



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On : 09.11.2017
Orders Pronounced On : 23.11.2017

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CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.8501 of 2017 and
WMP(MD)No.6491 of 2017

J.Ayesha Begam
Managing Partner,
M/s.P.H.Mohamed Nasiruddin (FIRM),
No.1, HM Garden,
NSB Road to Super Bazar Link Road,
Teppakulam, Trichy - 620 002.

.. Petitioner

Vs.

1. The Member Secretary,
Tiruchirappalli Local Planning Authority,
No.10, Williams Road, Trichy - 620 001.
2. The District Collector cum Executive Magistrate,
Tiruchirappalli District,
Trichy - 620 001.
3. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Trichy - 620 001.
4. The Director of Town & Country Planning,
807, Anna Salai, Chennai - 600 002.
5. The Director General of Archaeological
Survey of India,
Archaeological Survey of India Head Quarters,
Janpath, New Delhi 110 001.
6. The Superintending Archaeologist,
Government of India,
Chennai Circle, Archaeological Survey of India,
Fort St.George, Chennai - 600 009.
7. H.H.The Prince of Arcot Endowment
Represented by its Accredited Agent,
12, 2nd Floor, G.M.A.K.Block,
N.S.B.Link Road, Trichy - 620 002.



8. M/s.Rathna Stores,
Represented by its Managing Partner,
Door No.7 & 8, Siva Complex,
N.S.B.Road, Tiruchirappalli.

9. M/s.Rathna Stores (Firm)
represented by its Managing Partner,
Door No.9&10, N.S.B. Road,
Tiruchirappalli.

.. Respondents

Prayer: Writ Petition is filed Under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus forbearing the Respondents 1 to 6 herein from allowing the Respondent Nos.7 to 9 from proceedings with illegal construction of commercial complex in S.Nos.76, 77, 80 & 81, in N.S.B.Road, Trichy, on the North of petitioner's premises and consequently to demolish all the structures constructed in violations and deviations of permission, plan approval of First Respondent as well as violating licence condition of Sixth Respondent herein over and above 10 meters height.

For Petitioner : Mr.M.Ajmalkhan Senior Counsel for
Mr.M.Mahaboob Athiff

For R1, 2 & 4 : Mr.M.Govindan
Special Government Pleader

For R3 : Mr.N.S.Karthikeyan,
Standing Counsel

For R5 & 6 : Mr.N.Shanmugaselvam

For R7 : Mr.K.S.Shankar Murali

For R8 & 9 : Mr.T.V.Ramanujam,
Senior Counsel for
Mr.N.C.Ashok Kumar

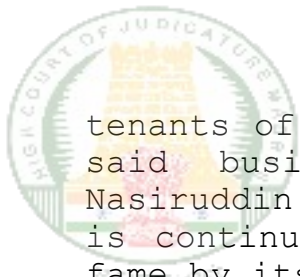
O R D E R

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

The Petitioner has focused the present Writ of Mandamus praying for passing of an order by this Court in forbearing the Respondent Nos.1 to 6 from allowing the Respondents 7 to 9 from proceedings with an illegal construction of commercial complex in S.Nos.76, 77, 80 & 81, in N.S.B.Road, Trichy, on the North of Petitioner's premises and consequently to demolish all the structures constructed in violations and deviations of permission, plan approval of the First Respondent as well as violating licence condition of Sixth Respondent over and above 10 meters height.

(2) SUMMARY OF Writ GERMANE LONG FACTS:

(i). The Petitioner is running a fresh fruit juice shop in New T.S.No.81 (Old S.No.2562) in N.S.B.Road, Trichirappalli in the name and style of "M/s.P.H.Mohamed Nasiruddin Firm" since 1959 and



tenants of the Prince of Arcot Endowments. As a matter of fact, the said business was started by her Father-in-Law P.H.Mohamed Nasiruddin in the year 1959 and after his death, the said business is continued as a partnership business, which has earned name and fame by its quality and service to the public in the locality.

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(ii).The Eighth and Ninth Respondents as the 'Lessee' of the Seventh Respondent/Endowment started putting up construction adjacent to petitioner's juice shop premises in S.No.81 for expansion of the shopping complex already in existence in S.No.76. Indeed, the Seventh Respondent had obtained permission for construction and approval for the building plan for the ninth Respondent from the Respondent Nos.1 to 4 in File No.F2/2573/04 of Trichirappalli Corporation, dated, 30.04.2004 and LPA Order in File No.871/2004 dated 20.12.2004, according to which, 4.57 metres (15 feet) open space should be left to the North of her juice shop.

(iii).In view of the fact that the site in question is within the distance of 110 meters from the Archaeological Monumental area viz., 'Main Guard Gate', it required permission from the Sixth Respondent and that the Seventh Respondent sought prior permission for construction of the commercial complex for the Eight and Ninth Respondents. The Sixth Respondent had issued the permission by means of licence, dated 11.10.2004, which is valid for a period of one year from the date of issuance of the said licence. Moreover, the construction ought to be put up within a period of one year stipulating seven conditions and deviation of any of the conditions would entail demolition of deviated construction as an unauthorised and illegal one.

(iv).The seven conditions are (1)The Construction is restricted upto a height of 10 meters (ten meters only); (2)No building of historical importance, which has been in existence for more than 75 years may be demolished; (3)In the facade of the building elements of ancient architecture be incorporated; (4)Appropriate breathing space be ensured around the building for better maintenance of the environment; (5)The earth work excavation should be done under the direct supervision, of the Curator, Government Museum, Tiruchirappalli; (6)If any Antiquities/Ancient structure is found should be reported to the Curator, Government Museum and the work should be stopped immediately; and (7)This licence will stand cancelled if any ancient remains are discovered by the Curator, Government Museum, Tiruchirappalli.

(v).The stand of the Petitioner is that the Respondent Nos. 7 to 9 had obtained a building plan approval only upto second Floor for a height not exceeding 10 metres, but the construction had proceeded upto Fourth Floor. Apart from that, the Respondents Nos.7 and 8 had not left open space of 15 feet on the North of the petitioner's juice shop. In fact, only one feet was left by them, which not only prevented the customers coming to the petitioner's shop, but posed life threat to her and her customers and damage to



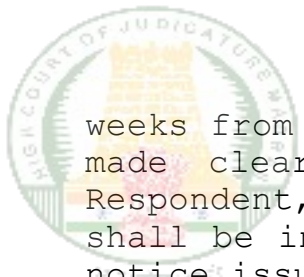
her premises. The Respondent Nos.7 to 9 had converted the approved parking underground area into commercial business Floor.

(vi).The Petitioner submitted an application before the Sixth Respondent stating that the construction is proceeded in violation of permission granted by them over and above the 10 meters height. At the time of construction of Third Floor itself, the Petitioner sent spate of complaints to the Respondent authorities pointing out the violations and deviation of conditions of permission and approval. She also issued a Lawyer's notice to the Respondent Nos.1 to 6, for which, the First Respondent/Member Secretary, Trichirappalli Local Planning Authority, Trichirappalli, had informed the petitioner's Counsel that already notice for violation of construction, the deviation from the approved plan was issued to the Respondents for not leaving 15 feet open space and not of her juice shop, as per approved building plan and for other violations.

(vii).The Petitioner filed W.P.(MD)No.7922 of 2010 based on the reply letters, dated 10.08.2010 and 29.09.2011, of the Local Planning Authority for her complaint in regard to the violation of mandatory open space of 15 feet gap to the North of juice shop. An order of injunction was issued against M/s.Ratna Stores Firm/Fifth Respondent therein.

(viii).On 04.04.2013 in W.P.(MD)No.7922 of 2010, a final order was passed, whereby a direction was issued to the Third Respondent to proceed further pursuant to the stop work notice issued by it to the Fifth Respondent on 19.11.2010 and act in accordance with Law. Also, it was observed that it is open to the Fifth Respondent to submit his reply to the notice, which shall be considered by the Third Respondent. Subsequently, the First Respondent/Member Secretary, Trichirappalli Local Planning Authority issued notice on 16.07.2013 under Section 56(2) of the Town and Country Planning Act, 1971, to lock and seal the building, in respect of the violation of not leaving side set back open space and constructing additional Third and Fourth Floor against the approved plan and construction, which was made without permission and plan approval from the authority. The Seventh and Ninth Respondents for the notice dated 16.07.2013, furnished their explanation on 19.07.2013 to consider the revised plan for approval.

