



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2017

Pronounced on : 21.02.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8132 of 2013, 18457 of 2014 and
6467 of 2015,
and
M.P(MD)No.2 and 3 of 2013 and 1 of 2015

W.P(MD)No.8132 of 2013 :

L.Nalla Perumal

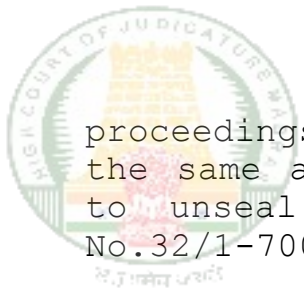
... Petitioner

vs.

- 1.The District Collector,
Kanyakumari District,
Kanyakumari.
- 2.The Commissioner,
The Nagercoil Municipality,
Nagercoil, Kanyakumari District.
- 3.The Member Secretary,
Local Planning Authority,
11-A, Ramanpillai Street,
Ramavarampuram,
Nagercoil, Kanyakumari District.
- 4.Kumari Mavatta Makkal Matrum
Samooga Nala Sangam
(Reg.No.67 of 2013),
Rep.by its President,
P.Kumaresan
(R4 is impleaded as per
order dated 13.09.2017
made in M.P(MD)No.1 of 2014)

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent in his



proceedings in Notice No.50/2012 NLA dated 06.05.2013 and quash the same as illegal and consequently direct the third respondent to unseal the building belonging to the petitioner in Door No.32/1-700, Veppamoodu Junction, Nagercoil.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.M.Govindan,
Spl.G.P. for RR1 to 3

Mr.T.Lajapathi Roy for R4

W.P(MD)No.18457 of 2014 :

D.Aathilingaperumal ... Petitioner

vs.

1.The District Collector,
Kanyakumari District,
Kanyakumari.

2.The Commissioner,
Nagercoil Municipality,
Kanyakumari District.

3.D.Lakshmanan Perumal

4.L.Nallaperumal
(R4 is impleaded as per
order dated 13.09.2017
made in M.P(MD)No.1 of 2015)

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 and 2 to remove the unauthorized constructions put up by the third respondents and other unauthorized construction in the municipal limits.

For Petitioner : Mrs.Srimathi
for Mr.S.M.S.Johnny Basha

For Respondents : Mr.M.Govindan,
Spl.G.P. for R1

Mr.P.Aathimoolapandian for R2
No appearance for R3

**W.P(MD)No.6467 of 2014 :**

Kumari Mavatta Makkal Matrum
Samooga Nala Sangam
(Reg.No.67 of 2013),
Rep.by its President,
P.Kumaresan

... Petitioner

vs.

- 1.The Director,
Directorate of Town and
Country Planning,
Opp.Lic, Chengalvarayan Building,
4th Floor, Anna Salai, Chennai.
- 2.The District Collector,
Kanyakumari District, Kanyakumari.
- 3.The Deputy Director of Town
Country Planning,
Palayamkottai, TVM Road,
Tirunelveli - 627 002.
- 4.The Member Secretary,
Local Planning Authority,
11-A, Ramanpillai Street,
Ramavarampuram,
Nagercoil, Kanyakumari District.
- 5.The Commissioner,
The Nagercoil Municipality,
Nagercoil, Kanyakumari District.
- 6.L.Nallaperumal

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the third respondent to initiate appropriate action to remove unauthorized construction made by the sixth respondent in Door.No.32/1-700, Veppamoodu Junction, Nagercoil, Kanyakumari District.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.M.Govindan,
Spl.G.P. for R1 to R4



Mr.Ajmal Khan, Sr.Counsel for
Mr.M.Mohaboob Aathiff for R6

COMMON O R D E R

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

W.P. (MD) No.8132 of 2013

The petitioner in W.P.(MD) No.8132 of 2013 obtained permission from Nagercoil Municipality on 11.10.1988 to put up construction for running a textile shop. But in complete deviation of the terms of approval, the petitioner put up an unauthorised multi-storied building. The building comprises ground floor plus four floors including a mezzanine floor. The area of construction is over 3000 sq.mts. The details of violation are as under:

