in W.P.(MD)No.13531 of 2017 is to the order passed by the Tamil Nadu Local Body Ombudsman dated 20 May, 2017, directing action to be taken against the officials of the Panchayat on account of their inaction against the illegal structure.

3. The Writ Petition in W.P.(MD)No.14291 of 2017 is filed by the builder to direct the Town and Country Planning Department to dispose of his appeal, within a specified time.



4. The petitioner in W.P.(MD)Nos.13531 of 2017 and 14291 of 2017 obtained planning permission for construction of a residential unit with a total area of 2,560 square feet. However, in total violation of the sanctioned plan, he constructed a commercial building with four floors. The constructed area would come to 10,000 square feet. There were litigations initiated against the illegal construction earlier. The Executive Officer, Palanichettipatti Town Panchayat, in the meantime, initiated enforcement action by issuing locking and sealing notice.

5. The Executive Officer, Palanichettipatti Town Panchayat, in his report submitted before this Court on 14 December, 2016, submitted that he could not seal the building on account of the resistance offered by the builder. According to the Executive Officer, the builder is a former Vice President of the Panchayat and a prominent member of a political party. Since the Executive Officer was physically prevented in executing the order, he could not seal the building.

6. The petitioner in W.P.(MD)No.14291 of 2017 submitted revised plan to the Directorate of Town and Country Planning Department. The plan was returned with a direction to submit it through the Local Planning Authority. The petitioner is yet to re-submit the plan.

7. The learned Senior Counsel for the petitioner in W.P.(MD) No.14291 of 2017 submitted that the plan would be re-submitted shortly and a direction should be issued to the Directorate of Town and Country Planning to process the plan and pass orders, as expeditiously as possible.

8. The order passed by the Tamil Nadu Local Body Ombudsman is challenged in W.P.(MD)No.13531 of 2017. It is the grievance of the petitioner that he was not heard before passing such an order involving civil consequences.

9. Since the Executive Officer, Palanichettipatti Town Panchayat in his report submitted that he was prevented by the petitioner in W.P.(MD)Nos.13531 and 14291 of 2017 to execute his order of locking and sealing, we directed the Superintendent of Police, Theni District, to give him necessary assistance. We are informed by the Executive Officer that the building has already been sealed with the assistance of police. The said *status quo* shall remain till a decision is taken by the Director of Town and Country Planning in the revised application submitted by the builder for planning permit.

10. The Writ Petition in W.P.(MD)No.14291 of 2017 is disposed of with a direction to the Local Planning Authority, to forward the revised plan to the Director of Town and Country Planning, if the same is otherwise in order. It is for the Director of Town and



Country Planning to take a decision in the matter on merits and as per law. No costs. Consequently, the connected miscellaneous petition is closed.

11. The order passed by the Tamil Nadu Local Body Ombudsman dated 20 May, 2017, indicates that action was recommended against the concerned officials. There was no direction as such against the builder. We, therefore, do not find any reason to quash the impugned order dated 20 May, 2017 at the instance of the petitioner in W.P.(MD)No.13531 of 2017. We make it clear that in case further action is taken, pursuant to the order dated 20 May, 2017, it is open to the concerned officials to defend the proceedings in accordance with law.

12. The Local Planning Authority has already taken action against the builder by locking and sealing the premises. The question of demolition of the illegal structure would depend upon the orders to be passed by the Town and Country Planning Department.

13. The Writ Petitions in W.P.(MD)Nos.4376 and 13531 of 2017 are disposed of with the above observation and direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

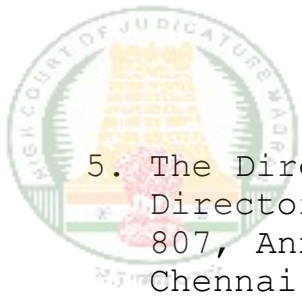
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Theni District.
2. The Assistant Director of Town Panchayats,
Theni Region,
Theni District.
3. The Executive Officer,
Palanichettipatti Town Panchayat,
Theni, Theni District.
4. The Tamil Nadu Local Body Ombudsman,
No.100, Annasalai,
Guindy,
Chennai-32.



5. The Director,
Directorate of Town and Country Planning,
807, Anna Salai,
Chennai.

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6. The Deputy Director,
Directorate of Town and Country Planning,
4, Hakkim Ajmal Khan Road,
Chinna Chokkikulam,
Madurai-625 002.

COPY TO

The Superintendent of Police,
Theni District.

+3cc to Mr.T.S.Mohammed Mohideen, Advocate Sr.No.74964,74963,74961
+1cc to The Spl.Government Pleader Sr.No.75162,75161,75093
+1cc to Mr.A.Mithun Chakravarthi, Advocate Sr.No.75220
+1cc to Mr.D.Shanmugaraja Sethupathi, Advocate Sr.No.74987
+1cc to Mr.Mr.R.J.Karthick, Advocate Sr.No.74993

SML

VB/KK/SAR3/24/10/2017/6P/15C

**Common Order made in
W.P. (MD) Nos.4376, 13531 and 14291 of 2017
Dated: 28.08.2017**