



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.7076 of 2013
and
M.P.(MD) Nos.1 to 3 of 2013

A.Mariya Sathiyanesan ... Petitioner
Vs.

1.The Director of Town and Country Planning,
No.807, Anna Salai, chennai - 600 002.

2.The District Collector,
Kanyakumari District,Kanyakumari.

3.The Member Secretary,
Local Planning Authority,
11-A, Ramanpillai Street,
Ramavarpuram, Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned proceedings issued by the 3rd respondent in Roc.No.72/12 NLPA dated 28.03.2013 and quash the same as illegal and consequently direct the 3rd respondent to unseal the petitioner's building in R.S.No.78/7B, Aloor Village, Kanyakumari.

For Petitioner : Mr.M.Mahaboob Athiff for
M/s.Ajmal Associates
For Respondents : Mr.M.Govindan, Spl.G.P.
For RR1 to 3

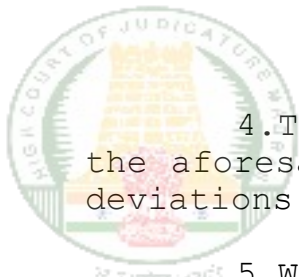
O R D E R

[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 third 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 + first floor	Ground + 5 floors	1.	11(4) 1/4 th open space	Not provided	100%	
		2.	12-Parking provision	Not Provided	100%	
		3.	15(1) stair case provision		100%	
		4.	14(3) set back provision		100%	
		5.	Location of site		100%	
Multi-storied and Public Building Rules, 1973						
			1.	4(a) to be declared as MSB since it is beyond 4 storeys	As per PP not located in declared area provided	100%
			2.	4(b) Minimum width of plot to be 24.50 Mtr. - as per PP 19.52	4.98	20.32%
			3.	9-F S.I. - 100		
			4.	9 Plot Coverage 50% - as per PP 75.57%	25.57%	
			5.	11(1)(b) Front set back all around atleast 6 mtr. - as per PP provided		100%
			6.	12(a) Access Way - as per PP not provided		100%
			7.	12(2) Emergency Exit - as per PP not provided		100%
			8.	13-Parking facilities - as per 8 car space		100%
			9.	14, 18 -Fire Safety norms to be adopted - as per PP no NOC obtained		100%
			10.	16(2) (b) Two exists - as per PP not provided		100%



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 person.

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 petitions are also dismissed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1.The Director of Town and Country Planning, No.807, Anna Salai, chennai - 600 002.

2.The District Collector, Kanyakumari District, Kanyakumari.



3.The Member Secretary, Local Planning Authority,
11-A, Ramanpillai Street, Ramavarpuram, Nagercoil,
Kanyakumari District.

+1CC to M/s.Ajmal Associates, SR.No. 55045

+1CC to the Special Government Pleader SR.No.55685

ORDER MADE IN
W.P.(MD)No.7076 of 2013 and
M.P.(MD) Nos.1 to 3 of 2013
13.03.2018

Arul

AM/KK/SAR 1/24.04.2018/4P/6C