



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2017

Pronounced on : 13.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8718 of 2015

and

M.P(MD)No.1 of 2015

M.T.Akitha through
power of Attorney
R.Mohanraj

... Petitioner

vs.

1. The Member Secretary,
Nagercoil Local Planning Authority,
11-A, Raman Pillai Street,
Ramavarmapuram,
Nagercoil - 629 001

2. The Municipal Commissioner,
Nagercoil Municipality,
Nagercoil - 629 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, Writ of Certiorari, to call for the records of the first respondent in Na.Ka.No.08/2015, Notice No.07/2015 Na.Oo.Thi.Ku, dated 09.03.2015, pertaining to the property situated at R.Sy.No.P2/22-1, P2/22-3, K.P.Road, Nagercoil is concerned and quash the same.

For Petitioner	: Mr.Mubarak for M/s.Ahmed Associates
For Respondents	: Mr.M.Govindan, Spl. Govt. Pleader for R1 P.Aathimoolapandian 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	Violation	
District Municipal Building Rules, 1972						
No approval	Cellar + Ground + floors	1.	11(4) 1/4 th set back	Not provided	100%	
		2.	11(2) (a) front set back	Not provided	100%	
		2.	12-Parking provision	Not provided	100%	
			14(1) 1/8 ventilation	Not provided	100%	
		3.	15(2) (g) stair case ventilation	Not provided	100%	
		4.	14(3) window provision 1.75 x 2.50 m	Not provided	100%	
Special Building Rules						
			1.	9 F S.I. - 1.50+20% =1.80	2.08	100%
			2.	Plot Coverage 65%	70%	100%
			6.	11(1) (b)Front set back		
				7.00 set back	East 2.10m West- 1.80m Rear set back - 2.40 in	Less 70% less 60% less 80%
			7.	13 Parking facilities	Required -17	Provided 7-42%

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.

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

7.Though in the affidavit filed in support of the petition, the petitioner 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 and obtained an interim order.

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,
Nagercoil Local Planning Authority,
11-A, Raman Pillai Street,
Ramavarmapuram,
Nagercoil - 629 001

2. The Municipal Commissioner,
Nagercoil Municipality,
Nagercoil - 629 001.

+1cc to M/s.Ahmed Associates, Sr.No.54852
+1cc to Spl.Government Pleader Sr.No.55718

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