



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2017
Pronounced on : 13.03.2018

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CORAM:

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

W.P. (MD) No. 8171 of 2013
and
M.P. (MD) Nos. 1 and 2 of 2013

D. Shahila Kumari

... Petitioner

Vs.

1. The Town Planning Authority,
No. 11A, Ramanpillai Street,
Ramavarmapuram,
Near R.D. Pillai Thirumana Mandapam
Nagercoil - 629 001,
represented by its Member Secretary (PO)

2. The Chairman,
Nagercoil Town Planning Authority cum
District Collector of Kanyakumari
at Nagercoil,
Kanyakumari District.

... Respondents

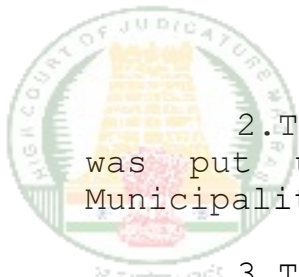
PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent pertaining to its order in Na.Ka.No.916/2011 Na.U.Thiku dated 08.02.2013 on its file and its consequential order dated 06.05.2013 on its file, locking and sealing the premises, bearing Door Nos. 49 and 51, Court Road, Nagercoil - 1, Kanyakumari District and quash the same.

(Prayer is amended as per order dated 29.08.2017 made in M.P. (MD) No. 3 of 2013)

For Petitioner : Mr. K.N. Thambi
For Respondents : Mr. M. Govindan, Spl. G.P.

O R D E R

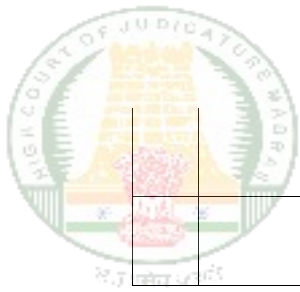
[Order of the Court was made by **G.R. SWAMINATHAN, J.**]



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 + 3 floors	Ground + 5 floors	1.	11(2) (a) Building Line	Not provided	100%	
		2.	12-Parking provision	Not Provided	100%	
		3.	14(1) ventilation 1/8 th	Not provided	100%	
		4.	14(3) window provision	Not provided	100%	
		5.	15(2) (g) stair ventilation	Not provided	100%	
Multi-storied 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%
			3.	4(b) minimum area of plot 4 grounds	Not provided	100%
			4.	9-F S.I. - 100	Not provided	100%
			5.	9 Plot Coverage 50%	Not provided	100%
			6.	11(1) (b) Front set back all around atleast 6 mtr.	Not provided	100%
			7.	12(a) Access Way	Not provided	100%
		https://www.ecourts.gov.in/hcservices/	8.	12(2) Emergency Exit	Not Provided	100%



	9.	13-Parking facilities	Not provided	100%
	10.	14, 18 -Fire Safety norms to be adopted	Not Provided	100%

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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.

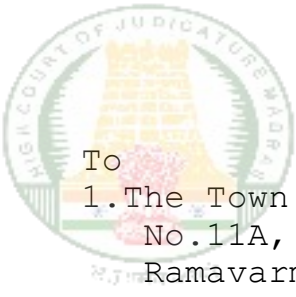
8.In any event, there is a statutory remedy available to the petitioner under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner without resorting to the specific remedy available under the Act, has rushed to this Court and obtained an interim order.

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(AE)

/True copy/



To

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represented by its Member Secretary(PO)

2.The Chairman,
Nagercoil Town Planning Authority cum
District Collector of Kanyakumari
at Nagercoil,
Kanyakumari District.

+1CC TO M/S.K.N.THAMPI, ADVOCATE, SR NO.54997
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.55691

ORDER MADE IN
W.P. (MD) No.8171 of 2013
and
M.P. (MD) Nos.1 and 2 of 2013
13.03.2018

Arul

MS/KKR/SAR-3/27.04.2018/4P.5C