



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 13.09.2017

ORDERS DELIVERED ON : 06.06.2018

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

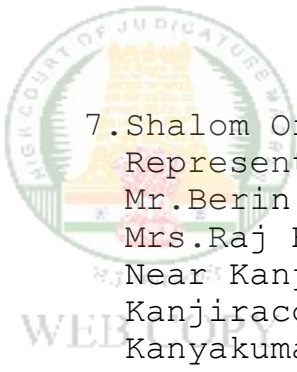
W.P. (MD) No.14264 of 2017
and
WMP (MD) No.11177 of 2017

K.Jegan

.. Petitioner

vs.

- 1.The Government of Tamil Nadu,
Represented by the Principal Secretary,
Department of Town and Country Planning Secretariat,
Fort St.George, Chennai-9.
- 2.The District Collector,
O/o. District Collector,
Kanyakumari District,
Kanyakumari.
- 3.The Director,
Directorate of Town and Country Planning,
O/o. Directorate of Town and Country Planning,
No.807, Annasalai,
Chennai-2.
- 4.The Deputy Director,
Directorate of Town and Country Planning,
O/o. Directorate of Town and Country Planning,
No.108, Tiruvanandapuram Salai,
Tirunelveli, Chennai-2.
- 5.The Member Secretary,
Local Planning Authority,
O/o. Local Planning Authority, Nagarcoil,
Kanyakumari District.
- 6.The Unnamalai Kadai Town Panchayat,
Represented by the Executive Officer,
Unnamalai Kadai Town Panchayat,
Kanyakumari District.



7. Shalom Orthopedic Hospital,
 Represented by its Proprietors,
 Mr. Berin Jeba,
 Mrs. Raj Babitha,
 Near Kanjiracode Post Office,
 Kanjiracode Post,
 Kanyakumari District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents Nos. 2 to 6 to remove the illegal constructions made by the respondent No. 7 in Survey Nos. 763/16C, 763/16C2, 763/18B, 763/1, 763/17, 763/7, 763/8, 763/9, 763/2, 763/3A, 763/3B Natalam Village, Vizhavankode Taluk, Kanyakumari District and unauthorized structures violating the plan approval as per notice dated 10.05.2017 issued by the respondent No. 4 as per Sections 56 and 57 of Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr. T. Lajapathi Roy

For R1 to R5 : Mr. M. Govindan
 Special Government Pleader

For R7 : Mr. M. Ajmalkhan
 Senior Counsel for
 M/s. Ajmal Associates

For R6 : No appearance

ORDER

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

Heard the learned counsel on either side.

2. The petitioner claims to have filed this Writ Petition in public interest. He seeks removal of the constructions put up by the seventh respondent. The seventh respondent has constructed a new hospital building in Natalam Village, Vizhavankode Taluk, Kanyakumari District.

3. The case of the petitioner is that the seventh respondent has violated the planning approval given by the authorities. The further allegation is that the seventh respondent has committed encroachment.

4. According to the petitioner, if the offending constructions are not removed, the ground water table of the locality would be adversely affected. He drew the attention of this Court to the notice dated 10.05.2017 issued by the fourth respondent as per Sections 56 and 57 of Tamil Nadu Town and Country Planning Act, 1971. The petitioner's grievance is that the Authorities have not taken follow up action.

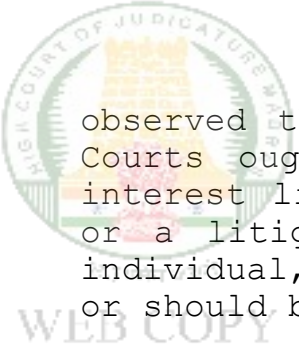


5.The learned counsel appearing for the petitioner Mr.T.Lajapathi Roy, took this Court through the materials enclosed in the typed set of papers including the information obtained by him under the Right to Information Act.

