



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.18721 of 2018

and

W.M.P. (MD) .Nos.16568 to 16570 of 2018

Dr.T.Thiraviam

... Petitioner

Vs.

1. The Director of Town & Country Planning,
No.807, Anna Salai,
Chennai 600 002.

2. The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

3. The Member Secretary,
Tirunelveli Local Planning Authority,
Xavier Colony,
South Bye Pass Road,
Tirunelveli.

... Respondents

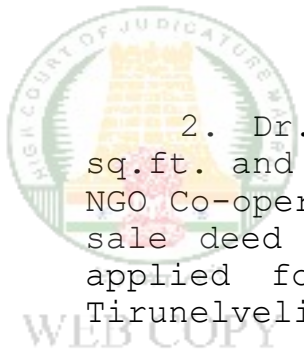
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the third respondent in Na.Ka.No.1157/2014 Thi Vu Thi Ku, dated 25.05.2018 and quash the same and consequently direct the first respondent herein to approve the revised plan furnished by the petitioner through third respondent.

For Petitioner : Mr.Veera Kathiravan,
Senior counsel
for M/s. Veera Associates
For R1 & R3 : Mr.V.Anand
For R2 : Mr.Aayiram K.Selvakumar

O R D E R

[Order of the Court was made by **T.RAJA, J.**]

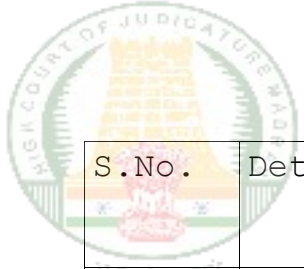
The writ petition is filed against the impugned order passed by the third respondent in Na.Ka.No.1157/2014 Thi Vu Thi Ku, dated 25.05.2018. It is directed the first respondent to approve the revised plan furnished by the petitioner through third respondent.



2. Dr.T.Thiraviam has purchased a vacant land having 5022.50 sq.ft. and 317.36 sq.mtr. in Plot B1 and B7 of lay out formed by the NGO Co-operative Housing Society Limited, Tirunelveli, by registered sale deed dated 17.10.2016 and 15.03.2013 from lawful owners and applied for building plan approval from the Member Secretary, Tirunelveli Local Planning Authority / the third respondent herein.

3. Learned counsel appearing for the petitioner submitted that accepting the application seeking planning permission, it was approved duly on 31.03.2014 by the third respondent. Hence, the petitioner has proposed to put up a superstructure in his Patta land for running an Orthopedic Clinic and put up a construction of silt + 3 floors without any violation and thereafter, he has been running an Orthopedic Clinic with 10 bed facilities with an emergency minor operation theatre and the said property also has been assessed for the property tax by the competent authorities. While so, the petitioner received notices from the third respondent indicating that there are certain non-compliance of the procedures and plan and also specifically indicating that there is a non-availability of the parking place and set back area as per the existing plan. Proceedings were also initiated thereon in 2015. Therefore, the petitioner, to satisfy the requirement of the third respondent, also purchased a vacant land adjacent to the eastern side of the existing building, on 17.10.2016, having 11½ cents and also made a detailed representation on 30.05.2018, to the first respondent along with the revised plan, seeking appropriate approval of the same. The Director of Town and Country Planning / the first respondent herein directed the petitioner in his proceedings dated 29.06.2018, to furnish all the documents and revised plan through the Member Secretary, Tirunelveli Local Planning Authority / the third respondent herein. Accordingly, the petitioner also filed all the documents before the Commissioner, Tirunelveli Corporation, Tirunelveli and the Member Secretary, Tirunelveli Local Planning Authority / the respondents 2 and 3 respectively for forwarding the same to the first respondent for necessary action. The counter affidavit filed by the third respondent also shows that pursuant to the notice issued by the third respondent informing certain violations said to have been allegedly committed by the petitioner, the petitioner also purchased sufficient land for the purpose of complying the conditions as mentioned in the notice. The third respondent has already sent a proposal on 06.09.2018 to the first respondent. Now, the Director of Town and Country Planning / the first respondent herein has to consider the same and pass appropriate orders. Till then no coercive steps be taken against the petitioner. The reason being if the first respondent accepts the proposal made by the third respondent, any coercive steps likely to be taken by the third respondent, would be a fatal to the building already constructed and the compliance made by the petitioner, it is pleaded.

4. A detailed counter affidavit has been filed by the Member Secretary, Tirunelveli Local Planning Authority / the third respondent herein indicating certain deviations as tabulated below:



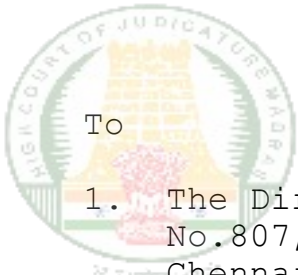
S.No.	Details	As Sanctioned Plan	Per Construction	Violation
1.	Front set back	4.50 m	1.70 m	2.80 m (less)
	Eastern set back	3.55 m	2.00 m	1.55 m (less)
	Western set back	3.55m	1.80 m	1.75 m (less)
	Rear side set back	4.78 m	1.60 m	3.18 m (less)
2.	Vehicle parking space	Stilt floor	Clinical use	100% Violation
	Building use	Retail shop of	Clinical building	100% Violation
3.	No of floor	Stilt + 4 floors	G + 4 floors	Violated

5. After receipt of the notice indicating the aforementioned deviations, the petitioner as mentioned above has also purchased 11½ cents to the eastern side of the existing building on 17.10.2016 for the purpose of complying with the defects. Thereafter, he has also made a detailed representation on 30.05.2018 to the first respondent. On receipt of the representation, the first respondent also passed a proceeding on 29.06.2018, directing the petitioner again to furnish all the details and revised plan through the third respondent. Accordingly, the petitioner also complying with the further instructions given on 29.06.2018, by the first respondent submitted a representation along with the documents and revised plan to the third respondent, which also on receipt of the same, in-turn placed before the first respondent. Therefore, we hereby direct the first respondent to consider the proposal forwarded by the third respondent along with the documents and revised plan, on merits, within a period of eight weeks from the date of receipt of a copy of this order. It is needless to mention that till the first respondent consider the same, the third respondent need not take any coercive steps against the petitioner.

6. With the above directions, the writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(crl side)

/True Copy/



To

1. The Director of Town & Country Planning,
No.807, Anna Salai,
Chennai 600 002.

2. The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

3. The Member Secretary,
Tirunelveli Local Planning Authority,
Xavier Colony,
South Bye Pass Road,
Tirunelveli.

+1cc to Mr.Aayiram K.Selvakumar, Advocate Sr.No.94298

+1cc to Spl.Government Pleader Sr.No.94253

AKV

VB/BK/SAR1/06.12.2018/4P/6C

W.P. (MD) No.18721 of 2018
01.11.2018