

**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.8349 of 2013
and
M.P(MD)No.1 of 2013**

K.Jeyan Kingsly

... Petitioner

vs.

1. The District Collector,
Kanyakumari District,
Kanyakumari.
2. The Municipal Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.
3. The Member Secretary,
Local Planning Authority,
11-A, Ramanpillai Street,
Ramavarmapuram,
Nagercoil, Kanyakumari District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, Writ of Certiorarified Mandamus to call for the records relating to the impugned notice of the 3rd respondent in Notice No.17/2013 Na.Vu.Thi.Ku dated 01.04.2013 and the consequential impugned proceedings of 3rd respondent in Na.Ka.No.17/2013 Na.Vu.thi.Ku dated 02.05.2013 and quash the same and consequently forbearing the respondents from in any way sealing the hotel and lodging premises of the petitioner in Door No.339E/17B, K.P.Road, Vadasery, Agastheeswaram Taluk, Nagercoil, Kanyakumrai District.

For Petitioner : Mr.M.Ajmalkhan, Sr.Counsel
for M/s.Ajmal Associates

For Respondents : Mr.M.Govindan,
Spl G P for R1 and 3
Mr.Aathimoolapandian for R2

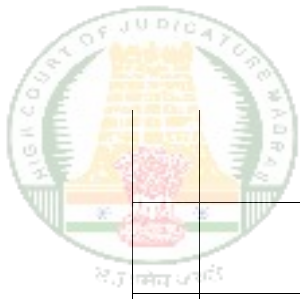
**O R D E R****(Order of the Court was made by G.R.SWAMINATHAN, J.)**

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 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 + first floor	Stilt + Ground + 3 floors	1.	11(4) 1/4 th set back	Not provided	100%	
			15(2)(g) stair case ventilation	Not provided	100%	
		2.	12-Parking provision	Not provided	100%	
			14(1) 1/8 ventilation	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 Rules						
			1.	FSI 1.75	Not declared	100%
			2.	PC 50%	Not provided	100%
			3.	Open space around 3m	Not provided	100%
https://www.ecourts.gov.in/hcservices/			4.	Front set back	Not provided	100%



		5.	around atleast 3 mtr.	Not provided	100%
		6.	Parking	Not provided	100%
		7.	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.

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(RTI)

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

Sub Assistant Registrar



To

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Kanyakumari District,
Kanyakumari.

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Kanyakumari District.

3. The Member Secretary,
Local Planning Authority,
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Ramavarmapuram,
Nagercoil,
Kanyakumari District.

+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 55051
+ 1 cc TO The Special Government Pleader in SR No. 55706

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

Order made in

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