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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.8336 of 2013

and

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

1.A.J.Kingsley Fernandez (Died)
2.Febianammal@ Parimalam
3.Helina Shyra Biju
(P2 and 3 are substituted as per order
dated 29.08.2017 made in WMP(MD)
No.1880 of 2016

... Petitioners

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
St. George Fort,
Chennai.

2.The Director,
Town and Country Planning,
807, Anna Salai,
Chennai - 2.

3.The Member Secretary,
Nagercoil Local Planning Authority,
11-A, Ramanpillai Street,
Ramavarmapuram,
Nagercoil - 1.

4.The District Collector/Chairman
Nagercoil Local Planning Authority,
Nagercoil - 629 001.

5.The Municipal Commissioner,
Nagercoil Municipality,
Nagercoil - 1.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 09.02.2013 in Na.Ka.No.916/11 Na.U.Thi.Ku passed by the 3rd respondent and the consequential order dated 06.05.2013 passed by the 3rd respondent and

quash the same and further directing the respondents herein not to take any further steps in respect of the petitioner's property in Door No.82, Kalluveettil Teenu Centre, Court Road, Nagercoil till the disposal of the petitioner's application for regularisation dated 22.03.2013 pending on the file of the second respondent herein.

For Petitioner : Mr.M.Vallinayagam, senior
counsel for Mr.D.Nallathambi

For Respondents : Mr.M.Govindan, Spl. G.P. For RR1 - 4
Mr.P.Athimoolapandian for R5

O R D E R

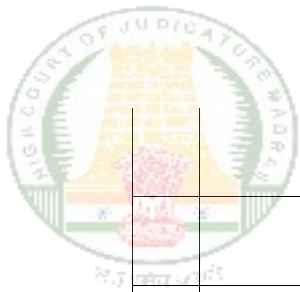
[Order of the Court was made by G.R.SWAMINATHAN, J.]

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 third 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 plus 2 floors	Stilt + 4 Ground plus 4 floors	1.	11(4) 1/4 th set back	Not provided	100%	
		2.	12-Parking provision	Not provided	100%	
		3.	14(1) 1/8 ventilation	Not provided	100%	
		4.	15(2)(g) stair case ventilation	Not provided	100%	
		5.	Location of site	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%



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			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.	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	Not Provided	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.

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

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)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Housing and Urban Development Department,
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2.The Director,
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5.The Municipal Commissioner,
Nagercoil Municipality,
Nagercoil - 1.

+1CC to Mr.D.Nallathambi Advocate in SR.No.55201,
+1CC to Special Government Pleader in SR.NO.55704.

ARUL

DS/RSK-SKN/SAR-3 :22.05.2018:4P/8C

ORDER MADE IN

W.P. (MD) No.8336 of 2013

and

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

13.03.2018