



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

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CORAM :

**THE HONOURABLE MR.JUSTICE T.RAJA  
AND  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

**W.P(MD)No.18509 of 2016**

**W.M.P. (MD) No.13405 of 2016**

M.Devarajan

... Petitioner

vs.

1. The State of Tamil Nadu,  
Represented by its Principal Secretary  
Department of Municipal Administration,  
Fort St. George, Chennai.
2. The District Collector,  
District Collector Campus,  
Madurai District.
3. The Corporation of Madurai,  
Rep. By its Commissioner  
Tallakulam,  
Madurai.
4. The Assistant Engineer,  
Madurai Corporation  
Thiruparankundram, Madurai.

5. K.Palanikumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to direct the respondent Nos.1 to 4 to initiate appropriate action to forbear the respondents No.5 from making unauthorised construction of 1<sup>st</sup> floor for the building situated at 2/1 Narayanar Street, Balaji Nagar, Thiruparankundram, Madurai, within a time frame fixed by this Court.



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For Respondents :Mr.V.R.Shanmuganathan for R1 & R2  
Special Government Pleader  
Mr.A.Srinivasan for R5  
Mr.T.S.Mohammed Mohideen  
for R3  
No appearance for R4

**ORDER**

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

This writ petition has been filed for a direction to the respondents 1 to 4 to take action against the 5<sup>th</sup> respondent from making unauthorized construction of first floor for the building situated at 2/1 Narayanar Street, Balaji Nagar, Thiruparankundram, Madurai.

2.Learned counsel for the petitioner pleads that the petitioner is residing in the house constructed in S.No.166/1 situate at 2/1 Narayanar Street, Balaji Nagar, Thiruparankundram. In the same locality, the 5<sup>th</sup> respondent is also having the house property. The petitioner owns a vacant land at R.S.No.166/1, patta was also issued and the petitioner was also paying vacant site tax till now and adjacent to his property, the 5<sup>th</sup> respondent is rising first floor without obtaining any approval or planning permission from the Madurai Corporation authorities for constructing the first floor. After noticing the illegal construction, the petitioner has given a representation on 10.06.2016 to the Assistant Engineer, 4<sup>th</sup> respondent herein to take action against the 5<sup>th</sup> respondent, as he has been rising his construction without planning permission from the competent authority. The said representation has not been responded either favourably or against the petitioner. Therefore, he has been advised to come to this Court.

3. A detailed counter affidavit has been filed by the third and fifth respondents.

4. Learned counsel for the third respondent, relying on the counter affidavit, submitted that the fifth respondent has applied for plan approval for construction of first floor in S.No.166/1 in Plot No.53, Balaji Nagar, Narayanar Street and his plan approval number is 167. However, the fifth respondent has started the construction against the plan approval, and therefore, notice under Sections 282, 296(1) and (2) of the Madurai City Municipal Corporation Act, 1971 has been issued on 03.08.2016 and one more notice under Section 296(3) of the said Act has also been issued on 29.08.2016 and that no order has been passed till now. It is,



at this stage, the learned counsel submitted that the petitioner has also approached the third respondent. As the third respondent has issued notice to Sangaiah, who is the paternal uncle of the fifth respondent, Sangaiah is entitled to participate in the enquiry, as he has been invited to attend enquiry being conducted by the third respondent.

5. Learned counsel for the fifth respondent would submit that the fifth respondent resides in the land belong to his paternal uncle, Mr.Sangaiah and Mr.Sangaiah has obtained planning permission on 12.08.2015 for construction of the first floor. Pursuant to the said permission, the construction has been made. He would further submit that the petitioner has raised a compound wall adjacent to his property, due to which, the children of the fifth respondent had lost free air and light. The writ petitioner, in the year 2015, filed a petition before this Court in Crl.O.P.(MD) No.22993/2015 to register a case against the 5<sup>th</sup> respondent. The said petition was disposed of and after detailed enquiry, the case has been closed as 'mistake of fact'. Suppressing all these facts, the petitioner is before this Court with this writ petition and hence, the writ petition is liable to be dismissed, he contended.

6. Taking note of the fact that Mr.Sangaiah has already obtained prior approval for rising the first floor at the aforementioned survey number, which has also been accepted by the third respondent, we do not find any merit in the writ petition. Accordingly, the writ petition fails and the same is dismissed. However, since notices have been issued by the third respondent for violation of the planning permission, it is for the third respondent to consider and pass appropriate orders on merits. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Principal Secretary  
State of Tamil Nadu,  
Department of Municipal Administration,  
Fort St. George, Chennai.
2. The District Collector,  
District Collector Campus,  
Madurai District.



3. The Commissioner  
Corporation of Madurai,  
Tallakulam, Madurai.

4. The Assistant Engineer,  
Madurai Corporation  
Thiruparankundram  
Madurai.

+1cc to Mr.T.S.Mohammed Mohideen, Advocate Sr.No.84176  
+1cc to Mr.A.Srinivasan, Advocate Sr.No.84195

RR

VB/RSK/SAR4/09.10.2018/4P/7C

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