



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2017

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.8922 of 2013

and

M.P (MD) Nos.1 and 2 of 2013

M.Razeeth Anver

... Petitioner

vs.

1. The District Collector,
Kanyakumari District, Kanyakumari.

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

3. The Member Secretary,
Local Planning Authority,
11-A, Ramanpillai Street,
Ramavarampuram,
Nagercoil, Kanyakumari District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent in his proceedings in Notice No.120/2012 NLA dated 29.11.2012 and the consequential proceedings in Na.Ka.No.916/11 NLA dated 09.02.2013 and quash the same as illegal and consequently forbear the respondents in any way locking or sealing the premises belonging to the petitioner in Survey No.N-5/72, 73 namely "Bahira Hardware", Chettikulam Junction, Nagercoil, Kanyakumari District.

For Petitioner : Mr.Ajmal Khan, Sr.Counsel for
Mr.M.Mohaboob Aathiff

For Respondents : Mr.M.Govindan,
Spl.G.P. for RR1 and 3
Mr.P.Athimoolapandian for R2

O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J.)



2.The petitioner is running a Hardware shop at Nagercoil. He purchased the building in question by sale deed dated 04.08.2012. According to the petitioner, the building was put up by his vendor after obtaining required building permission from the statutory authority. He is aggrieved by the issuance of the impugned notice dated 29.11.2012 issued by the third respondent.

3.In response to the notice issued by this Court, the third respondent filed a typed set of papers, in which the deviations in respect of the building in question have been set out as follows:

Sl. No.	Description of rule	Present condition at site	Violation
District Municipal Building Rules, 1972			
1.	11((2)(a) Building line	Not provided	100%
2.	12-Parking provision	Not provided	100%
3.	14(1) 1/8 ventilation	Not provided	100%
4.	14(3) window provision	Not provided	100%
5.	15(2)(g) stair 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 provided	100%
2.	4(b) Minimum width of plot to be 24.50 Mtr.	Not provided	100%
3.	4(b)Minimum area of plot grounds	Not provided	100%
4.	9-F S.I. - 100	Not provided	100%
5.	Plot Coverage 50%	Not provided	100%
6.	11(1)(b) Front set back all around atleast 6 mtr.	Not provided	100%
7.	12(a) Access Way	Not provided	100%
8.	12(2) Emergency Exit	Not Provided	100%
9.	13-Parking facilities	Not provided	100%
10.	14, 18 -Fire Safety norms to be adopted	Not Provided	100%

4.In the said typed set of papers, it has been further specifically pointed out that the building comprises ground floor plus 4 floors and that it does not have any set back space on any side. It also does not possess NOC from the Fire Service department. This NOC is a pre-requisite for multi-storied buildings.



5.The petitioner has not filed any rejoinder controverting the aforesaid allegations made by the authority with respect to the deviations pointed out in respect of the building in question.

6.We have heard the learned counsel on either side and perused the materials available on records.

7.The impugned communication merely informs the petitioner that the construction is question is not in conformity with the provisions of Tamil Nadu Town and Country Planning Act, 1972. The petitioner has only been required to obtain the requisite permission. It was made clear that if such permission is not obtained within 30 days, coercive action will follow.

8.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.

9.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.

10.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.

11.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(RTI)

/True Copy/

Sub Assistant Registrar



To

1. The District Collector,
Kanyakumari District, Kanyakumari.

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

3. The Member Secretary,
Local Planning Authority,
11-A, Ramanpillai Street,
Ramavarampuram,
Nagercoil, Kanyakumari District.

+1cc to M/s. Ajmal Associates, Sr.No.55044

+1cc to Spl.Government Pleader Sr.No.55684

ARUL

VB/SKN/RSK/SAR4/19/04/2018/4P/6C

Order made in
W.P(MD)No.8922 of 2013
and
M.P(MD)Nos.1 and 2 of 2013
13.03.2018