(ix).Later, the Seventh Respondent/Endowment, filed W.P.(MD) No.11857 of 2013 assailing the notice dated 16.07.2013 of the First Respondent/Local Planning Authority. After filing of common counter by the Respondent authorities pointing out the 100% violation in the construction narrating all the facts and submissions, this Court, on 24.04.2014, had directed the Second Respondent to consider the explanation submitted by the petitioner, dated 19.07.2013 to the impugned notice issued by the Second Respondent, dated 16.07.2013, and to pass appropriate orders on the revised plan submitted by the petitioner, as per the provisions of the Tamil Nadu Town & Country Planning Act, 1971, as expeditiously as possible, not later than two



weeks from the date of receipt of a copy of this order. Also, it was made clear that till a final order is passed by the Second Respondent, as per the direction issued by this Court, no action shall be initiated against the petitioner, pursuant to the impugned notice issued by the Second Respondent dated 16.07.2013.

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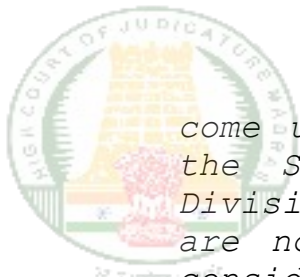
(x). Since no action was taken by the First Respondent/Member Secretary, Trichirappalli Local Planning Authority and because of the fact that the Respondent Nos.7 and 8 had proceeded with their illegal construction, the Petitioner was prepared to send a representation to the First Respondent on 15.09.2014 requesting them information as to the action taken on the orders passed in W.P.(MD) No.11857 of 2013. The First Respondent gave a reply on 10.10.2014 stating that the Seventh Respondent/Endowment sought approval of their illegal construction and the Explanation/Request of Seventh Respondent was rejected on 07.10.2014 and a chain of action was said to have been taken under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971.

(xi). For the past three years despite issuance of directions by this Court in W.P.(MD) No.7922 of 2010 dated 04.04.2013 and W.P.(MD) No.11857 of 2013, dated 24.07.2017, no action was taken by the First Respondent and the Respondent Nos.7 to 9 had proceeded to complete the construction. In fact, the Respondent Nos.7 to 9 had flouted the orders of this Court with the active support of Respondent Nos.1 to 6. Again the Respondent Nos.7 to 9 are proceeding with construction without permission and plan approval from the Respondents on the North of petitioner's premises, over and above the existing illegal construction. The Petitioner made objections, but she was threatened by some disgruntled persons and therefore, she addressed a representation dated 30.03.2017, to the Respondent Nos.1 to 6 through registered post with Acknowledgement Due bringing to their notice about the fresh construction with six photographs without permission and plan approval from them and also prayed for stopping the illegal construction and sought for demolition of the same. The Respondents had not so far considered her representation dated 30.03.2017 and that the Respondent Nos.7 to 9 are hastily attempting to complete the construction. There was a fire in the year 2012 in the same building and no safety norms are in place. Since the Respondent Nos.1 to 6 remain inactive and refused to exercise the statutory power vested in them, despite repeated directions issued by this Court in numerous Writ Petitions, the Petitioner left with no other option, has filed the present Writ Petition.

(xii) The Learned Senior Counsel for the Petitioner refers to the decision **P.T.PRABHAKAR AND ANOTHER v. THE MEMBER SECRETARY, CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY AND SEVEN OTHERS**, reported in **2006 (5) CTC 449**, at special page Nos.463 and 464, wherein at paragraph Nos.23 to 26, it is observed as follows:-

"23. The next question to be considered is as to what further process to be taken in this regard. The issue relating to the demolition of unauthorised construction had

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come up on more than one occasion. Series of judgments of the Supreme Court on the issue was considered by the Division Bench of this Court reported in 2006(4) CTC 483. We are not inclined to once again refer to those judgments, considering the serious lapses committed by the 3rd Respondent. The Development Control Rules are intended to ensure proper administration and to provide proper civic amenities. The paramount considerations of regulating provisions for construction activities are public interest and convenience. No one has vested right to seek for regularisation. Regularisation relating to development of the land and the construction of buildings should be strictly implemented. Going by judicial notice, we find that most of the times, these regulations/rules are kept only as "paper regulation" and "paper Rules" and ornaments to the statute without giving effect to, resulting infringement of the basic right to amenities by citizens to which they are otherwise entitled in Law. In *Friends Colony Development Committee v. State of Orissa* the Supreme Court has observed in para 25 as follows:

"Though the municipal Laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or any attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations, do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum."

24. In *Syed Muzaffar Ali v. Municipal Corporation of Delhi*, 1995 Supp. 4 SCC 426 the Supreme Court has observed as follows:

Mere departure from authorised plan or putting up a construction without sanction does not ipse facto and without more necessarily and inevitably justify the demolition of the structure. There are cases and cases of such unauthorised construction, some are amenable to compounding and some may not be. There may be cases by grave and serious breaches of the licencing provisions or building regulations that may call for extreme steps of demolition.

25. In *MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.*, 2004 (9) SCC 619 the Supreme Court has observed as follows:



In ordinary course the builder could not have carried out construction activities in anticipation that such violations/deviations might be regularised.

If admittedly the constructions are not in terms of the rules, the question of getting them sanctioned by statutory authority would not arise.

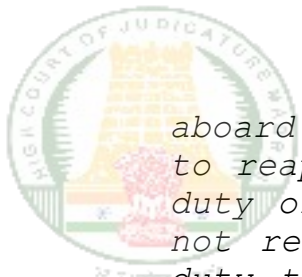
No builder acquires any legal right in respect of even the plan until it is sanctioned in his favour.

26. In Pratibha Cooperative Housing Society Limited and Anr. v. State of Maharashtra and Ors. A.I.R. 1991 SCC 1453 while considering the unauthorised construction, the Supreme Court had observed in para 6 as follows:

"We are of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety occupiers and residents.... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and by-Laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits."

(xiii).The Learned Senior Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in **ROYAL PARADISE HOTEL (P) LTD., v. STATE OF HARYANA AND OTHERS**, reported in **(2006) 7 SCC 597**, at special page 598, whereby and where under it is held as follows:-

"The predecessor of the appellant put up the offending construction in a controlled area in defiance of the provisions of Law preventing such a construction and in spite of notices and orders to stop the construction activity. The constructions put up are thus illegal and unauthorised. The appellant is only an assignee from the person who put up such a construction and his present attempt is to defeat the statute and the statutory scheme of protecting the sides of highways in the interest of general public and moving traffic on such highways. Therefore, the present case is a fit case for refusal of interference against the decision declining the regularization sought for by the appellant. Such violations cannot be compounded. It is time that the message goes



aboard that those who defy the Law would not be permitted to reap the benefit of their defiance of Law and it is the duty of High Courts to ensure that such defiers of Law are not rewarded. The High Court was rightly conscious of its duty to ensure that violators of Law do not get away with it."

(xiv).The Learned Senior Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in **DIPAK KUMAR MUKHERJEE v. KOLKATA MUNICIPAL CORPORATION AND OTHERS** reported in (2013) 5 SCC 336 at special pages 342 to 344, wherein at paragraph Nos.6 to 8, it is observed as under:-

"6. In **Shanti Sports Club v. Union of India** (supra), this Court approved the order of the Delhi High Court which had declared the construction of sports complex by the appellant on the land acquired for planned development of Delhi to be illegal and observed:

"In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning Laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant Laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and



people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other Laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar Laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with Laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting Laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

7. In Priyanka Estates International Pvt. Ltd. v. State of Assam (supra), this Court refused to order regularisation of the illegal construction raised by the appellant and observed:



"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

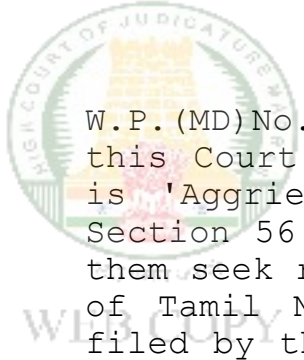
8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal Laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning Laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."