Sl. No.	Description of rule	Present condition at site	Violation
District Municipal Building Rules, 1972			
1.	11(4) one fourth open space	Not provided	100%
2.	12-Parking space	Not provided	100%
3.	14(1) one eighth ventilation	Not provided	100%
4.	15(2) (g) staircase ventilation 1.50 sq.m.	Not provided	100%
Multi-storied and Public Building Rules, 1973			
1.	4(a) declared as MSB	Not provided	100%
2.	4(b) Minimum width of site	Not provided	100%
	Minimum area of plot grounds	Not provided	100%
3.	9-F S.I. - 1.00	Not provided	100%
	P.C. - 50%	Not provided	100%
4.	11(1) (b) Open space around 5m	Not provided	100%
5.	12(2) emergency exit	Not provided	100%
6.	13-Parking facilities for every 200 sq.m. - 20 sqm for shops and for 6 beds-20 sqm for lodging	Not provided	100%
7.	14-Fire NOC	Not provided	100%

2. Therefore, the third respondent issued proceedings dated 29.11.2012 under Section 49, 56 and 57 of Tamil Nadu Town and Country Planning Act, 1971. The petitioner submitted a cryptic explanation dated 12.12.2012. All that the petitioner stated



therein was that the petitioner has put up construction and is running a textile shop in the name and style of S.Nallaperumal and Sons for over twenty five years. Not satisfied with the said explanation, the third respondent proceeded to lock and seal the premises on 06.05.2013. Questioning the notice dated 29.11.2012 and the consequential proceedings dated 06.05.2013, this writ petition came to be filed.

3.We have heard the learned counsel for the petitioner and the learned Standing counsel for the Local Planning Authority, Nagercoil.

4.In response to the counter affidavit filed by the third respondent, there is no rejoinder filed by the writ petitioner. The writ petitioner is not in a position to controvert the allegations regarding deviations as pointed by the third respondent authority. The tabulated particulars set out supra are not disputed.

5.It cannot be petitioner's case that the construction put up by him is in accordance with the sanctioned plan. The local planning authority called upon the petitioner to remove the unauthorised construction. It was only on account of the failure on his part to comply with the demand set out in the proceedings dated 29.11.2012 that the enforcement action was taken by the competent authority.

6.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.

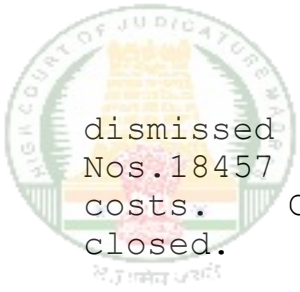
7.In any event, there is a statutory remedy available to the petitioner under Section 80(a) of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner without resorting to the specific remedy available under the Act, has rushed to this Court and obtained an interim order.

8.The building in question is used by the public. It is a textile shop. Since the public are using the shop, the shop 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.

W.P. (MD) Nos.18457 of 2014 and 6467 of 2015:

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

9.Since the writ petition filed by the building owner has been



dismissed by this Court, no orders are necessary in W.P.(MD) Nos.18457 of 2014 and 6467 of 2015 and they stand closed. No costs. Consequently connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

Arul

To

- 1.The Director,
Directorate of Town and
Country Planning,
Opp.Lic, Chengalvarayan Building,
4th Floor, Anna Salai, Chennai.
- 2.The District Collector,
Kanyakumari District, Kanyakumari.
- 3.The Commissioner,
The Nagercoil Municipality,
Nagercoil, Kanyakumari District.
- 4.The Member Secretary,
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11-A, Ramanpillai Street,
Ramavarampuram, Nagercoil, Kanyakumari District.
- 5.The Deputy Director of Town
Country Planning,
Palayamkottai, TVM Road,
Tirunelveli - 627 002.

+1 CC TO M/S.Ajmal Associates , Sr.No. 50684
+1 CC TO Mr.T.Lajapathi Roy , Advocate, Sr.No. 50639
+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No. 50614

JAM/29/05/2018/ SKN-RSK/SAR 2/ 6p-9c

Pre -Deliver Order made in

**W.P(MD)No.8132 of 2013, 18457 of 2014 and
6467 of 2015,**

and

M.P(MD)No.2 and 3 of 2013 and 1 of 2015

21.02.2018