



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.12.2018
PRONOUNCED ON : 15.03.2019

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CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P. (MD) No.1594 of 2018
and
W.M.P. (MD) Nos.1683 & 8407 of 2018

Suresh K. ... Petitioner

Vs.

1.The Commissioner,
Nagercoil Municipality,
Kanyakumari District.

2.Dr.Safiyullah

3.The Deputy Director of Town
and Country Planning,
Tirunelveli.

... Respondents

[R.3 is *suo motu* impleaded vide order dated 25.01.2018]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the first respondent to take appropriate action against the unauthorized construction made by the second respondent in Ward No.6, Block No.10, Town Survey No.19-3, Parakkai Road, Nagercoil, within a stipulated time limit.

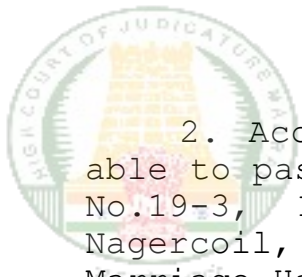
For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.P.Aathimoola Pandian for R.1
Mr.Siddhiq
for Mr.T.Madasamy for R.2

Mr.V.R.Shanmugathan,
Special Government Pleader for R.3

O R D E R

This writ petition is filed seeking a Writ of Mandamus directing the first respondent to take appropriate action against the unauthorized construction made by the second respondent in Ward No.6, Block No.10, Town Survey No.19-3, Parakkai Road, Nagercoil, within a stipulated time limit.



2. According to the petitioner, he is a Driver and he is not able to pass through the road in Ward No.6, Block No.10, Town Survey No.19-3, Parakkai Road, Opposite to Sudalai Madasamy Temple, Nagercoil, due to the congestions owing to the construction of a Marriage Hall, namely, "Safi Mahal" and Shopping Complex in front of the Marriage Hall by the second respondent. On verification, the petitioner found that the Marriage Hall was constructed without any valid approval from the authorities concerned and therefore, he has filed this writ petition.

3. When the writ petition came up for admission, this Court, by an order dated 25.01.2018, has granted an interim order of injunction based on the "stop construction notice" issued by the first respondent. This Court also thought it fit to implead the third respondent, namely, the Deputy Director of Town and Country Planning, Tirunelveli, as party respondent to this writ petition.

4. The first respondent / Commissioner, Nagercoil Municipality filed a counter affidavit stating that the second respondent has obtained a building permission on 27.01.2014 for construction of a residential building, whereas, he constructed a Marriage Hall and Shopping Complex in contravention of the approval. It is also stated that the approval was obtained for 3882 Sq.ft [residential building] and construction was made for 10071 Sq.ft [Marriage Hall]. For better appreciation, the relevant portion from the counter affidavit is extracted thus:

S.No	Approved Details	Area Approved as per plan	Actual Construction of floors	Revised plan / Appeal pending or not	Remarks
1	Approved by NMC BA.No: 334/20 13/F2	<u>Residential Buildings</u> Ground Floor : 1295 Sq.ft First Floor : 1295 Sq.ft Second Floor : 1139 Sq.ft Head Room : 153 Sq.ft Total : 3882 Sq.ft	<u>Marriage Hall</u> Ground Floor : 4329 Sq.ft First Floor : 4242 Sq.ft Second Floor : 1500 Sq.ft Total : 10071 Sq.ft	No pending	1.Approval to be obtained from LPA 2.100% Parking Violation



5. It is further submitted that the Municipality has got no power to grant building plan permission for more than 2000 Sq.ft of commercial building and the first respondent had also taken appropriate action by issuing notice under Sections 216(1) & (2), 317 of the Tamil Nadu Municipalities Act.

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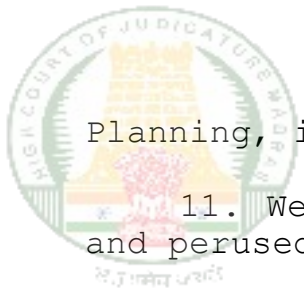
6. The second respondent has filed a counter affidavit that he is a Medical Practitioner, specialized in Pediatric medicine and he constructed eight shops [shopping complex] for retail and petty transactions and necessary approval was obtained for the same in the year 2013 itself. He has also relied upon certain receipts from 27.06.2017. Therefore, he would submit that suppressing that the shops are of approved category, the present writ petition came to be filed.

7. With regard to the Marriage Hall, it is represented that he submitted a plan to the first respondent on 28.06.2017, but, it was returned on 01.02.2018 and he re-presented the same on 01.02.2018. But the same was also returned with an endorsement that i) there is a violation of building rules; ii) total area of construction is more than 2000 Sq.ft and therefore, he was directed to approach the Local Planning Authority (LPA). Thereafter, on 07.03.2018, the second respondent submitted a revised plan to the local planning authority, namely, the third respondent herein.

