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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. 8440 of 2013

and

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

Budharam Choudhry

... Petitioner

Vs.

1. The Government Tamilnadu,  
rep. by the Secretary to Government,  
Housing and Urban Development Department,  
Secretariat,  
Fort St. George,  
Chennai.
2. The Director of Town Planning Authority,  
Opposite to LIC,  
Chengalvarayan Buildings, 4<sup>th</sup> Floor,  
807, Anna Salai,  
Chennai - 2.
3. Nagercoil Composite Local Planning Authority,  
No.11, Ramanpillai Street,,  
Near Ramavarmapuram,  
Near R.D.Pillai Marriage Hall,  
Nagercoil - 629 001  
rep. by its Member Secretary.
4. The District Collector  
Kanyakumari District,  
Nagercoil.
5. The Commissioner,  
Nagercoil Municipality,  
Nagercoil,  
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 proceedings of the 3<sup>rd</sup> respondent dated 27.11.2012 in Notice No.88/2012/NLA and consequential proceeding dated 11.02.2013 in Na.Ka.No.916/2011/NLA and to quash the same and consequently forbear the respondents from locking and sealing the petitioner's premise situated in Door



No.N.M.C.37/2/1, Chemmakkudy Road, Nagercoil Municipality, Kanyakumari District.

For Petitioner

: Mr.N.Dilip Kumar

For Respondents

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

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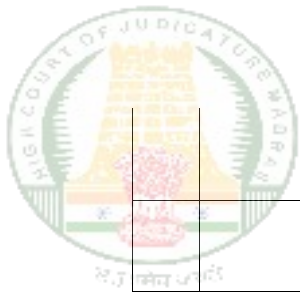
[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

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.

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 first floor                       | Stilt + Ground plus 5 floors | 1.    | 11(4) 1/4 <sup>th</sup> 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                 |                                                         |              |      |
| Multi-storied and Public Building Rules, 1973 |                              |       |                                  |                                                         |              |      |
|                                               |                              |       | 1.                               | 4(a) to be declared as MSB since it is beyond 4 storeys | Not provided | 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. | 13-Parking facilities                              | Not provided | 100% |
|  |  | 7. | 14, 18 -Fire Safety norms to be adopted            | Not Provided | 100% |
|  |  | 8. | 16(2) (b) Two exists                               | 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 petitions are also dismissed.

Sd/-

Assistant Registrar(T&P)

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Sub Assistant Registrar

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Nagercoil,  
Kanyakumari District.

+1cc to Mr.N.Dilip Kumar, Advocate Sr.No.54864

+1cc to The Spl. Government Pleader Sr.No.55710

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VB/SKN/RSK/SAR4/20.04.2018/4P/8C

ORDER MADE IN  
W.P. (MD) No.8440 of 2013  
and  
M.P. (MD) Nos.1 to 3 of 2013  
13.03.2018