(3) The First Respondent's Counter Averments:-

(i) A notice, dated 30.12.2014 was issued by the First Respondent because of the fact that the Petitioner had failed to submit the application with relevant documents even after several extension of time was given by the Authority. The First Respondent was directed by this Court to lock and seal the building as per order dated 10.08.2017, after obtaining the approval from the District Collector and with the aid of Police, Revenue and Trichirappalli Corporation Officials, the building was sealed on 12.08.2017 between 6.30 a.m and 8.30 a.m.

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(ii). In fact, the premises was sealed by the authority on 12.08.2017 in compliance with the direction issued by this Court in



W.P.(MD)No.8501 of 2017, and the same is pending. Apart from that, this Court had already expressed that if the owner of the Building is 'Aggrieved' in respect of the action of Lock and seal under Section 56(2) of Tamil Nadu Town and Country Planning Act 1971, let them seek remedy before the statutory Authority as per Section 80(A) of Tamil Nadu Town and Country Planning Act 1971. An Appeal was filed by the Seventh Respondent on 23.08.2017 before the Government and that the Government directed the First Respondent/Member Secretary, Tiruchirappalli Local Planning Authority to deseal the building for a period of 45 days. Later, this Court had granted permission to deseal the premises as per the order of Government.

(iii).The Seventh Respondent's agent had directly submitted a proposal to the Commissioner of Town and Country Planning, Chennai, on 12.08.2017 and the same was scrutinized and additional particulars were called for from the applicant on 29.08.2017. The Seventh Respondent had submitted the proposal to Tiruchirappalli Corporation on 18.09.2017, which was forwarded to the Local Planning Authority on 13.10.2017 and the same was received by the said Local Planning Authority on 16.10.2017 and the same is under scrutiny.

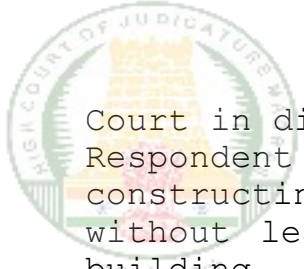
(iv).The Seventh Respondent had preferred an Appeal on 20.10.2017 before the Government and in the said Appeal, an order was passed to the following effect, which runs as under:-

"The appellant in his Appeal has represented that their application for planning permission is under process and now pending with the Trichy Municipal Corporation, Since the application for planning permission is under process with Local Authority/LPA and finally to be disposed of by the Commissioner of Town and Country Planning, the unauthorised building shall be desealed for a further period of 45 days. The Commissioner of Town and Country Planning and LPA of Tiruchirappalli are informed to expedite the disposal of the planning permission and send a report to Government to pass final orders."

(v).The Government in its order dated 20.10.2017 had granted another 45 days to deseal the premises. In the mean time, the Writ Petition is pending for final adjudication and that the interim direction of statutory Authority is for a limited period. Therefore, the Local Planning Authority can take a decision to execute the interim order of Statutory Authority by stating that desealing of premises is subject to the out come of the Writ Petition.

(4).The Contents of the Third Respondent's Counter:

(i) The First Respondent had granted Planning permission on 20.12.2004 and that the Respondent Nos.7 to 9 were permitted to construct two Floors with height not exceeding 10 meteres. However, the Writ Petitioner had constructed four Floors violating all the conditions specified under the planning permission granted by the First Respondent. As a matter of fact, the First Respondent filed W.P.(MD)No.7922 of 2010 seeking for passing of an order by this



Court in directing the Local Planning Authority to forbear the Fifth Respondent (Eighth Respondent in the present Writ Petition) from constructing the building in S.No.81, N.S.B.Road, Trichirappalli without leaving a safe distance of 15 feet from the petitioner's building. The said Writ Petition was disposed recording the submission made by the Third Respondent/First Respondent herein. Moreover, the First Respondent had issued not only a stop work notice but also demolition notice to the Respondent Nos.7 to 9 on 09.09.2008 itself.

(ii).The Seventh Respondent had challenged the First Respondent's notice by filing W.P.(MD)No.11857 of 2013 and this Court, passed necessary orders. The First Respondent, who accorded planning permission in the year 2004, had rejected the 'Revised Plan' on 07.10.2014 and also initiated action to stop work and to demolish the unauthorised construction and that the Petitioner had sent a representation dated 30.03.2017 in regard to the unauthorised construction made by the Respondent Nos.7 to 9.

(iii).A notice under Section 282(1)(2) of the Tiruchirappalli City Corporation Act, dated 01.04.2008, was issued in regard to the deviation in Basement, Ground Floor, First Floor to Fourth Floor. Inasmuch as the Respondent Nos.7 to 9 had not obeyed the earlier notice, another notice was issued under Section 258 of the Tiruchirappalli City Corporation Act, dated 09.04.2008 for removal of encroachment made in the storm water drain. The said encroachment of putting up sodium vapor electric lamp was removed by the Third Respondent. Subsequently, another notice dated 28.03.2016 under Section 297(1)(2) of the Tiruchirappalli City Corporation Act was issued to stop the construction work of the Respondents 7 to 9. The Third Respondent sought the help of police for removal of workmen from that place, as per letter dated 02.06.2008, since the Respondent Nos.7 to 9 had disobeyed the order. Thereafter, as per Section 282(3) of the Trichirappalli City Corporation Act, dated 10.06.2008, affirming the earlier deviation and constructions shown in the notice dated 01.04.2008 was issued. The Third Respondent filed a charge sheet before the Learned Judicial Magistrate, Trichirappalli, in S.T.C.No.212 of 2008, where the Respondents Nos.7 to 9 had admitted the guilt and remitted a fine of Rs.500/- on 22.09.2008. Later, the First and Sixth Respondent had taken steps to remove the unauthorised construction made by the Petitioner by following due process of Law. So far, all the steps taken by the Department was stalled by the Respondent Nos.7 to 9 in one way or other. As such, the Respondent is unable to demolish the unauthorised construction made by the Respondent Nos. 7 to 9.

(5).The Counter Pleas of Fifth and Sixth Respondents:

(i).The Fort Gateway (Locally called as main Guard Gate) in T.S.Nos.(Old)40, 41&42 of Ward V & T.S.No.2573 in Ward IV in Trichirappalli, is a centrally protected monument vide Government of Madras Finance Department Notification No.44, as per Ancient Monuments Preservation Act, 1904 and is currently covered by Ancient Monuments



and Archaeological Sites Remains Act, 1958 (As amended in 2010) and is under the protection of falling under the Archaeological Survey of India, Chennai Circle, Chennai.

(ii).As per Section 20A of the above Act, 'Every area beginning at the limit of the protected area or the protected monument, as the case may be and extending to a distance of 100 meters in all directions shall be the prohibited area in respect of such protected area of protected monument'. Further, in terms of Section 20B of the said Act, 'Every area, beginning at the limit of prohibited area in respect of every ancient monuments archaeological site and remains, declared as of national importance under Section 3 and 4 and extending to a distance of two hundred meters in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains'. Moreover, as per Sub Section 20D (3) of the above Act, the application for construction in regulated area are perused and permission is granted by the Competent Authority/Tamilnadu, the Second Respondent herein on the basis of recommendation of National Monuments Authority, New Delhi.

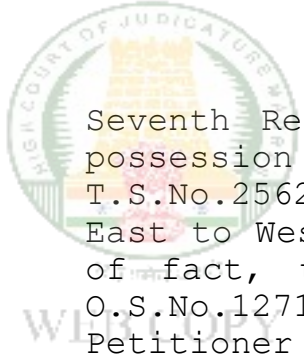
(iii).Before the enactment of Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, the permission for construction in the regulated area of the centrally protected monuments was with Superintending Archaeologist, ASI, Chennai and accordingly granted permission on 11.10.2004 to the Seventh Respondent with the restricted height of 10m and the licence was valid only up to October 2005. After inspection, on the spot, it was found out that construction was made over and above 10 meters height and therefore, notice was issued on 06.04.2017 to the private Respondents to stop the work and until 'No Objection Certificate' is obtained from the Competent Authority.

(iv).In fact, Notices were issued to the Seventh Respondent on 30.09.2017 to stop the construction. Further, the Respondent Nos.7 to 9 have not obtained any fresh permission and therefore, a show cause notice was issued on 18.04.2017 seeking an explanation for the illegal construction.

