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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.8249 of 2013
and
M.P. (MD) Nos.1 to 3 of 2013

Devaregin Harris

... Petitioner

Vs.

1 .The District Collector,
Kanyakumari District,
Kanyakumari.

2. The Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

3. The Member Secretary,
Local Planning Authority,
No.11A, Ramanpillai Street,
Ramavarmapuram,
Nagercoil-1,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned notice dated 29.11.2012 in Notice No.68/2012 நா.உ.தி.கு. as well as notice dated 11.02.2013 in Na.Ka.No.916/2011 நா.உ.தி.கு. on the file of the 3rd respondent and the proceedings of the 3rd respondent 06.05.2013 and quash the same and further directing the 3rd respondent to unseal the premises in Door No.174, 174 C and 803, K.P.Road, Nagercoil known as "Harris Residency".

For Petitioner

: Mr.M.P.Senthil

For Respondents

: Mr.M.Govindan, Spl. G.P. For R1 & 3
Mr.P.Athimoolapandian for R2

O R D E R

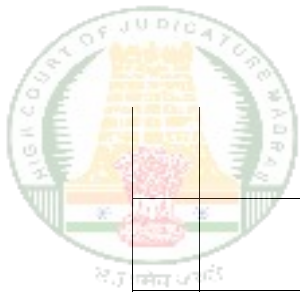
[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

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 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						
Ground + 1 floor	Ground + 4 floors	1.	11(4) 1/4 th set back	Not provided	100%	
		2.	14(1) 1/8 th ventilation	Not provided	100%	
		3.	12-Parking provision	Not provided	100%	
		4.	15(2) (g) stair case 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.	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%	



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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 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.

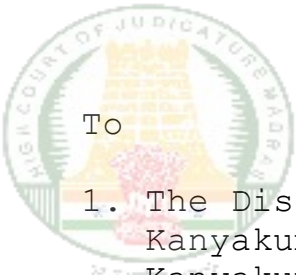
8.In any event, there is a statutory remedy available to the petitioner under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner without resorting to the specific remedy available under the Act, has rushed to this Court and obtained an interim order.

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(T&P)



To

1. The District Collector,
Kanyakumari District,
Kanyakumari.
2. The Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.
3. The Member Secretary,
Local Planning Authority,
No.11A, Ramanpillai Street,
Ramavarmapuram,
Nagercoil-1,
Kanyakumari District.

+ 1 cc TO The Special Government Pleader in SR No. 55698

Arul

AE/JC/SAR3/19.04.2018/4P/5C

ORDER MADE IN

W.P. (MD) No.8249 of 2013
and
M.P. (MD) Nos.1 to 3 of 2013
13.03.2018