



WEB COPY

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.8345 of 2013
and
M.P.(MD) No.1 of 2013

K.Suresh Raj Kumar

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District
Nagercoil.

2.The Member Secretary (General)
Local Planning Authority,
11-A, Raman Pillai Street,
Near P.D.Pillai Marriage Hall
Ramavarmapuram,
Kanyakumari District.

3.The Commissioner,
Nagercoil Municipality,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents 1 and 2 from initiating coercive steps to demolish the petitioner's building namely Popular Electricals situated at Door No.704, Cape Road, Nagercoil, Kanyakumari District and consequently direct the respondents 1 and 2 to dispose of the petitioner's representation dated 08.05.2013.

For Petitioner : Mr.K.P.Narayanakumar

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.]

The petitioner seeks mandamus, forbearing the respondents 1 and 2 from initiating coercive steps to demolish the petitioner's building namely Polular Electricals situated at Door No.704, Cape

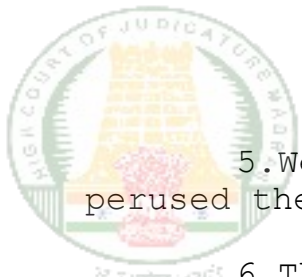
Road, Nagercoil, Kanyakumari District and consequently direct the respondents 1 and 2 to dispose of the petitioner's representation dated 08.05.2013.

2.The case of the petitioner is that the petitioner after getting plan approval from the municipal authorities put up a commercial complex in Door No.704, Cape Road, Nagercoil, Kanyakumari District. Since some deviations were noted, the second respondent, the local planning authority issued lock and seal notice dated 09.02.2013. The petitioner sent representations dated 04.03.2013 and 08.05.2013 to the respondents 1 and 2 seeking not to take any coercive action against the petitioner. Instead of challenging the notice dated 09.02.2013, the petitioner has chosen to file the writ of mandamus for disposing of his representation dated 08.05.2013.

3.The second respondent has filed a counter affidavit, in which the deviations in respect of the building in question has been set out in a tabulated format. The same is as under:

Sl. No.	Description of rule	Present condition at site	Violation
District Municipal Building Rules, 1972			
1.	11(4) one fourth open space	Not provided	100%
2.	12-Parking space	Not provided	100%
3.	14(1) 1/8 ventilation	Not provided	100%
4	15(2) (g) staircase ventilation 1.50 sq.m.	Not provided	100%
Multi-storied and Public Building Rules, 1973			
1.	4(a) declared as MSB	Not provided	100%
2.	4(b) Minimum width of site	Not provided	100%
	Minimum area of plot 4 grounds	Not provided	100%
3.	9-F S.I. - 100	Not provided	100%
	Plot Coverage 50%	Not provided	100%
4.	11(1) (b) open space around 5 m	Not provided	100%
5.	Since site abuts Highways front set back 7.0m	Not provided	100.00%
6	12(2) Emergency Exit	Not Provided	100%
7	13-Parking facilities for every 200 sq.m. - 20 sq.m. for shops and for 6 beds-20 sqm. for lodging	Not provided	100%
8	14 Fire NOC	Not Provided	100%

<https://hcservices.ecourts.gov.in/hcservices> 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 notice dated 11.02.2013 passed by the second respondent 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 is also dismissed.

Sd/-

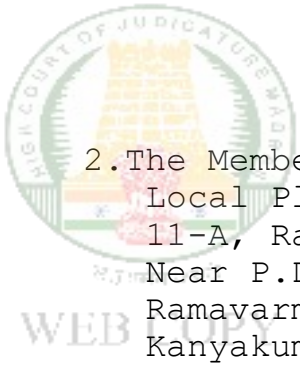
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector,
Kanyakumari District
Nagercoil.



2.The Member Secretary (General)
Local Planning Authority,
11-A, Raman Pillai Street,
Near P.D.Pillai Marriage Hall
Ramavarmapuram,
Kanyakumari District.

3.The Commissioner,
Nagercoil Municipality,
Kanyakumari District.

+1cc to Mr.K.P.Narayana Kumar, Advocate, SR.No.55178

+1 cc to The Special Government Pleader, SR.No.55705

RL/6C/4P/SKN/RSK/SAR1/19/4/2018

ORDER MADE IN

W.P. (MD) No.8345 of 2013
and
M.P. (MD) No.1 of 2013

13.03.2018