



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. 8221 of 2013
and
M.P. (MD) No. 1 of 2013

C. Nepalaraaj

... Petitioner

Vs.

1. The Member Secretary,
Nagercoil Local Planning Authority,
11A, Raman Pillai 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: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, to call for the records of the 1st respondent in Na.Ka.No.916/2011 Na.U.Thi.Ku, dated 11.02.2013, quash the same and consequentially direct the 3rd respondent to grant exemption to the petitioner's building consisting Basement, Ground Plus Three Floors, at No.158 & 159, Balamore Road, Nagercoil - 629 001 in terms of G.O. (Ms.) No.43 dated 22.02.2013.

For Petitioner
For Respondents

: Mr. Mubarak for M/s. Ahamed Associates
: Mr. M. Govindan,
Spl. G.P. For RR1, 3 and 4
Mr. P. Athimoolapandian for R2



O R D E R

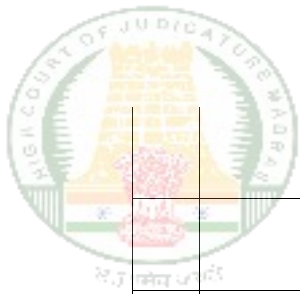
[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

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 + 1st floor	Basement + Ground + 4 floors	1.	11(4) 1/4 th set back	Not provided	100%
		2.	12-Parking provision	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 provided	100%
		2.	4(b) Minimum width of plot to be 24.50 Mtr.	Not provided	100%
		3.	9-F S.I. - 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.	12(a) Access Way	Not provided	100%
		7.	12(2) Emergency Exit	Not Provided	100%



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		8.	13-Parking facilities	Not provided	100%
		9.	14, 18 -Fire Safety norms to be adopted	Not Provided	100%
		10.	16(2) (b) Two exists	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 petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

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Nagercoil - 629 001.

+ 1 cc TO M/S.Ahamed Associates , Advocate in SR No. 54853

Arul

AE/KKR/SAR3/19.04.2018/4P/6C

ORDER MADE IN

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and
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13.03.2018