(6).The Counter Averments of the Seventh Respondent:-

(i).The Petitioner is not a tenant under the Seventh Respondent in respect of the demised property. The Father-in-Law of the Managing Partner of the Petitioner/Firm alone was a tenant under the Seventh Respondent in respect of the vacant site of the demised property. The monthly rent was Rs.30/-. The husband of the Managing Partner of the Petitioner/Firm is a veteran litigant, who used to send plethora of vexatious applications against the Seventh Respondent and instigating the other tenants of the Seventh Respondent to lodge a complaint against the Seventh Respondent without any basis.

(ii).The Petitioner filed a suit in O.S.No.1271 of 1989 against the Seventh Respondent for permanent injunction forbearing the

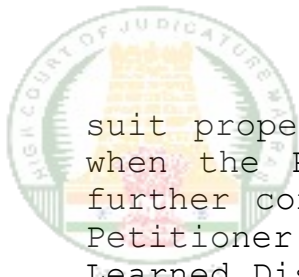


Seventh Respondent from interfering with the Petitioner's alleged possession and enjoyment of the vacant site comprised in Old T.S.No.2562 admeasuring to an extent of North to South 25 feet and East to West 50 feet, other than by due process of Law. As a matter of fact, the Seventh Respondent during the pendency of Suit in O.S.No.1271 of 1989 had filed a 'Suit for Ejectment' against the Petitioner for recovery of possession of the property therein and recovery of damages in O.S.No.1384 of 1988 on the file of the District Munsif Court, Tiruchirappalli. The said Suit in O.S.No. 1271 of 1989 was decreed on 24.12.1999. No Appeal was preferred as against the decree in O.S.No.1271 of 1989, dated 24.12.1989, since the Seventh Respondent had filed Suit for ejectment in O.S.No.1384 of 1989.

(iii).The Petitioner filed a Suit in O.S.No.519 of 1995 on the file of the Learned District Munsif, Tiruchirappalli against the Seventh Respondent/Endowment and others for permanent injunction restraining the Director of Town and Country Planning, Chennai from according any sanction or approval of any building plan in favour of the Seventh Respondent in respect of any land including the demised property, which is under the illegal occupation of the Petitioner/Firm. After filing of the said suit, the Petitioner made an endeavour to put up construction in the suit property therein without any permission from the Seventh Respondent and that such act of the Petitioner, perforced the Seventh Respondent to file I.A No.675 of 1995 in O.S.No.519 of 1995 for an order of interim injunction restraining the Petitioner herein from alienating or dealing with the leasehold property or extending the further construction. The said I.A No.675 of 1995 was allowed on 14.08.1995.

(iv).The Petitioner filed yet another suit in O.S.No.31 of 1996 on the file of Sub Court, Tiruchirappalli against the Seventh Respondent seeking the relief of permanent injunction forbearing the Seventh Respondent from interfering with the Petitioner's right to maintain the suit property therein and effecting periodical repairs and reconstruction in the Flooring and roofing and side portion of the suit property therein etc. However, no interim order was passed in O.S.No.31 of 1996. However, the Petitioner notwithstanding the fact that there was an order in I.A.No.675 of 1995 in O.S.No.519 of 1995 continued to put up construction in the vacant site of the lease hold property and apprehending contempt proceedings withdrew the suit in O.S.No.519 of 1995 which was transferred to the District Munsif Court Tiruchirappalli and numbered as O.S.No.1336 of 1996 and the said Suit came to be dismissed as not pressed on 04.01.1997.

(v).The Seventh Respondent/Endowment also filed a suit in O.S.No. 63 of 1997 on the file of the District Munsif Court, Tiruchirappalli against the Petitioner for permanent injunction restraining the Petitioner from putting up permanent construction in the demised property or extended area and for mandatory injunction to demolish all the illegal construction and extension made in the



suit property in violation of the court order from 14.08.1995 till when the Petitioner withdrew the suit in O.S.No.1336 of 1996 and further construction made thereafter. Indeed, the suit filed by the Petitioner in O.S.No.31 of 1996 was transferred to the file of the Learned District Munsif and renumbered as O.S.No.2896 of 2004.

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(vi). The Petitioner being not satisfied with the filing of the aforesaid vexatious suits, filed another suit in O.S.No.1199 of 2005 on the file of the Learned District Munsif, Tiruchirappalli against the Seventh Respondent seeking the relief of declaration that the Petitioner is entitled to customary easement viz., Urban Servitude and Legal Rights under the implied covenant of lease 'to go over space' with a breadth of 3 feet on the West and on the South of the suit property for effecting repair white washing of Southern face of the Southern wall and Western face of the Western wall of the suit property belonging to him and for consequential relief of permanent injunction restraining the Seventh Respondent from digging any pit or putting up construction in the above space to a width of 3 feet.

(vii).The suit in O.S.No.1384 of 1998 filed for ejectment against the Petitioner was decreed with costs on 30.08.2006 and that the Petitioner was directed to deliver the vacant possession of the suit property to the Seventh Respondent. As against the decree dated 30.08.2006 in O.S.No.1384 of 1998, the Petitioner projected an Appeal in A.S.No.222 of 2006 on the file of the II Additional Sub Court, Tiruchirappalli and the stay already granted in the aforesaid Appeal was already vacated and the said Appeal is pending adjudication.

(viii).The Petitioner filed I.A.No.233 of 2002 in O.S.No.1271 of 1989, but the same was subsequently not pressed. To annoy and harass the Seventh Respondent, the Petitioner filed E.P.No.682 of 2004 in O.S.No.1271 of 1989 against the Seventh Respondent and the same was subsequently dismissed.

(ix).The Petitioner filed I.A.No.283 of 2010 in O.S.No.1199 of 2005 against the Seventh Respondent for an order of interim injunction restraining the Seventh Respondent, his men, servants from digging up any pit or putting up any constructions in the space to the breadth of 3 feet on the North of the suit property. The relief sought for in the Interlocutory Application is similar/identical to the relief sought for in the Writ Petition, except the distance required to be left. The Petitioner had not pressed the said Interlocutory Application and withdrew the suit and resultantly, the suit in O.S.No.1199 of 2005 was dismissed as not pressed on 11.06.2010.

(x).In fact, the Petitioner has wilfully and wantonly failed to disclose the same before the Court. The petition filed by the Petitioner in O.S.No.1384 of 1998 (Under section 9 of the Madras City Tenants Protection Act) was dismissed. The Petitioner has already encroached over and above the extent of the leasehold



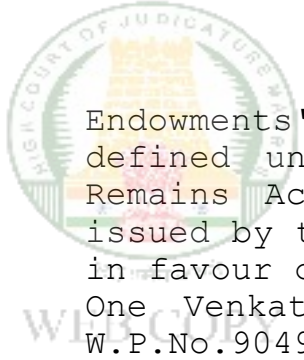
property and as a wrong doer, he is not entitled to get any relief. An extent of 3 feet is left on the South of the Petitioner's leasehold property. On the east of the lease hold property a pathway running North South is in existence. On the North of the leasehold property, the Seventh Respondent put up constructions by leaving an extent of 15 feet and on the west 12 feet. There is no violation of building plan approval and it is in strict adherence to the building plan approval, the Seventh Respondent had put up the construction.

(xi).As against the dismissal of I.A.No.655 of 2004 in O.S.No.1384 of 1998, dated 14.03.2004, seeking stay of the trial of the suit till the disposal of CMA No 2 of 2002 (Wakf CMA), a Civil Revision petition in C.R.P.No.762 of 2005 was filed and the same was also dismissed. Further, this Court in C.R.P.No.431 of 2011, on 04.03.2011, had directed the Second Additional Subordinate Judge, Tiruchirappalli to dispose of A.S.No.222 of 2006 before the end of June 2011, after disposing all the Interlocutory Applications and subsequently reiterated the same by its order dated 19.04.2011.

(xii).The Petitioner filed C.R.P.(MD)No.1100 of 2013 against the order in I.A.No..1016 of 2010 and the same was remanded by this Court. He also filed C.R.P.No.1725 of 2013 against the order in I.A.No.322 of 2007. The Learned Second Additional Sub Judge, Tiruchirappalli dismissed the I.A.No.1016 of 2007 on 27.09.2013, against which, the Petitioner filed C.R.P.No.1166 of 2014 and a Common order was passed in C.R.P.Nos.1725 of 2013 and C.R.P.No.1166 of 2014 and both the Civil Revision Petitions were dismissed by this Court on 08.04.2015, against which, the Petitioner filed S.L.P.Nos.21058 and 21059 of 2015 before the Honourable Supreme Court, which were dismissed on 03.08.2015. Now, the Appeal in A.S.No.222 of 2006 is to be disposed of, as per the order passed by this Court.

