



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. 8224 of 2013
and
M.P. (MD) No. 1 of 2013

T. Rajan

... Petitioner

Vs.

1. The District Collector Kanniyakumari
District Collector Office,
Nagercoil - 1.

2. The Member Secretary,
Nagercoil Local Planning Authority,
11A, Raman Pillai Street,
Ramavarma Puram, Nagercoil - 629 001.

3. The Commissioner,
Nagercoil Municipality
Nagercoil.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent relating to the passing of the impugned order issued in proceeding notice No. 115/2009 in proceedings No. 916/2011 Na.Vu.Thiku dated 11.02.2013 and quash the same.

For Petitioner : Mr. M. R. Raman Laal

For Respondents : Mr. M. Govindan, Spl. G.P. For RR1 & 2
Mr. P. Athimoolapandian for R3

O R D E R

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

<https://hcservices.ecourts.gov.in/hcsservices/>
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 second 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						
Basement + Ground + 3 Floors	Basement + Ground + 3 floors	1.	11(4) 1/4 th set back	Not provided	100%	
		2.	12-Parking provision	Not Provided	100%	
		3.	15(1) stair case provision	Not provided	100%	
		4.	14(3) set back provision	Not provided	100%	
		5.	Location of site	Not provided	100%	
Special Building Rule						
			1.	FSI - 1.75	Not provided	100%
				PC - 50%	Not provided	100%
			2.	Open space around 3m	Not provided	100%
			3.	Since site abuts highway front set back 7.0m	Not provided	100%
			4.	13 Parking facilities for every 2000 sqm w0 sqm for shops and for 6 beds-20 sqm for lodging	Sufficient space not provided	100%
			5.	14 - Fire NOC	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.

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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(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector Kanniyakumari,
District Collector Office,
Nagercoil - 1.

2. The Member Secretary,
Nagercoil Local Planning Authority,
11A, Ramani Pillai Street,
R.V.Puram, Nagercoil - 1.



3. The Commissioner,
Nagercoil Municipality,
Nagercoil.

+ 1 cc TO Mr.R.Raman Laal , Advocate in SR No. 54973
+ 1 cc TO The Special Government Pleader in SR No. 55680

Arul
AE/JC/SAR3/19.04.2018/4P/6C

ORDER MADE IN

W.P. (MD) No.8224 of 2013
and
M.P. (MD) No.1 of 2013
13.03.2018