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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.8226 of 2013 and  
M.P. (MD) No.2 of 2013

The Federal Bank Limited,  
rep. by its Senior Manager,  
Nagercoil Branch,  
110, Kalluveetil Teenu Centre,  
Nagercoil.

... Petitioner

**Vs.**

1. The District Collector,  
Kanyakumari District, Nagercoil.

2. The Member Secretary,  
Local Planning Authority,  
Nagercoil.

3. A.J.Kingsley Fernandez

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the lock and seal order of the 2<sup>nd</sup> respondent dated 06.05.2013 and quash the same as in violation of the proviso clause of 56(2)(iii) of the Tamil Nadu Town and Country Planning Act.

For Petitioner : No Appearance

For Respondents : Mr.M.Govindan, Spl. G.P. For R1 & 2

**O R D E R**

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**[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.

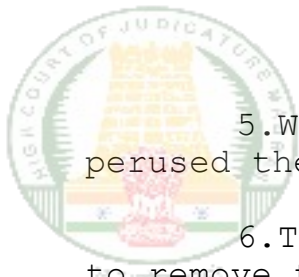
<https://hcservices.ecourts.gov.in/hcservices/>

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 + 2 floors                  | Ground + 4 floors | 1.                | 11(4) 1/4 <sup>th</sup> set back    | Not provided                                            | 100%            |      |
|                                               |                   | 2.                | 12-Parking provision                | Not provided                                            | 100%            |      |
|                                               |                   | 3.                | 14(1) 1/8 <sup>th</sup> ventilation | Not provided                                            | 100%            |      |
|                                               |                   | 4.                | 15(2) (g) stair case ventilation    | Not provided                                            | 100%            |      |
|                                               |                   | 5.                | 14(3) Set back provision            |                                                         |                 |      |
|                                               |                   | 6.                | Location of Site                    |                                                         |                 |      |
| 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.                                  | 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% |
|                                               |                   |                   | 8.                                  | 13-Parking facilities                                   | Not provided    | 100% |
|                                               |                   |                   | 9.                                  | 14, 18 -Fire Safety norms to be adopted                 | No NOC obtained | 100% |
|                                               |                   |                   | 10.                                 | 16(2) (b) Two exists                                    |                 |      |

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 Special Government Pleader 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 persons.

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/

Sub Assistant Registrar

To

1. The District Collector,  
Kanyakumari District, Nagercoil.
2. The Member Secretary,  
Local Planning Authority, Nagercoil.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 55695

ARUL

TE/RSK/SAR-2 : 08/05/2018 : 4P/4C