(xiii).With a view to drag on the proceedings, the Petitioner filed I.A.No.802 of 2015 in A.S.No.222 of 2006 stating that W.P.No.1459 of 2014 is filed by them challenging the G.O.351-1993, dated 10.09.1993, but this Court had not granted any interim stay in WP(MD)No.1459 of 2014 till now. But the pendency of the Writ Petition has nothing to do with the disposal of the abovesaid Appeal. The I.A.No.802 of 2006 was allowed by the Learned Second Additional Subordinate Judge, Tiruchirappalli by granting one month time to the Petitioner, so as to enable her to get stay order in W.P.(MD)No.1459 of 2014. Again the Petitioner filed I.A.No.1093 of 2015 in A.S.No.222 of 2006 seeking two months time and the same was allowed on 06.11.2015, wherein time was granted till 07.12.2015.

(xiv)The Seventh Respondent had intended to put up a commercial complex belonging the Prince of Arcot Endowments in T.S.Nos.76, 77, 78, 79 part and 81 situated at NSB Road, Tiruchirappalli. In fact, the Sixth Respondent issued a letter, dated 11.10.2004 in favour of the Seventh Respondent. The said property of the 'Prince of Arcot



Endowments' is neither situated within the prohibited area as defined under the Ancient Monuments and Archeological sites and Remains Act 1958 and the rules framed there under. The licence issued by the Superintending Archeologist, Chennai, dated 11.05.2000 in favour of the 'Prince of Arcot Endowments' is valid for one year. One Venkatesan, a stooge of one Ibrahim Ali had already filed W.P.No.9049 of 2005 before this Court assailing the Licence issued by the Sixth Respondent and the same was dismissed by this Court on 27.04.2005. Because of the encroachment and pendency of the Writ Petition, the Seventh Respondent/Endowment was not in a position to put up constructions in the aforesaid properties immediately, but it was completed during the year 2007.

(xv).The Commissioner, Town and Country Planning Chennai by his proceedings, dated 22.11.2004 had granted revised permission to put up a commercial complex belonging to the Seventh Respondent/Endowment in T S.No. 76, 77, 78, 79 part and 81, NSB Road, Tiruchirappalli. The First Respondent/Member Secretary, Trichirappalli Local Planning Authority issued a Planning Permit on 20.12.2004, in favour of the Seventh Respondent/Endowments. The Third Respondent Commissioner, Trichirappalli City Municipal Corporation through proceedings, dated 05.1.2005 issued a Building Licence to and infavour of the Seventh Respondent/Endowment.

(xvi).The Seventh Respondent had put up the constructions in accordance with the planning permit and building licence referred to supra, but there were minor deviations and the same was noticed by the First Respondent, who issued notice on 26.03.2008 and that the Seventh Respondent was called upon to secure compliance with the sanctioned plan or to produce revised planning permission. One A.M.Ibrahim Ali filed a Writ Petition in W.P.No.12076 of 2011 against the Seventh Respondent and others praying for not to put up constructions in the afore stated properties without the renewal of licence issued by the Sixth Respondent/ Superintending Archeologist, Chennai. When renewal of licence was applied for on 31.10.2011, the Superintending Archeologist, Chennai by his reply, dated 03.11.2011 refused to renew the licence due to the pendency of the Writ Petition.

(xvii).The Petitioner/disgruntled tenant of the Seventh Respondent had filed W.P.(MD)No.7922 of 2010 against the Seventh Respondent and others seeking the relief of Mandamus in directing the Respondent Nos.1 to 3 therein to forbear the Fifth Respondent therein viz., M/s.Ratna Stores Firm, the Lessee of the Seventh Respondent from putting up any construction or carrying out digging of earth for construction in T.S.No. 81, at NSB Road near Super Bazaar, Tiruchirappalli, without leaving a space of 15 feet from M/s.P.H.Nasirudeen Firm's building in Door No.1, T.S.No.81, NSB Road, Tiruchirappalli. The Seventh Respondent had put up construction by leaving an extent of 15 feet and there is no violation of building plan approval. The Seventh Respondent was dragged into court by the disgruntled tenants, who are all using the



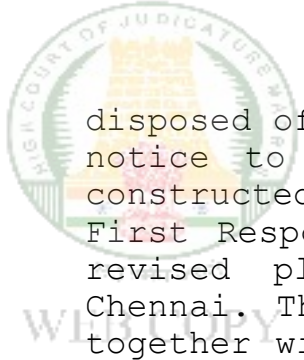
Public Interest Litigation as a weapon to shield their misdeeds etc. The First Respondent by the stop work notice dated 19.11.2010 issued to the Seventh Respondent ordered to stop the construction activities and the same was duly complied with.

(xviii).The Seventh Respondent has also also submitted a revised plan as contemplated under section 56 of the TamilNadu Town and Country Planning Act, 1971, but the same was rejected orally as there is no renewal of licence issued by the Superintending Archeologist, Chennai and on account of the pendency of W.P.(MD) No.7922 of 2010. This Court by its order, dated 04.04.2013, in W.P. (MD)No.7922 of 2010, directed the First Respondent to proceed further, pursuant to the stop work notice, dated 19.11.2010 and act in accordance with Law by issuing prior notice and calling for explanation from the Seventh Respondent's Lessee M/s.Ratna Stores Firm.

(xix).As per Section 56 of the TamilNadu Town and Country Planning Act, 1971, renewal of unauthorised developments can be ordered, where any development of land or building has been carried out without permission or after the permission has been revoked. In terms of Section 56(d (ii) of the Act, 1971, where any development has been carried out in violation of the permission, the concerned party may be directed to secure compliance with the permission or with the conditions of permission. In short, the violation of permission already granted can be cured by way of filing a revised plan. The Seventh Respondent submitted its revised plan to secure compliance of the sanctioned plan. However, the same was rejected because of pendency of W.P.(MD)No.7922 of 2010.

(xx).As per order, dated 04.04.2013 in W.P(MD)No.7922 of 2010, the First Respondent/Member Secretary, Trichirappalli Local Planning Authority, had not issued any notice either to the Petitioner or to its Lessee M/s.Ratna Stores Firm/Eighth Respondent. But to the rude shock and surprise of the Seventh Respondent, the First Respondent by its impugned notice, dated 16.07.2013 had called upon the Seventh Respondent's lessee M/s.Ratna Stores Firm to remove its articles within a period of one week and threatened further to seal and lock the demised building. In the said notice, it was alleged that the building in the demised property is deemed to be put up without planning permit. In fact, the Seventh Respondent immediately after coming to know about the impugned notice, sent a letter dated 19.07.2013 to the First Respondent with a revised plan. But the First Respondent issued the said impugned notice to the Seventh Respondent only on 19.07.2013 and the same was received by the Seventh Respondent on 20.07.2013.

(xxi).Since the impugned notice, dated 16.07.2013, issued by the First Respondent is *Ex-facie* illegal, void, ultravires and without any authority, the Seventh Respondent/Endowment, filed W.P (MD)No.11857 of 2013, which resulted in the notice, dated 16.07.2013 on the file of the First Respondent and the said petition was



disposed of on 30.07.2014. The First Respondent had already issued a notice to lock and seal the Third and Fourth Floor, which are constructed in violation of the planning permit already issued. The First Respondent had informed the Seventh Respondent to send the revised plan to the Commissioner, Town and Country Planning, Chennai. Therefore, the Seventh Respondent submitted an application together with revised plan through online on 12.08.2017 and also by post to the Commissioner, Town and Country Planning, Chennai and to the First Respondent. Pursuant to the interim order granted by this Court in the aforesaid case, the First Respondent instead of locking and sealing the Third and Fourth Floors, sealed the entire building from the Ground Floor to the Fourth Floor and also 60 shops constructed in accordance with the building permit already issued. Because of the sealing of the entire building, the Seventh and Eighth Respondents and 60 tenants of the Seventh Respondent are put to immense loss and hardship. No opportunity was given to the Eighth Respondent and 60 tenants to remove their articles before locking and sealing their lease hold properties.

