



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.13251 of 2013

and

M.P(MD)No.2 of 2013

1. The Vellala Educational Trust,
through its President,
410, K.P.Road,
Ramavarmapuram,
Nagercoil - 1,
Kanyakumari District.

2. The Correspondent,
K.N.S.K.College of Engineering,
P.C.P,Nagar,
Therekalputhooor,
Kanyakumari District - 629 901.

... Petitioners

vs.

1. The District Collector,
Kanyakumari District,
Nagercoil.

2. The The Member Secretary,
Local Planning Authority,
Nagercoil,

3. The Executive Officer,
Therror Town Panchayat,
Theroor,
Agastheeswaram Taluk,
Kanyakumari District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, Writ of Mandamus, directing the 2nd respondent to consider the representation dated 12.06.2013 and permit the petitioner college to use the lab till the disposal of the petitioner application dated 07.12.2011 for grant of planning permission.

For Petitioner

: Mr.F.Deepak

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

For Respondents

: Mr.M.Govindan,

Spl G P for R1 to R3

**O R D E R**

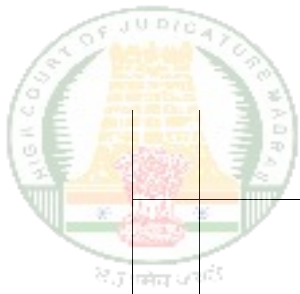
(Order of the Court was made by G.R.SWAMINATHAN, J.)

The petitioners seek a direction to direct the 2nd respondent to consider the representation dated 12.06.2013 and permit the petitioners' college to use the lab till the disposal of the petitioners application dated 07.12.2011 for grant of planning permission.

2.The case of the petitioners is that the petitioner after getting plan approval from the municipal authorities put up a college building at S.Nos.622/1, 667/2, 668/2 and 687/2 at Theroor village, Theroor Panchayat, Agastheeswaram Taluk, Nagercoil. Since some deviations were noted, the second respondent, the local planning authority issued notice dated 19.08.2011 to remove the unauthorised construction. Instead of challenging the lock and seal notice, the petitioners have chosen to file third writ of mandamus for disposing of his representation dated 12.06.2013.

3.The second respondent has filed a counter affidavit, in which the deviations in respect of the building in question have 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	Viola tion	
District Municipal Building Rules, 1972						
Not approval	Ground + 2 floors	1.	11(4) 1/4 th set back	Not provided	100%	
		2.	12-Parking provision	Not provided	100%	
		3.	14(1) 1/8 ventilation	Not provided	100%	
		4.	15(2)(g) stair case ventilation	Not provided	100%	
		5.	14(3) set back provision	Not provided	100%	
			Nature of Building			
2.Multistoreyed Building and Public Building Rules, 1973						
			1.	4(a) to be declared as MSB since it is beyond 4 storeys	Not declared	100%
			2.	4(b) minimum width of plot to be 24.50 Mtr.	Not provided	100%
vices.ecourts.gov.in/hcservices/			3.	9 FSI - 100	Not provided	100%



		4.	9 Plot Coverage 50%	Not provided	100%
		5.	11(1) (b) Front set back all around atleast 6 mtr.	Not provided	100%
		6.	13-Parking facilities	Not provided	100%
		7.	14, 18 -Fire Safety norms to be adopted	Not Provided	100%

4.The petitioners have not filed any rejoinder controverting the aforesaid allegations made by the authority with respect to the deviations committed by the petitioners.

5.We have heard the learned counsel on either side and perused the materials available on record.

6.Though in the affidavit filed in support of the petition, the petitioners have contended that the building was constructed after taking permission from the local planning authority, the deviations highlighted in the counter affidavit have not really been explained by the writ petitioners.

7.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.

8.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.

9.The building in question is used by the students. It is an educational institution building. Since the students 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 petitions is also dismissed.

Sd/-

Assistant Registrar (T&P)



To

1. The District Collector,
Kanyakumari District,
Nagercoil.
2. The Member Secretary,
Local Planning Authority,
Nagercoil,
3. The Executive Officer,
Therror Town Panchayat,
Theroor,
Agastheeswaram Taluk,
Kanyakumari District.

+1CC to Mr.F.Deepak Advocate, SR.No.55305,
+1CC to Special Government Pleader SR.No.55717.

ARUL

DS/KKR/SAR-1 : 08.05.2018: 4P/C6

Order made in
W.P (MD) No.13251 of 2013
and
M.P (MD) Nos.2 of 2013
13.03.2018