



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **29.08.2017**

CORAM:

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

W.P. (MD)No.1036 of 2013

T.Nesamony

.. Petitioner

Vs.

1.The District Collector,
Kanyakumari District @ Nagercoil.

2.The Commissioner,
Kuzhithurai Municipality,
Kuzhithurai Post, Kanyakumari District.

3.The Bishop,
Church of South India,
CSI Church Building, Marthandam,
Kanyakumari District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 and 2 herein to stop and remove the unapproved construction in the CSI Church ground [adjacent to LMS Girls School] at Kannacode Road in Marthandam, Kanyakumari District and to restore the compound wall in the western portion of the LMS Girls Higher Secondary School at Marthandam with proper safety standards within a time frame and consequently take appropriate action against the third respondent herein.

For Petitioner	: Mrs.M.Padmavathy
For Respondent No.1	: Mr.M.Govindan Special Government Pleader
For Respondent No.2	: Mr.K.Vamanan
For Respondent No.3	: Mr.K.Sreekumaran Nair

O R D E R

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

The District Collector, Kanyakumari District at Nagercoil, by utilizing the amount from the Member of Parliament Constituency Development Fund, constructed a compound wall to the Aided LMS Girls Higher Secondary School at Marthandam. The School is managed by Kanyakumari Diocese, Church of South India.



2. The third respondent demolished the compound wall and constructed a Shopping Complex on the Western boundary of the School. The petitioner filed this Writ Petition to direct the second respondent to stop and remove the unauthorized construction of the Shopping Complex and restore the compound wall on the western portion of LMS Girls Higher Secondary School at Marthandam.

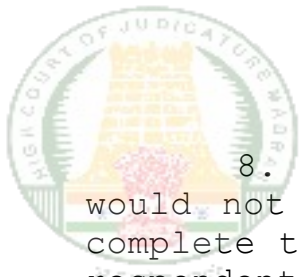
3. It is the case of the petitioner that about 1100 girl students are studying in LMS Girls Higher Secondary School at Marthandam, which is an Aided Educational Institution run under the Management of Church of South India, Kanyakumari Diocese, represented by the third respondent. The Member of Parliament (Lok Sabha), Nagercoil Thiru.A.V.Belarmine allotted a sum of Rs.2,00,000/- out of his MP Constituency Development Fund. The District Collector, by using the said amount, constructed a compound wall to the LMS Girls Higher Secondary School. The third respondent demolished the compound wall and without obtaining planning permit from the Local Planning Authority, constructed a Shopping Complex on the western boundary of the School. The petitioner, therefore, filed this Writ Petition in *pro bono publico*.

4. The third respondent, in his counter-affidavit, admitted the demolition of the compound wall. According to the third respondent, compound wall was demolished for widening the road. Subsequently, application was submitted for construction of shop. The Municipality returned the plan. The third respondent, expecting sanction from the Municipality, started construction and completed the same.

5. We have heard the learned counsel for the petitioner. We have also heard the learned Special Government Pleader appearing on behalf of the first respondent, the learned Standing Counsel for the second respondent and the learned counsel for the third respondent.

6. There is no dispute that the compound wall was constructed by using public funds. The LMS Girls Higher Secondary School, Marthandam, is an Aided Institution. The third respondent was not correct in demolishing the compound wall. Since the compound wall was constructed by using public funds, before demolishing such structure, the third respondent ought to have taken permission from the first respondent. However, no such effort was taken by the third respondent and in a high handed manner, the compound wall was demolished.

<https://hcservices.ecourts.gov.in/theservices>
The next question is as to whether the third respondent was correct in constructing a Shopping Complex without obtaining planning permit.



8. The fact that application was given to the Local Body would not give a right to the third respondent to commence and complete the construction. It is a matter of record that the third respondent has not obtained planning permission till date. The third respondent should be a role model for others. The Building Regulations are made only for compliance.

9. The second respondent failed to take action in the matter and the same resulted in filing this Writ Petition by the petitioner. The Commissioner, Kuzhithurai Municipality, was obliged to look into the representation submitted by the petitioner for taking action against the third respondent for demolition of compound wall and putting up unauthorized construction.

10. We direct the respondents 1 and 2 to inspect the building constructed by the third respondent without planning permission and take appropriate action in accordance with law. Such exercise shall be completed, within a period of three months from the date of receipt of a copy of this order.

11. The Writ Petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To:

1.The District Collector,Kanyakumari District @ Nagercoil.

2.The Commissioner,
Kuzhithurai Municipality,
Kuzhithurai Post, Kanyakumari District.

+1cc to M/S.K.VAMANAN, Advocate SR.No.75502

+1cc to M/S.K.Sreekumaran Nair, Advocate SR.No.75210

NB/SML

MAS/JC/SAR2:11.09.2017:3P-5C

ORDER MADE IN
W.P. (MD)No.1036 of 2013
Dated: 29.08.2017