(xxii).The tenant Ibrahim Ali filed Contempt Petition in C.P.No.726/2015 to lock and seal the Seventh Respondent building and demolish the same. However, this Court on 15.06.2015 was pleased to dismiss the Contempt Petition. Now, the Petitioner has come forward with the very same relief in the above Writ Petition. The Petitioner is in arrears of rent from the year 1996 onwards. With a view to squat on the leasehold property the Petitioner has filed the present Writ Petition.

(xxiii).The deviations and violations of the building can be regularized by the Regulations called 'Development Control Regulations' for Erode/Vellore/Thiruvellore/Coimbatore/Madurai/Gummidipoondi/ Kancheepuram/ Chengalpattu/Thiruppur/ Tiruchirappalli Local Planning area. The Seventh Respondent is entitled to get all the benefits of the said Regulations and Guidelines for the exemption of building Rules, 2017. There is no merit in the Writ Petition and the same is liable to be dismissed.

(xxiv).The Learned Counsel for the Seventh Respondent refers to the decision of the Hon'ble Supreme Court in **BALCO EMPLOYEES' UNION (REGD.) v. UNION OF INDIA AND OTHERS** reported in (2002) 2 SCC 333, at special page 335, wherein it is held as follows:-

"In a democracy, it is the prerogative of each elected Government to follow it's own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to Law or mala fide, a decision bringing about change cannot per se be interfered with by the Court. It is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public



policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical."

(xxv). Further, in the aforesaid decision of the Hon'ble Supreme Court, at page No.336, it is observed as under:-

"In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz., Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana vs. Shri Des Raj Sangar and Another, (1976) 2 SSC 844, on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any Law, then the normal consequences as a result of disinvestment must follow."

(xxvi). The Learned Counsel for the Seventh Respondent refers to the decision in **M. SENNIAPPAN v. DIRECTOR OF TOWN AND COUNTRY PLANNING, CHENNAI AND OTHERS**, (2007) 1 MLJ 226, wherein it is held as follows:-

"When notice under Section 56(4), Tamil Nadu Town and Country Planning Act, 1971, is issued with regard to the demolition of an illegal construction, the aggrieved person may submit a revised plan to the Authorities concerned. Notice under said Section shall not take effect pending final orders on the revised plan."



UDHAGAMANDALAM MUNICIPALITY reported in **2015 (2) CWC 497**, at special page 499, wherein at paragraph No.8, it is observed as under:- "8.On hearing the Learned Counsel for the parties, we are unable to make out whether it is really a mistake or a deliberate act of sending defective Notices, only to comply with general directions passed by this Court qua unauthorised construction in Ooty. The Authorities concerned have slept over the matter for years together and only seemed to act when the Court Passes Orders, as if they are denuded of any Statutory Authority. When the Court directs action in accordance with Law, defective actions are taken, which only facilitate Stay Orders being obtained by the aggrieved parties and burden is shifted on to the Court. The Respondent was certainly called upon to pass a Speaking Order, once the Reply dated 10.12.2013 was placed on record, specifically qua the main issue on the structure pre-dating the Act, which makes the Notice non est, Renovations were of course, admittedly carried out thereafter and that fact is said to have been verified. We are also fail to appreciate how a sealing would take place prior to the expiry of the date specified in the Notices for sealing."

(xxviii).The Learned Counsel for the Seventh Respondent relies upon the order dated 24.07.2014, in **W.P.(MD)No.11857 of 2013**, between **HH THE PRINCE OF ARCOT ENDOWMENTS, REP. BY ITS ACCREDITED AGENT, TRICHIRAPPALLI-2 v. THE COMMISSIONER, TAMIL NADU TOWN AND COUNRTY PLANNING, CHENNAI AND FIVE OTHERS**, wherein this Court, at paragraph Nos.11 and 12, had observed the following:-

"11. It is also noted that, under Section 56 of the Act, removal of unauthorised development could be ordered, where any development of land or building has been carried out, without the necessary permission or after the permission had been revoked. Under Section 56(d)(ii) of the Act, where the development had been carried out in contravention of the permission granted, the party concerned may be directed to secure compliance with the permission or with the conditions of the permission. As such, it could be seen that the contravention, if any, could be cured by way of filing a revised plan. It is the case of the Petitioner that a revised plan had been submitted to the Second Respondent. However, no order had already been passed on the revised plan submitted by the Petitioner, till date.

12. In such circumstances, without going into the merits of the matter, we find it appropriate to direct the Second Respondent to consider the explanation submitted by the Petitioner, dated 19.07.2013, to the impugned notice issued by the Second Respondent, dated 16.07.2013, and to pass appropriate orders on the revised plan submitted by the Petitioner, as per the provisions of the Tamil Nadu Town and

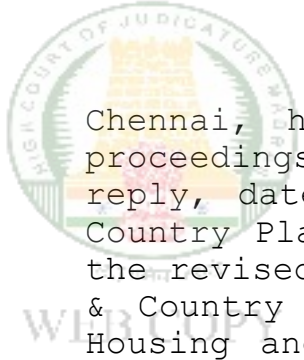


Country Planning Act, 1971, as expeditiously as possible, not later than two weeks from the date of receipt of a copy of this order. It is made clear that till a final order is passed by the Second Respondent, as per the direction issued by this Court, by this order, no action shall be initiated against the Petitioner, pursuant to the impugned notice issued by the Second Respondent, dated 16.07.2013."

(7).The Contents of Eighth and Ninth Respondents:-

(i).The Writ Petitioner is a tenant under the Seventh Respondent/Endowment. The Seventh Respondent filed an ejectment suit in O.S.No.1384 of 1998 on the file of the Learned District Munsif, Tiruchirappalli, wherein the Writ Petitioner was directed to deliver vacant possession after removing the superstructure by means of a decree, dated 30.08.2006. There are spate of civil litigations between the Writ Petitioner and the Seventh Respondent. In fact, the Writ Petitioner had encroached more than the extent of the property, which was given 'Under the Lease' and she has put up authorised construction in the property. The present Writ Petition is filed out of malice and the Respondent Nos.8 and 9 are the tenants under the Seventh Respondent. The Seventh Respondent had put up construction after obtaining planning permission from the Tiruchirappalli Local Planning Authority vide planning permission No.83 of 2004. Building permission was obtained from the Corporation of Tiruchirappalli in F2/2573/2004, dated 05.01.2005 and in pursuance of the planning permission and building permission, the Seventh Respondent has put up construction.

(ii).In fact, the office of Conservation Assistance, Archeological Survey of India had issued notice to the landlord/Seventh Respondent, in which it is admitted that the construction site was 150 meters away from the monument and that the Seventh Respondent had given a suitable reply to the Archaeological Survey of India and license was obtained from the said Department. The Seventh Respondent had already submitted a revised plan to the Member Secretary, Tiruchirappalli Planning Authority in respect of the deviated portion. The First Respondent had directed the Seventh Respondent to submit the revised plan in the prescribed format. The Seventh Respondent had submitted the revised plan to the First Respondent and the same is pending consideration. In the meanwhile, the Petitioner has filed the present Writ Petition and obtained an order on 10.08.2017 to lock and seal the premises and the premises was sealed on 12.08.2017. As against the sealing of the premises, the Seventh Respondent has filed an Appeal before the Secretary to Government, Housing and Urban Development Department under Section 80-A of Tamilnadu Town and Country Planning Act, 1971. In Appeal, an order was passed on 23.08.2017 to de-seal the premises for a period of 45 days. Accordingly, the premises was de-sealed for another period of 45 days by the First Respondent by means of an order, dated 20.10.2017. Pursuant to the revised plan furnished by the Seventh Respondent, the Director of Town & Country Planning,



Chennai, had sought a report from First Respondent through its proceedings, dated 29.08.2017. The First Respondent had sent a reply, dated 13.10.2017 by recommending to the Director of Town & Country Planning, Chennai to give exemption to the building and now the revised planning permission is pending with the Director of Town & Country Planning, Chennai. Later, the Secretary to Government, Housing and Urban Development Department had issued proceedings, dated 20.10.2017 to extend the desealing of the premises for a further period of 45 days and the Commissioner, Town & Country Planning and the Local Authority of Tiruchirappalli to expedite the disposal of the planning permission. The Secretary to Government had taken note of the fact that the application for planning permission is under process with the local authority and local planning authority.

