



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.2638 of 2014

and

M.P. (MD) No.1 of 2014

K.Ponnupandian

... Petitioner

Vs.

1. The Director,
Town and Country Planning,
Chennai.
2. The Local Planning Authority,
Tirunelveli District,
Tirunelveli.
3. The District Collector,
Tirunelveli District,
Tirunelveli.
4. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli District.
5. Tmt.B.Venkateshwari

... Respondents

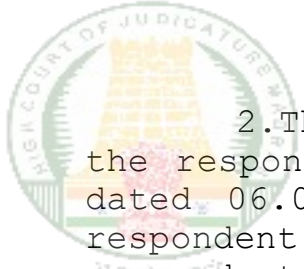
Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 4 to take action in accordance with law in pursuant to the notice dated 06.01.2014 in Na.Ka.No.1611/2013 issued by the second respondent.

For Petitioner : Mr.T.Antony Arularaj
For Respondents : Mr.D.Muruganandham
Additional Government Pleader
for R1 to R3
Mr.Aayiram K.Selvakumar, for R4
Mr.T.Selvan, for R5

ORDER

(Order of the Court was made by **T.S. SIVAGNANAM, J.**)

Heard T.Antony Arularaj, learned counsel appearing for the petitioner, Mr.D.Muruganandham, learned Additional Government Pleader appearing the respondents 1 to 3, Mr.Aayiram K.Selvakumar, learned counsel appearing for the fourth respondent and Mr.T.Selvan, learned counsel appearing for the fifth respondent.

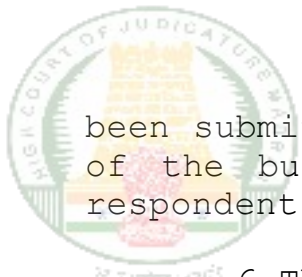


2. This writ petition has been filed seeking direction to the respondents 1 to 4 to proceed further pursuant to the notice dated 06.01.2014 issued by the second respondent to the fifth respondent on the ground that the construction put up by the sixth respondent is in deviation of approved plan. Though such notice was issued in the year 2014, no action was initiated. Therefore, the petitioner, who is the neighbour and constructed individual house, approached this Court and filed this writ petition.

3. This Court by an order dated 30.04.2014, granted an order of interim injunction. Unfortunately the authorities namely the respondents 1 to 4, who were also aware of the interim order did not take any action against the fifth respondent and on account of their inaction, the fifth respondent has constructed four floors and as on date only plastering work remains to be done. At the time, when the writ petition was entertained, it is stated that the construction was only upto stilt plus two floors and in spite of the order of interim injunction, two floors have been constructed. It is a fit case where appropriate action should be initiated against the officers concerned who were working at that time in the office of the second respondent and the fourth respondent if it is established that construction was carried on despite the order of interim injunction.

4. The learned Additional Government Pleader, on instructions from the second respondent submitted that no construction was effected after the interim order was granted in this writ petition. However, *prima facie*, we are not convinced because it is the specific case of the writ petitioner that on the date when the writ petition was filed, the construction was only stilt plus two floors. Photograph was placed before this Court today which shows that it is still stilt plus four floors. Another photograph has been produced, stated to have been taken before filing of the writ petition shows the construction is stilt plus two floors. Therefore, it is *prima facie* clear that on the date of filing this writ petition, there were only two floors and the fifth respondent has proceeded with the construction despite the order of interim injunction being in force. Above all, the second respondent and the fourth respondent Corporation should have inspected the building, especially, when already a notice has been issued to the fifth respondent intending to demolish the building for gross violation of the building plan approval.

5. The learned counsel appearing for the fifth respondent submitted that revised plan has been submitted to the authorities for regularisation of the deviated portions of the building. We are of the opinion that such prayer for regularisation may not be feasible as it appears from the photographs produced there is set back of all sides and the building being framed structure, the only solution would to demolish the building. In any event, the fifth respondent has stated that revised plan has



been submitted and has agreed to demolish those offending portions of the building. This revised plan was returned by the second respondent on 13.11.2017.

6. The learned counsel for the petitioner submitted that the revised planning permission application has been re-presented. However, the documents produced by the fifth respondent does not clearly show the date of the re-presentation of the application. In any event, the matter, as on date, is seized of by the planning authority.

7. In the light of the above discussion, we direct the building constructed by fifth respondent be locked and sealed forthwith. It is open to the fifth respondent to pursue for the revised plan permission application which shall be dealt with in accordance with law.

8. We direct the Directorate of Town and Country Planning to look into the matter and if it is found that construction has proceeded despite notice for stopwork/demolition and after the order of interim injunction, initiate disciplinary action against the officers working with local planning authority during the relevant time (I.e) March 2014 onwards and we also direct the Commissioner of Tirunelveli City Municipal Corporation to initiate action against the officers who were in-charge of the municipal area at the relevant time from March 2014 onwards.

9. With the above direction, the writ petition is disposed of. It is needless to say that the appropriate authority while dealing with the application for revised plan should take note of the objection raised by the persons in the locality including the writ petitioner. No Costs. Consequently, M.P.(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Director,
Town and Country Planning,
Chennai.

2. The Local Planning Authority,
Tirunelveli District,



3. The District Collector,
Tirunelveli District,
Tirunelveli.

4. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli District.

+1cc to Mr.T.Antony Arularaj, Advocate Sr.No.52151

+1cc to Mr.T.Selvan, Advocate Sr.No.52259

+1cc to The Spl. Government Pleader Sr.No.52317

MRN/RMK

VB/GT/SAR4/14/03/2018/4P/8C

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