



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.07.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

W.P. (MD) No. 23059 of 2015

and

M.P. (MD) No. 1 of 2015

and

W.M.P. (MD) No. 3318 of 2016

WEB COPY

Navalar Na.Mu.Venkadasamy Nattar
Educational Arts and Cultural Trust,
Rep.by its Managing Trustee Elamurugan.

... Petitioner

Vs.

1.Thanjavur Corporation,
Rep.by its Commissioner,
Gandhiji Road,
Thanjavur.

2.The Local Town Planning Authority,
No.33, Rajappa Nagar,
Medical College Road,
Thanjavur Town.

3.The Director of Town Planning Authority,
No.807, Anna Salai,
Chennai 600 002.

4.G.M.Construction,
No.85, Cooperative Colony,
8th Cross Road, Thanjavur.

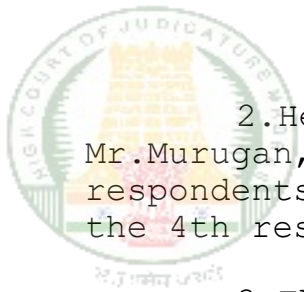
... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from putting up further construction in S.No.106 of Ward No.1, Palliagraharam, Thanjavur Corporation.

For Petitioner	: Mr.P.Vadivel
For Respondents	: No appearance for R1 Mr.Murugan, G.A. for R2 and R3 Mr.G.Karnan for R4

O R D E R

The prayer in the Writ petition is for a Writ of Mandamus, forbearing the respondents from putting up further construction in Survey No.106, Ward No.1 at Palliagraharam, Thanjavur Corporation, Thanjavur District.



2. Heard Mr.P.Vadivel, learned counsel for the petitioner, Mr.Murugan, learned Government Advocate appearing for the respondents 2 and 3 and Mr.G.Karnan, learned counsel appearing for the 4th respondent.

3.The petitioner is the neighbour of the proposed construction land of the first respondent to have a construction of residential or quarters or dwelling houses for Sweepers working in their Corporation.

4.The grievance of the petitioner is that, the first respondent proposed to have a multi storied building of 72 tenements for their Sweepers that too without any planning approval or building construction approval from the authority concerned ie., respondents 2 and 3 and without having any such approval, the first respondent / Corporation has given the tender work to the fourth respondent / Construction company. Accordingly, the fourth respondent wanted to proceed with the construction. Therefore, at that movement, being the neighbour, who would be affected as apprehended, the petitioner has moved this Writ petition with the aforesaid prayer.

5.I have heard the learned counsel for the petitioner, who reiterated the said stand taken in the petitioner's affidavit filed in support of the Writ petition and submitted that, without proper planning permission and without drainage facilities, the construction of multi storied building if is permitted that will have an environmental impact in that locality as it is very adjacent to a river bed and therefore, on that ground, the proposed construction shall be prohibited.

6.I have heard the learned counsel appearing for the first respondent / Corporation, who by relying upon the documents, filed in the typed set of papers as well as the counter affidavit filed by the first respondent, submitted that, initially, at the time of the proposal for constructing the said multi storied building, though the application was given to the third respondent to get approval, the same was not granted because of want of jurisdiction and at that time, the said application had been forwarded to the third respondent. During that pendency of that application, the present Writ petition has been filed. However, subsequently, the third respondent has granted such approval by a proceedings dated 05.01.2016 and consequential permission has also been given on 11.02.2016.

7.Therefore, by relying upon these permissions granted by the respondents 2 and 3, the learned counsel for the first respondent submitted that, the complaint made by the petitioner against the first respondent, is no more available and the same line was also submitted by the learned Government Advocate appearing for the respondents 2 and 3. In this regard, he relied upon the averments made in the counter affidavit filed by the 2nd respondent, which

reads thus -

"7.I submit that it is pertinent to note that the 2nd respondent as having power of granting approval to the construction upto 25,000 sq.ft. only and in case of the building above 25,000 sq.ft, it is the 3rd respondent is the appropriate authority in granting permission and since the present building has the area of approximately 40,197 sq.ft.this respondent has forwarded the approval to the third respondent. The 3rd respondent finally gave approval of the building Ka.Va./Na.Oo.E.No.05/2016 vide letter No.14116/2015, dated 05.01.2016. It is pertinent to note that the present residential quarters is for the benefit of poor sweepers working under the control of the 1st respondent and the prior approval has been given on 05.01.2016, the decks has been now cleared for the construction. Final approval must be given after a resolution is passed in the Local Planning Authority."