(iii).The 'Revised planning permission' is under consideration of the Director of Town & Country Planning, Chennai under Section 113-C of the Act. The de-sealing of premises is extended further for a period of 45 days from 20.10.2017 and in the meanwhile the authorities are directed to dispose of the revised planning permission submitted by the Seventh Respondent. The allegation that the construction site is within the prohibited distance of 110 meters from the Archaeological Monument area viz., "Main Guard Gate" is denied. Even as per the notice of the Archelological Department, the construction site is more than 150 meters from the monument. It is not within the prohibited area within the meaning of the Act and Rules. Since the Archaeological Department had issued a notice, license was also obtained from the said Department. Under Section 20-A of Ancient Monuments & Archelological Sites and Remains Act, 1958, the area within 100 meters from the protected monument shall be the prohibited area. Even as per the notice the Archaeological department, the construction site falls within the regulated area.

(iv).Earlier, license under the Ancient Monuments & Archaeological Sites and Remains Act, 1958 was obtained. Later, the Seventh Respondent had applied for extension of license with modification of building hight to the competent authority and the same is pending consideration. The Writ Petitioner's complaint by way of representation was duly considered by the authorities and notices were issued. The Writ Petitioner has no right to invoke the remedy under Article 226 of the Constitution of India. The order, dated 23.08.2017 of Secretary to Government had merged with the subsequent order, dated 25.10.2017, wherein another 45 days time was granted for usage of lock and seal and the lock and seal order has been kept in abeyance. The Government has powers to pass orders under Section 80-A of Tamil Nadu Town and Country Planning Act, 1971.

(v).The Learned Senior Counsel for the Respondent Nos.8 and 9 places reliance on the order of this Court dated 21.09.2017, in **W.P. (MD) NO. 13144 OF 2017** between **S.KANNIAMMAL v. THE STATE OF TAMIL NADU, REP. BY ITS SECRETARY TO GOVERNMENT, HOUSING AND URBAN**



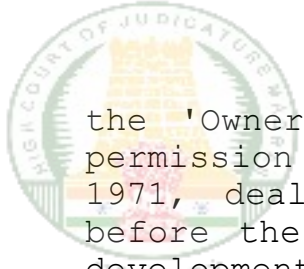
DEVELOPMENT, SECRETARIAT, CHENNAI-9 AND TWO OTHERS, wherein at paragraph No.11, it is observed as follows:-

"11. In the light of the stand of the Petitioner that no construction has been made post 01.07.2007, the Petitioner is at liberty to file a Special Revision Petition under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, against the impugned De-occupation dated 16.05.2017, before the First Respondent along with the relevant authenticated documents within a period of four weeks from the date of receipt of a copy of this order and the First Respondent, upon receipt of the same, shall entertain the said revision, if the papers are otherwise in order and then take up the petition for stay and give disposal within a period of two weeks and in the alternative, shall take up the revision and give disposal within a period of ten weeks by passing pass orders on merits and in accordance with Law and depending upon the result of the petition for the stay and main revision itself, the Petitioner is at liberty to work out her remedy in accordance with Law. The Respondents 2 and 3, till the disposal of the petition for stay filed along with the special revision petition, shall defer further decision in terms of the impugned notice, dated 16.05.2017. It is also made clear that till the disposal of the special revision petition by the First Respondent, the Petitioner shall not alter the physical structure of the property and shall not create any Third party right in respect of the superstructure in question."

(vi). The Learned Senior Counsel for the Respondent Nos.8 and 9 cites the order dated 12.09.2017, in **W.P. (MD) No.19637 of 2017** between **DR.S.ARUMKUMAR v. THE MEMBER SECRETARY, CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY, CHENNAI-8** and three others, wherein at paragraph No.7, it is observed as under:-

"7. Though the Petitioner prays for a 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, directs the Fourth Respondent to entertain the Appeal, if the papers are otherwise in order and dispose of the same in accordance with Law within a period of ten weeks from the date of receipt of a copy of this order and till such time, the Respondents 2 and 3 shall defer further decision as to the demolition of the offending construction and however, shall keep the premises under lock and seal."

8. It must be borne in mind that Section 48 of the Tamil Nadu Town and Country Planning Act, 1971, speaks of certain restrictions in respect of the Lands and Buildings in any area, in which, the Development Plan is pressed into service. No wonder in Law, an unauthorised construction is not to be permitted to be occupied by



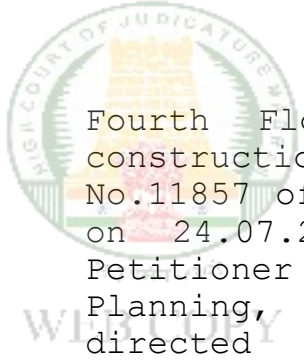
the 'Owner' or 'Lessee' pending consideration of application for permission projected by the owner. In fact, Section 49 of the Act, 1971, deals with an application for permission to be submitted before the appropriate standing authority for carrying out of any development of any land or building and the grant of refusal of permission by the appropriate planning authority. Indeed, the rules relating to an application for planning permission under the Tamil Nadu Town and Country Planning Act, 1971, were framed as per G.O.Ms.No.652, R.D. and L.A. Department, dated 08.04.1975. In the event of building permission being granted, subsequent issue of notice under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, is a mandatory and illegal one.

9. In this connection, it is relevant for this Court to pertinently point out that the 'Planning Permission' and 'Building Permission' are necessarily to be obtained. Insofar as the non-compliance with the statutory restrictions, there can be no deemed sanction, as per decision of the Hon'ble Supreme Court in **COMMISSIONER OF MUNICIPAL CORPORATION v. PREM LATA SOOD**, reported in **2007 (11) SCC 40**. Section 54 of the Tamil Nadu Town and Country Planning Act, 1971, refers to 'Power of Revocation and Modification of Permission to Development' in certain areas.

10. It is to be noted that Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, empowers the 'Appropriate Planning Authority' to order the removal of unauthorised development made without permission or in violation of any permission etc. It is to be remembered that the notice specified in Section 6 of the Tamil Nadu Town and Country Planning Act, 1971, is not an empty formality and a decision is to be taken when condition under Sub Section (i) is satisfied a notice preceded by the decision that the provisions of Sections 49, 50, 54 and 56 are fulfilled for the violation. Section 56(1) of the Act, 1971, contemplates three years time to issue notice against an unauthorised development.

11. In this connection, it is not out of place for this Court to make a pertinent mention that the 'unauthorised Construction', if it is illegal, cannot be compounded and has to be demolished, as per decision of the Hon'ble Supreme Court in **M.I. BUILDERS (P) LTD., V. RADHEY SHYAM SAHU**, reported in **AIR 1999 SC 2468**.

12. In the instant case, the fact of the matter is that the Seventh Respondent/Endowment, had secured the approval from the Commissioner of Town and Country Planning, Chennai on 22.11.2004, planning permit from the First Respondent/Member Secretary of Trichirappalli Local Planning Authority on 20.12.2012 and the building licence from the Commissioner of Trichirappalli City Municipal Corporation on 05.01.2005. The Seventh Respondent/Endowment was given an approval to raise Ground Floor, First Floor and Second Floor. A notice was issued by the First Respondent/Member Secretary, Trichirappalli Local Planning Authority, to the Seventh Respondent/Endowment, when the Third and



Fourth Floor construction works were completed to stop the construction etc., and the said notice was challenged in W.P.(MD) No.11857 of 2013. In fact, this Court, in W.P.(MD)No.11857 of 2013, on 24.07.2014 (filed by the Seventh Respondent/Endowment, as Petitioner against one Commissioner, Tamil Nadu Town and Country Planning, Chennai and five others), had among other things, had directed the Second Respondent therein viz., the Member Secretary/Joint Secretary, Town and Country Planning, Trichirappalli Local Planning Authority, to consider the explanation submitted by the Petitioner (Seventh Respondent), dated 19.07.2013 to the impugned notice issued by the Second Respondent therein dated 16.07.2013 and to pass appropriate orders on the revised plan submitted by the Petitioner etc. Further, it was lucidly made clear that till a final order is passed by the Second Respondent therein (Member Secretary/Joint Secretary, Town and Country Planning, Trichirappalli Local Planning Authority), as per direction issued by this Court, no action shall be initiated against the Petitioner (Seventh Respondent), in W.P.(MD)No.11857 of 2013, pursuant to the notice issued by the Second Respondent dated 16.07.2013.

