

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.11.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.26695 of 2019

and

W.M.P.Nos.26077 and 26079 of 2019

and

Writ Petition No.24803 of 2019

and

W.M.P.Nos.24435 and 24437 of 2019

S.Murugesan

... Petitioner in both W.Ps

Versus

1. The District Collector,
The Nilgiris District, The Nilgiris.

2. The Special Officer / Block Development Officer,
(Village Panchayat), Jackanarai Panchayat,
Jackanarai, Kothagiri Taluk,
The Nilgiris District ... Respondents in both W.Ps

PRAYER in W.P.No.26695 of 2019:-Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings RC.No.D10, No.20458/2019, dated 26.07.2019 and quash the same.

PRAYER in W.P.No.24803 of 2019:-Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.6/2019-2020, dated 31.07.2019 and quash the same.

For Petitioner ..

Mr.C.Prakasam in both W.Ps

For R1 and R2 ..

Mr.Inbanathan,
Additional Government Pleader
in both W.Ps

C O M M O N O R D E R

Heard the petitioner's counsel and perused the counter filed by the second respondent.

2. The case of the petitioner is that the Plot situated in S.No.2102/1, Jackanarai Village, Aravenu, Kothagiri Taluk, Nilgiris District is owned by him and he has constructed a house after obtaining building approval from the second respondent. Subsequently, the petitioner approached the respondent on 23.11.2018 for conversion of the residential building into a commercial building. The second respondent granted permission and issued building plan approval on 05.07.2019. Accordingly, the petitioner changed the residential building into a commercial shopping in complex spending huge amount and the tenants have also occupied the building and obtained license for running shops.

3. While so, the second respondent has passed a proceeding dated 31.07.2019 cancelling the conversion of residential building into commercial building without giving any notice to the petitioner. Hence, the Writ Petition seeking Writ of Certiorari Mandamus to call for the entire records relating to the impugned order passed by the first respondent dated 26.07.2019 and quash the same.

4. The second respondent has filed counter wherein, it is stated that the petitioner herein initially obtained permission for residential building. Without getting permission from the District Collector and the Special Tahsildar, Jackanarai Village he converted the residential building into commercial complex. 3 consecutive notices were issued by the second respondent to the petitioner to stop the commercial usage of the building. The petitioner replied stating that he has applied for revised approval and will carry on the commercial usage of the building obtaining approval.

5. In the counter, it is further stated that for conversion of residential building into commercial building, no objection from Agriculture Department, Forest Department and Geo Tech Department shortly known as AAA Departments has to be obtained. The first respondent after granting approval for conversion to the petitioner came to know that the petitioner has not obtained AAA clearance and hence, issued the proceeding cancelling the earlier order of permitting conversion.

6. The earlier approval for conversion issued by the first respondent without obtaining N.O.C from AAA Departments by oversight of the District Administrative. Being empowered to cancel the approval, in order to protect the Eco-System of the District, the cancellation order was issued.

7. On coming to know that the petitioner has not obtained AAA clearance, the first respondent has withdrawn the earlier permission for conversion and passed the impugned order. While, revoking the permission for conversion, the impugned order also refer the application of the petitioner pending before the AAA Committee and the District Administration will issue order for conversion after AAA Committee clearance.

8. Recently after the filing of this Writ Petition was pending, the AAA Committee has considered the application of the petitioner for conversion and after considering the building plan and the structure existing has pointed out certain deviations and has observed that the conversion to residential building into commercial building done without proper permission and there is 100% deviation in the existing plan. It states that unless the petitioner modify and correct the structure, permission for conversion of the said building into commercial building cannot be granted. The decision of AAA Committee arrived on 04.11.2019 has been communicated to the petitioner herein by the Special Tahsildar, Jackanarai Panchayat/B.D.O, Kothagiri Taluk vide proceedings No.326/1920, dated 15.11.2019. The petitioner has also received the same on 17.11.2018.

9. The contention of the counsel for the petitioner is that the building was constructed only after getting clearance from the AAA Department and therefore, it is improper to say that there is violation in the building and such observation is made by the AAA Committee with malafide intention.

10. The learned counsel for the petitioner would also show the photograph of the building to impress upon this Court that there is no violation or deviation in the structure.

11. This Court is unable to entertain the said submission. In view of the fact that the structure was made initially with permission for constructing the residential building. Thereafter, the petitioner has converted the building into a commercial complex and had rented it to third parties. When the authorities has found that there is illegal conversion of the building, notice has been caused to him for which, he has not properly responded. Anyone put up construction in the hill

area of Nilgiri has to get clearance from the AAA Committee.