8.He would further submit that since planning approval has been given by the third respondent, who is the competent authority to whom the application was forwarded by the 2nd respondent for want of jurisdiction and therefore, in the year 2016 itself, permission has been granted and approval has been given. Therefore, there can be no further impediment for the first respondent to proceed with the construction.

9.However, by way of reply, the learned counsel for the petitioner submitted that, even though during the pendency of the Writ petition, such permission has been granted and the same is produced before this Court and in the said permission given by the third respondent on 05.01.2016, a number of conditions have been imposed and those conditions, if the first respondent has not followed, then it will have an environmental impact and therefore, still the learned counsel for the petitioner apprehends that the first respondent may not follow the conditions imposed by the third respondent in the plan approval.

10.I have considered the said submission made by the respective counsels appearing for the parties and perused the materials placed before this Court.

11.Probably at the time of filing the Writ petition since the application for getting approval for construction of tenements by the first respondent / Corporation was not cleared, either by the 2nd respondent or by the 3rd respondent, this Writ petition has been filed on the ground that, no approval was given and therefore, this Writ petition was entertained at that time.

12.However, in the year 2016 itself has been stated supra, plan approval has been given by the competent authority ie., the third respondent and the copy of the same has been produced before this Court and this has been endorsed by the 3rd respondent in the counter affidavit filed in this regard and the relevant portion also



has been extracted herein above.

13. Therefore, the main ground raised that the first respondent, without having planning permission, is proceeding to construct the tenements, goes.

14. However, with regard to the present apprehension on the part of the petitioner that, the first respondent / Corporation, by making the construction, would not follow the conditions imposed by the first respondent in the planning permission dated 05.01.2016 is concerned, no doubt the permission was given only subject to the conditions imposed therein and therefore, the first respondent shall scrupulously follow those conditions and comply with the same.

15. Hence, the Writ petition is disposed of with the following order:

That the first respondent shall proceed with the construction of the proposed tenements for the Sweepers, working under the first respondent / Corporation and while making the said construction, the 13 conditions imposed by the first respondent vide proceedings dated 05.01.2016 shall be scrupulously followed without fail.

The respondents 2 and 3 shall ensure that such conditions imposed by them are fully complied with while constructing the proposed construction by the first respondent / Corporation.

16. With these observations and directions this Writ petition is disposed of. No costs. Consequently, connected M.P. and W.M.P. are closed.

Sd/-

Assistant Registrar (CS-II)

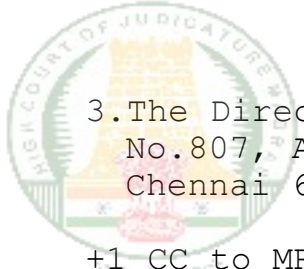
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Sub Assistant Registrar (CS)

To

1. The Commissioner,
Thanjavur Corporation,
Gandhiji Road,
Thanjavur.

2. The Local Town Planning Authority,
No.33, Rajappa Nagar,
Medical College Road,



3.The Director of Town Planning Authority,
No.807, Anna Salai,
Chennai 600 002.

+1 CC to MR.P.VADIVEL, Advocate (SR-73683[F] dated 05/07/2019)
+1 CC to MR.G.KARNAN, Advocate (SR-73725[F] dated 05/07/2019)
+1 CC to SPL GP (SR-73712[F] dated 05/07/2019)

W.P. (MD) No.23059 of 2015
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NBJ

MK (28.08.2019) 5P 7C