13.It comes to be known that in W.P.(MD)No.8501 of 2017 filed by the present Writ Petitioner (J.Ayesha Begam) against the Member Secretary, Trichirappalli Local Planning Authority, Trichirappalli, and Eight others, this Court, on 10.08.2017 had directed the Respondent Nos.1 to 3 therein to execute the order, dated 30.12.2014, issued under Section 56(2A) of the Act, by locking and sealing the premises in question forthwith and in reality, the premises was sealed on 12.08.2017.

14.As against the sealing of premises, admittedly, the Seventh Respondent/Endowments had preferred an Appeal before the Secretary to Government, Housing and Urban Development Department, as per Section 80A of Tamil Nadu Town and Country Planning Act, 1971. As a matter of fact, on 23.08.2017, the premises was de-sealed for a period of 45 days and further by means of an order in Letter No.23331/UD4(1)/2017-1, dated 20.10.2017, the premises was de-sealed by the First Respondent.

15.Based on the 'Revised plan' submitted by the Seventh Respondent, the Director of Town and Country Planning, Chennai, had called for a report from the First Respondent/Member Secretary, Trichirappalli Local Planning Authority, through proceedings, dated 29.08.2017 and the First Respondent issued a reply, dated 13.10.2017 to the Fourth Respondent/Director of Town & Country Planning, Chennai, to do the needful (In regard to the exemption sought for) by considering the Appeal Petition, the documents and in the teeth of the order passed by the Madurai Bench of this Court.

16.The 'Revised Planning Permission' is pending with the Director of Town and Country Planning, Chennai. As seen from the contents of letter No.23331/UD4(1)/2017-1, dated 20.10.2017 of the Additional Secretary (Technical), Housing and Urban Development



Department, Secretariat, Chennai, it is quite evident that since the application for planning permission is under process with the Local Authority/Local Planning Authority and finally to be disposed of by the Commissioner of Town and Country Planning, the unauthorised building shall be de-sealed for a further period of 45 days and that the Commissioner of Town and Country Planning and Local Authority of Trichirappalli, were informed to expedite the disposal of the planning permission and sent a report to the Government, for passing final orders. The de-sealing of the premises for a further period of 45 days expires on 04.12.2017.

17. In short, this Court opines that the order of the Additional Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai-9 in Letter No.19256/UD4(1)/2017-1, dated 23.08.2017, wherein the Member Secretary/Local Planning Authority of Trichirappalli (First Respondent in the present Writ Petition) was directed to de-seal the building for a period of 45 days from the receipt of the order, got annexed with the subsequent Letter No.23331/UD4(1)/2017-1, dated 20.10.2017, whereby and where under, another 45 days were granted for de-sealing of the unauthorised building in issue.

18. One cannot brush aside a pivotal fact that in respect of an unauthorised construction, the owner of the building can be commanded to secure the compliance with the permission or with the conditions, as per Section 56(1)(ii) of the Tamil Nadu Town and Country Planning Act, 1971. It is well settled proposition of Law that a requisition of the building is permissible, after passing of necessary orders by the competent authority, based on the 'Revised Plan'.

19. A mere glance of the ingredients of Section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971, unerringly points out that 'Any person aggrieved by such notice, may, within the period specified in the notice and in the manner prescribed, apply for permission under Section 49 of the Act, 1971, for the retention of the land or any place or works or for the continuance of any use of the land or building to which, the notice relates'. Under Section 56(4)(a) of the Act, 1971, refers to 'The notice (except the cases covered by clause (iii) of Sub Section (2) of Section 56 of the Act, 1971), shall not be of any effect pending the final determination or withdrawal of the application.

20. To put it succinctly, when notice under Sub Section (4) of Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, was issued pertaining to a demolition of an unauthorised/illegal construction, an affected person/aggrieved individual is entitled to apply for a revised plan before the concerned authorities. The resultant effect would be that the notice under Section 56(4) of the Act, 1971, shall not take effect pending passing of final orders on the revised plan.



21. At this stage, this Court points out that in the decision of the Hon'ble Supreme Court in **V.M.KURIAN v. STATE OF KERALA**, reported in **AIR 2001 SC 1409**, it is held that a minor deviation cannot be permitted in the case of high rise buildings, since it jeopardize the public safety and convenience.

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22. It is to be significantly pointed out that Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, speaks of 'Exemption in Respect of Development of Certain Buildings'. Section 113-C was inserted by the Tamil Nadu Town and Country Planning (Amendment) Act, 2012 (T.N.Act 36 of 2012) with effect from 16.07.2012. In fact, in terms of Section 113-C of the Act, 1971, the Government framed the guidelines for the exemption of buildings 2017 and the Tamil Nadu Assessment and Collection of amount for exemption of Buildings Rules 2017 (vide G.O.Ms.No.110 and 111, dated 22.06.2017).

23. Section 115 of the Tamil Nadu Town and Country Planning Act, 1971, speaks of 'Execution of Work by Occupier' of any building or land, in case of default of owner of such building or land, as the case may be. If the owner fails to carry out the modification/rectifications, the occupiers role commences to execute the work, as per order, dated 18.07.2016 in **W.P.No.23408 of 2016** between **SANKARANTI HOTELS PVT. LTD., v. GOVERNMENT OF TAMIL NADU**.

24. At this juncture, this Court, worth recalls and recollects the Division Bench order in W.P.(MD)No.11857 of 2013, dated 24.07.2014 (filed by the Seventh Respondent/Endowment, as Writ Petitioner), wherein at paragraph No.12, it was lucidly made clear that till a final order is passed by the Second Respondent therein/Member Secretary/Joint Secretary, Town and Country Planning, Trichirappalli Local Planning Authority, as per the direction issued by this Court, by this order, no action shall be initiated against the Petitioner (Seventh Respondent/Endowment). Therefore, in respect of the revised plan, which is pending before the concerned authority, it is for the said authority to take a final call and pass necessary orders, in the subject matter in issue.

25. In view of the detailed forgoing qualitative and quantitative discussions and also this Court, bearing in mind of a primordial fact (with reference to the Appeal petition of the Seventh Respondent), the Additional Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai, in the Letter No.23331/UD4(1)/2017-1, dated 20.10.2017, had granted another 45 days time for de-sealing the building in issue (which expires on 04.12.2017) and considering the fact that the State Government have the requisite special powers to pass appropriate orders under Section 80A of the Tamil nadu Town and Country Planning Act, 1971, (Inserted by Tamil Nadu Town and Country Planning (Amendment) Act, 2008 (T.N.Act 61 of 2008), this Court, comes to a resultant conclusion that the relief sought for by the present Writ Petitioner in the writ petition, is a premature and otiose one. Viewed in that



perspective, the Writ Petition fails.

26. In fine, the Writ Petition is dismissed. Before parting with the case, it is made clear that the dismissal of the present Writ Petition will not preclude the Writ Petitioner to seek appropriate remedy against the concerned, before the 'Competent Forum' for redressal of her grievances, if any, of course in the manner known to Law and in accordance with Law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The Member Secretary,
Tiruchirappalli Local Planning Authority,
No.10, Williams Road, Trichy - 620 001.
 2. The District Collector cum Executive Magistrate,
Tiruchirappalli District, Trichy - 620 001.
 3. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Trichy - 620 001.
 4. The Director of Town & Country Planning,
807, Anna Salai, Chennai - 600 002.
 5. The Director General of Archaeological
Survey of India,
Archaeological Survey of India Head Quarters,
Janpath, New Delhi 11. 001.
 6. The Superintending Archaeologist,
Government of India,
Chennai Circle, Archaeological Survey of India,
Fort St.George, Chennai - 600 009.
- + 1 CC TO M/s.AJMAL ASSOCIATES, ADVOCATE IN SR No. 88887
+ 1 CC TO Mr.N.C.ASHOK KUMAR, ADVOCATE IN SR No. 89293
+ 1 CC TO Mr.N.SHANMUGA SELVAM, ADVOCATE IN SR No. 89012
+ 5 CC TO Mr.SHANKAR MURALI, ADVOCATE IN SR No. 88831

RJ2

TE/MR-KKR/SAR-1 : 29/11/2017 : 29P/15C