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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD) No.13745 of 2019

and

W.M.P. (MD) No.10293 of 2019

Priya Prithvin

... Petitioner

Vs.

1.The Principal Secretary,
Town and Country Planning and Housing Board,
Secretariat,
St.George Fort,
Chennai-600 009.

2.The Commissioner,
Town and Country Planning and Housing Board,
No.807, Anna Salai,
Chennai.

3.The Member Secretary/Municipal Commissioner,
Kodaikanal Municipality,
Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to remove the seal affixed forthwith in the petitioner's premises at Plot No.87, 88, T.S.No.9, Block No.23, Ward No.D, V.G.P. Layout, Shanbakanoor, Kodaikanal Town, to an extent of 6435/- sqft and building to an extent of 2679 sqft of ground floor and first floor and to pass orders on the petitioner's representation dated 25.03.2019 within the stipulated period as fixed by this Court.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader
for R.1 and R.2
: Mr.T.S.Mohamed Mohideen
Standing Counsel for R.3

**ORDER**

(Order of the Court was made by M.SATHYANARAYANAN, J)

By consent, the Writ Petition is taken up for disposal and is disposed of by this order.

2. Heard the submissions of Mr.M.Ajmal Khan, learned Senior Counsel, appearing for the petitioner and Mr.A.K.Baskara Pandian, learned Special Government Pleader, who accepts notice on behalf of the respondents 1 and 2 and Mr.T.S.Mohammed Mohideen, learned Counsel, who accepts notice on behalf of the third respondent.

3. A perusal of the materials placed before this Court would disclose that the mother of the petitioner herein submitted building application dated 24.07.2017 to the Commissioner of Kodaikanal Municipality and vide proceedings dated 27.07.2017 in B.A.No.43/2017/F1 and in B.L.No.47/2017/F1, permission was accorded to construct the residential building with Ground Floor having plinth area of 102 sqm and First floor with plinth area of 144 sqm totalling 246 sqm, subject to 17 conditions. The original owner of the property viz., Rajeswari Jenix, in whose favour the building permission was granted, had settled the property along with the superstructure comprised in Old Survey No.445 part, now correlated in Re-Survey Ward "D", Block No.23, T.S.No.9 part further sub-divided into T.S.No.9/5, as per Patta NO.GR-1013 to an extent of 6435 sqft equalling 14.75 cents or 0.05.97 ares, bearing Plot Nos.87 and 88, (DDTP Authority No.19/85, in Na.Ka.No.8454/84/MM3), together with the R.C.C. Roofed house building thereon, having a plinth area of 2500 sqft with all fixtures and fittings thereon and all improvements in favour of her daughter, who is the petitioner herein vide registered Settlement Deed dated 17.01.2018 and she claims to be in possession and enjoyment of the same.

4. The primordial submission of the learned Senior Counsel appearing for the petitioner is that all of a sudden, without any notice whatsoever, the said premises has been sealed on the pretext that it is being used for commercial purpose - home stay and the petitioner has also invoked the revisional jurisdiction of the first respondent by filing a Special Revision Petition under Section 80-A of the Town and Country Planning Act, 1971 and would pray that it would suffice to direct the first respondent/ revisional Court to dispose of the Special Revision Petition within a stipulated time frame and also made a request to consider the prayer for interim relief to de-seal the premises.

<https://hcservices.ecourts.gov.in/hcservices/> Per Contra, Mr.T.S.Mohammed Mohideen, learned Standing Counsel, who accepts notice on behalf of the third respondent, has



drawn the attention of this Court to the order dated 15.05.2019 made in W.P.(MD)No.12017 of 2019 in **A.Velusamy Vs. The Principal Secretary, Town and Country Planning and Housing Board, Secretariat, Chennai - 600 009 and two others** and would submit that though this Court vide the above said order, directed to dispose of the appeal filed by the petitioner, had not passed any positive order as to the de-sealing of the premises and the first respondent therein, vide Letter No.5519/UD4(1)/2019-4, dated 28.05.2019, had ordered de-sealing of the premises, subject to certain conditions and if similar kind of orders are passed, the premises which are under lock and seal are likely to be de-sealed.

6. It is also pointed out by the learned Counsel appearing for the third respondent that admittedly, the premises is used for commercial purpose in the form of giving accommodation to the tourists, who are visiting the hill station and knowing pretty well that such kind of use has been prohibited, still the petitioner permitted to use the said premises for commercial purposes and therefore, the sealing of the premises is perfectly in order and prays for dismissal of this Writ Petition.

7. Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 1 and 2 would submit that proper instructions would be given to the first respondent to go through the orders already passed or to be passed by this Court while disposing of the Special Revision Petition filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, with regard to the sealing of the premises.

8. The said submission, on instructions, is placed on record.

9. Though the petitioner prays for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the case projected either in the Special Revision Petition filed before the first respondent or in this Writ Petition, directs the first respondent to entertain the Special Revision Petition, if the papers are otherwise in order and after eliciting the response from the third respondent thereon, and dispose of the Special Revision Petition on merits and in accordance with law and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order and till such time, the third respondent shall not demolish the superstructure. It is also made clear that till the disposal of the Special Revision Petition by the first respondent, the premises in question shall not be de-sealed and be kept under lock and seal.



10. The Writ Petition is disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Secretary,
Town and Country Planning and Housing Board,
Secretariat,
St. George Fort,
Chennai-600 009.

2. The Commissioner,
Town and Country Planning and Housing Board,
No.807, Anna Salai,
Chennai.

3. The Member Secretary/Municipal Commissioner,
Kodaikanal Municipality,
Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.

+1 CC to M/s. AJMAL ASSOCIATES, Advocate (SR-70778[F] dated
24/06/2019)

+1 CC to M/s. T.S. MOHAMED MOHIDHEEN, Advocate (SR-71026[F] dated
25/06/2019)

SSL

W.P. (MD) No. 13745 of 2019
24.06.2019

KM/ (02.07.2019) 4P 6C