8. According to the second respondent, in this interregnum period, he has completed the construction and scheduled a grand inauguration for the Marriage Hall on 28.01.2018. While so, the petitioner, at the instance of an Advocate, who is also supposed to be their relative, has filed this writ petition and obtained an order of interim injunction. Even in the very same road, there are two Hospitals, three Community Halls and lots of Commercial Buildings on either side of his Marriage Hall, however, he has been targeted at the instance of his relations to wreck vengeance on him.

9. The stand of the third respondent is that the second respondent has submitted an application on 21.02.2018 seeking planning permission for the Marriage Hall. Since the site was classified as Primary Residential use zone in the Review Approved Nagercoil Master Plan, the application was returned vide Letter No.169/18 dated 23.02.2018, with a direction to the second respondent to submit a proposal for change of land use from primary residential use zone to commercial use zone.

10. It is further submitted that the second respondent, thereafter, submitted a revised plan application to exempt the rules to the Director of Town & Country Planning on 07.03.2018 and the same was refused vide letter No.9605/2018 BA1, dated 05.06.2018, stating that there is no possibility to allow Marriage Hall in the primary residential use. Thereafter, the second respondent has submitted an appeal on 09.10.2018 requesting for change of land use from Primary Residential use zone to Commercial use zone and the same is pending consideration before the Director of Town & Country



Planning, in letter No.1174/2018 NLPA dated 10.11.2018.

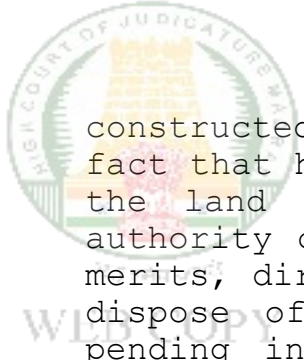
11. We have heard the learned Counsel appearing on either side and perused the documents placed on record.

12. No doubt, every individual will tend to utilise his property with maximum utilisation and with maximum output. Marriage Halls are, of course, now-a-days, worth investments. Therefore, everybody tends to utilise their property as Marriage Halls, but without following the norms and without even allotting any space for parking the vehicles. When the statute requires necessary parking space to be allotted for a public building / commercial building, the building plans have been approved without any space for parking and ultimately, the vehicles are parked in the public roads and causing annoyance to the common man and the traffic. The development of a property cannot be made at the cause of the common man. The authorities are giving a go-by to the acts and rules and are granting permission without any space for parking. This has to be addressed by the Government strictly.

13. Now, coming to the present case on hand, admittedly, the Marriage Hall has been constructed by the second respondent without obtaining any valid permission from the authority concerned and therefore, the first respondent has issued the notice under Sections 216 (1) & (2) and 317 of the Tamil Nadu Municipalities Act. Taking note of the same, this Court has also granted an order of interim injunction on 25.01.2018. Only after the interim order of this Court, the second respondent appears to have submitted an application to the third respondent on 21.02.2018 for the planning permission of the building.

14. It is the specific stand of the third respondent that the area is classified as Primary Residential Use Zone in the Review Approved Nagercoil Master Plan and therefore, the application dated 21.02.2018 was returned on 23.02.2018, directing the second respondent to submit a proposal for change of land use from Primary Residential use zone to Commercial Use zone. However, a revised plan application was submitted by the second respondent on 07.03.2018 seeking exemption of the rules, but the same was also rejected by the Director of Town & Country Planning that there is no possibility to allow the Marriage Hall in the primary residential area. Subsequent thereto, the second respondent has submitted an appeal for change of land use from primary residential zone to commercial use zone on 09.10.2018 and the same is still pending before the Director of Town and Country Planning, Chennai.

15. Therefore, it is clear from the stand of the third respondent that they, while considering the second respondent's application for planning permission, has directed him to submit a proposal for change of land use and the same is pending before the Director of Town and Country Planning, Chennai, in Letter No.1174/2018 NLPA dated 10.11.2018. Though the second respondent has



constructed the Marriage Hall, without any approval, considering the fact that he has filed an appeal seeking change of classification of the land use and the same is pending consideration before the authority concerned, this Court, without expressing anything on the merits, directs the Director, Town and Country Planning, Chennai, to dispose of the appeal filed by the second respondent, which is pending in Letter No.1178/2018 NLPA dated 10.11.2018, within a period of four weeks from the date of receipt of a copy of this order. Till such time, the parties are directed to maintain status quo as on date.

16. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

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Sub Assistant Registrar(CS)

1.The Commissioner,
Nagercoil Municipality,
Kanyakumari District.

2.The Deputy Director of Town
and Country Planning,
Tirunelveli.

Copy to: The Director,
Town & Country Planning,
Chennai.

Pre delivery order made in

W.P. (MD) No.1594 of 2018

and

W.M.P. (MD) Nos.1683 & 8407 of 2018

15.03.2019

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PK/05.04.2019 : 5P/4C