12. Admittedly, the petitioner has converted the building without AAA clearance. Later, the AAA Committee has considered his application and has rejected the same stating the reasons. If the petitioner has any objection in the order passed by the AAA Committee, he can prefer an appeal and seek review of the order.

13. The order of withdrawal based by the District Collector is justified by the documents and the earlier permission for conversion granted due to inadvertence and improper application of records will not give any advantage for the petitioner herein, since, the said clearance itself was given after construction and not before construction.

14. In view of the development subsequent to filing of this petition, the point to be decided is that Whether the petitioner is entitled for conversion of his residential building into commercial building. If the petitioner wants the conversion, he should abide by the existing law and the guidelines of the AAA Committee. Now, as being pointed out by the AAA Committee the building is in violation of Rule 6(1) and 6(4). It is for the petitioner to rectify the same and seek for conversion permission, the communication of the Special Officer dated 15.11.2019 is explicit which gives liberty to the petitioner to rectify the defects mentioned and seeks for conversion. In view of the above fact, this Court finds that there is no material for interference of this petition.

15. Accordingly, W.P.No.26695 of 2019 is dismissed. No costs. Consequently, connected W.M.Ps are closed.

16. W.P.No.24803 of 2019:-

In the light of the order passed in the above Writ Petition, this Writ Petition filed consequent to the communication of the first respondent order does not survive. Hence, this Writ Petition is dismissed. No costs. Consequently, connected W.M.Ps are closed.

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Sd/-

Asst.Registrar (CS IV)

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Sub Asst. Registrar

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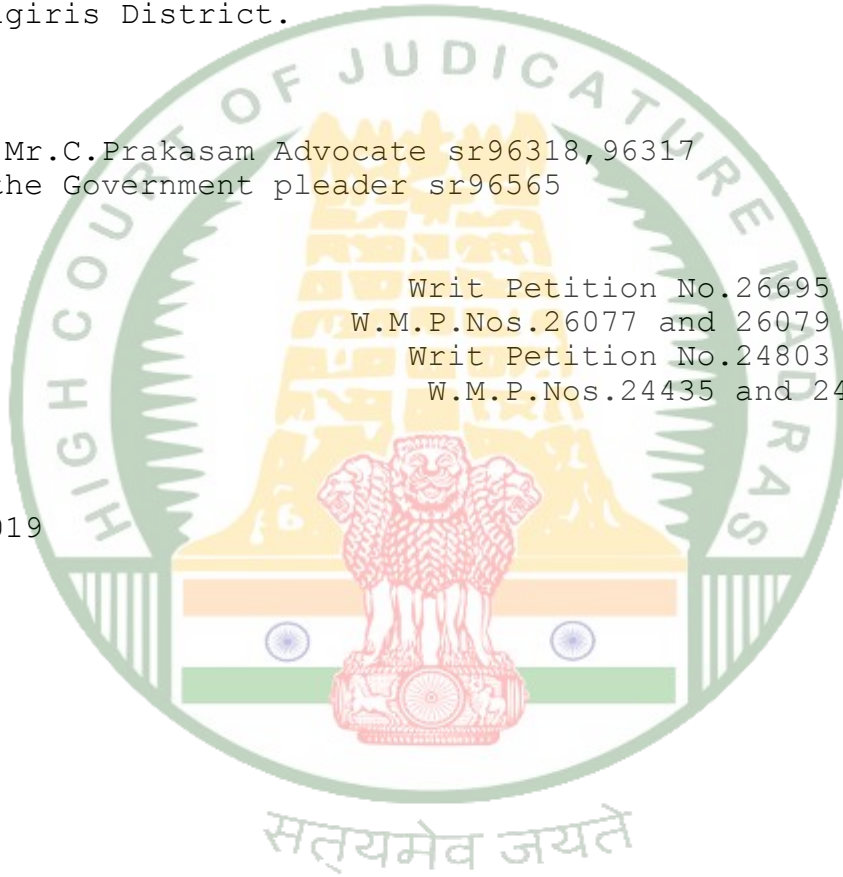
To

1. The District Collector,
The Nilgiris District, The Nilgiris.
2. The Special Officer / Block Development Officer,
(Village Panchayat), Jackanarai Panchayat,
Jackanarai, Kothagiri Taluk,
The Nilgiris District.

+2 ccs to Mr.C.Prakasam Advocate sr96318,96317
+1 cc to the Government pleader sr96565

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aa30/12/2019



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