



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.10943 of 2013

and

M.P(MD)Nos.1 of 2013

Paul Devaraj Ahiah

... Petitioner

vs.

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

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

3.The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.

4.The District Collector / Chairman,
Nagercoil Local Planning Authority,
Office of the District Collector,
Nagercoil - 629 001.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for all the relevant records of the first respondent Notice No.18/2012 NLPA dated 14.06.2013 and quash the same and consequently direct the third respondent to grant planning permission to the petitioner for the revised plan pertaining to the construction of the building comprised in R.Sy.No.E-15/146, R.Sy.No.E-15/147 and R.Sy.No.E-15/148 situated in N.M.C Ward No.48 Victoria Press Road, Nagercoil, Nagercoil Village, Agastheeswaram Taluk, Kanyakumari District.

For Petitioner

: Mr.S.Ramakrishnan
for Mr.D.Christenson Jugunu

For Respondents

: Mr.M.Govindan,
Spl.G.P. For RR1, 3 and 4
Mr.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						
Ground + 1 st floors	Cellar + Ground + 3 floors	1.	11(4) 1/4 th set back	Not provided	100%	
			15(2)(g) stair case ventilation	Not provided	100%	
		2.	12-Parking provision	Not provided	100%	
			14(1) 1/8 ventilation	Not provided	100%	
		3.	15(1) stair case provision	Not provided	100%	
		4.	14(3) set back provision	Not provided	100%	
		5.	Location of site			
Special Building Rules						
			1.	F S.I. - 1.7500	2.34	400%
			2.	Plot Coverage 50%	68.92%	120%
			3.	Open space around	0.90 m	71%
			4.	Front set back	Not provided	100%
			5.	Around atleast 3 mtr	Not Provided	100%
			6.	Parking	Not provided	100%
			7.	Fire NOC	Not Provided	100%
			8.	Road with 9m	5.50m	61%



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.

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 (T&P)

/True Copy/

Sub Assistant Registrar

To

1.The Member Secretary,
Nagercoil Local Planning Authority,
11-A, Ramanpillai Street,
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+1cc to M/S.D.Christenson Jugunu, Advocate SR.No. 55076

+1cc to Special Government Pleader, SR.No. 55716

Order made in
W.P(MD)No.10943 of 2013
and
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JM/JC/SAR 4/20.04.2018/4P/7C