6.Per contra, Mr.M.Ajmal Khan, learned Senior counsel appearing for the private respondent vehemently denied the allegation of encroachment. He pointed out that the construction is entirely on the patta land of the seventh respondent. He fairly conceded that there were some deviations committed by the seventh respondent, but the same has since been set right and fully regularised. He also contended that the Writ Petition is liable to be dismissed, in view of the decision of the Hon'ble Supreme Court reported in (2016) 2 SCC 653-(D.N.Jeevaraj Vs. State of Karnataka).

7.This Court went through the materials on record. In view of the divergent pleadings, this Court directed the fourth respondent, who is the competent authority to conduct an inspection and file his report based on the records. The fourth respondent inspected the construction site on 04.09.2017. It is seen from the Inspection Report that the seventh respondent submitted an application on 25.08.2015 for building plan approval. It is a four storied building(Stilt + four floors). The application was forwarded to the Commissioner of Town and Country Planning, Chennai. No Objection Certificate dated 05.02.2015 was given by the Tahsildar, Vilavancode. Likewise, clearance had been obtained from the other departments. Thereafter, the Commissioner, Town and Country Planning granted building plan approval by an order dated 11.01.2017. The Inspection Report reveals that the seventh respondent put up an additional building in Survey Nos.763/7 and 763/8 without prior building plan approval. Therefore, notices were issued under Sections 56 and 57 of the Town and Country Planning Act, 1971 on 10.05.2017 and 22.05.2017. Thereafter, the seventh respondent submitted an application dated 25.05.2017 for revised building plan approval for the entire building. The same was considered and approval was granted on 11.01.2017. It is further revealed from the records that Survey Nos.763/16C2A, 763/C1B and 763/18B were classified as dry land even at the time of submitting the application for building plan approval. Only survey Nos.763/7 and 763/8 were classified as wet land in the revenue record and only in respect of those survey nos conversion order needed to be obtained. The District Collector, Kanyakumari District vide order dated 06.09.2017 granted permission for conversion also. The Inspection Report concludes that the seventh respondent has not committed any encroachment and that he has also obtained the requisite approvals from all the concerned authorities.

8.We are therefore satisfied that the petitioner has not made out any case for issuance of Writ of Mandamus as sought for. We are of the view that the case on hand is clearly covered by the decision of the Hon'ble Supreme Court reported in (2016) 2 SCC 653-(D.N.Jeevaraj Vs. State of Karnataka). The Hon'ble Supreme Court



observed that while in issues pertaining to good governance, the Courts ought to be somewhat more liberal in entertaining public interest litigation, however, in matters that may not be of moment or a litigation essentially directed against one organization or individual, public interest litigation ought not to be entertained or should be rarely entertained.

9.The learned Senior Counsel Mr.M.Ajmal Khan pointed out that the petitioner has been targeting the seventh respondent successively, even though he had already obtained approvals from all the statutory authorities. Since the official respondents have categorically stated that the seventh respondent has obtained all the necessary approvals, this Court is of the view that the Mandamus sought for cannot be issued.

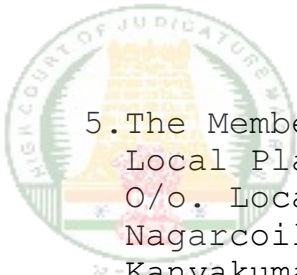
10.The Writ Petition therefore stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

Sub Assistant Registrar

To:

- 1.The Principal Secretary,
The Government of Tamil Nadu,
Department of Town and Country Planning Secretariat,
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Chennai-9.
- 2.The District Collector,
O/o. District Collector,
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Tirunelveli,
Chennai-2.



5.The Member Secretary,
Local Planning Authority,
O/o. Local Planning Authority,
Nagarcoil,
Kanyakumari District.

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+1CC to M/s.Ajmal Associates in SR.No.67212,
+1CC to Mr.T.Lajapathi Roy Advocate in SR.No.67337.

TSG

DS/SKN-RSK/SAR-4 :20.06.2018: 5P/8C

Order Made in
W.P. (MD) No.14264 of 2017
06.06.2018