



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2017

Pronounced on : 13 .03.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18269 of 2014

and

M.P(MD)No.2 of 2014

S.Ramamoorthy

... Petitioner

vs.

1. The Member Secretary (In-Charge),
Local Planning Authority,
Nagercoil, Kanyakumari District.

2. The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order in Na.Ka.No.161/2014, Notice No.27/2014 dated 10.09.2014 signed on 16.09.2014 on the file of the respondent No.1 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.M.Govindan, Spl.G.P.

For R1

P.Athimoolapandian for R2

O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The petitioner questions the impugned proceedings issued by the Local Planning Authority, Nagercoil.

2.The case of the petitioner is that the building in question was put up only after obtaining approval from the Nagercoil Municipality.

3.The first respondent has filed a typed set of papers, in which the deviations in respect of the building in question has been set out in a tabulated format. The same is as under:



Approval Details			Violation Details		
Approval	Present	Sl.No	Description of rule	Present condition at site	Viola tion
District Municipal Building Rules, 1972					
Stilt + Ground + 1 floor	Ground + 4floors	1.	12-Parking provision as per PP 159.54 sqm	No parking	100%
		2.	Nature of Building as per PP Ordinary Building	Multistoried	--
Multi-storied and Public Building Rules, 1973					
			1.	4(a) to be declared as MSB since it is beyond 4 storeys	Not declared 100%
			2.	4(b) Minimum width of plot to be 24.50 Mtr.	11.00 m
			3.	9-F S.I. - 100 as per PP 3.72	100%
			4.	Plot Coverage 50% as per PP 93.13%	100%
			5.	11(1) (b) Front set back all around atleast 6 mtr.	Not provided 100%
			6.	14, 18 -Fire Safety norms to be adopted	Not obtained 100%
			7.	Nature of Building as per PP Ordinary building	Multistoried

4.The petitioner has not filed any rejoinder controverting the aforesaid allegations made by the authority with respect to the deviations committed by the petitioner.

5.We have heard the learned counsel on either side and perused the materials available on record.

6.The impugned communication merely calls upon the petitioner to remove the unauthorised constructions.

7.Though in the affidavit filed in support of the petition, <https://hservices.courts.gov.in/hservices/> has contended that the building was constructed after taking permission from the local planning authority, the



deviations highlighted in the counter affidavit has not really been explained by the writ petitioner.

8. In any event, there is a statutory remedy available to the petitioner under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner without resorting to the specific remedy available under the Act, has rushed to this Court.

9. The Hon'ble Supreme Court in **Dipak Kumar Mukherjee Vs. Kolkatta Municipal Corporation (2013 (5) SCC 336)** observed that illegal and unauthorised construction of buildings and other structures 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.

10. The building in question is used by the public. It is a commercial building. Since the public are using the building, it must have a structurally sound building. There is nothing on record to see that the building was constructed in adherence to the safety standards. In any case, the local authority was correct in taking enforcement action. We are therefore of the view that there is no ground made out in this writ petition. We therefore dismiss the writ petition. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Member Secretary (In-Charge),
Local Planning Authority,
Nagercoil, Kanyakumari District.

2. The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.54962

+1cc to Spl.Government Pleader Sr.No.55722

VB/SKN/RSK/SAR4/19/04/2018/3P/5C

Order made in
W.P(MD)No.18269 of 2014
and
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