



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
08.04.2019	25.07.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.163 of 2019
and
W.M.P.(MD) Nos.145,146,147 and 1763 of 2019

1.S.Prabakaran
2.D.Kamalaveni
3.S.Kamalam
4.R.Anil Kumar
5.K.Venkatesh

... Petitioners

-vs-

1. The Principal Secretary,
Department of Municipal Administration and Water Supply
Fort. St.George
Chennai- 9.

2. The District Collector,
Dindigul District,
Dindigul.

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

4. The Executive Engineer,
TANGEDO, Kodaikanal Municipality.
(R4, *Suo Motu* impleaded vide Court order
dated 10.01.2019)

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the impugned order of the third respondent in UAC No.2999/2007/F1 dated 07.07.2015 and consequential order of the first respondent in அரசு கடிதம் எண். 631/நநி .1/2015 dated 27.10.2015 and the consequential order of the third respondent in Na.Ka.No.2999/2007/F1 dated 20.11.2017 and to quash the same as illegal and without jurisdiction.



WEB COPY

For Petitioners : Mr.M.Thirunavukarasu

For Respondents : Mr.K.Chellapandian

Additional Advocate General

assisted by Mr.A.K.Bhaskarapandian

Additional Government Pleader (for R1 & R2)

Mr.T.S. Mohamed Mohideen (for R3)

Mr.S.M.S.Johnny Basha (for R4)

ORDER

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

The petitioners purchased the property measuring 6 cents in T.S.No.17 of Kodaikanal Municipality in the year 1995 and put up a construction therein. The apartment was named as D.R.Apartments, which comprised 8 housing units. The petitioners state that it is being used only for residential purposes and that it has not been put to any commercial use. It is stated that the land originally belonged to Kodaikanal Building Society and it has sold the same to various persons during the time when there was no master plan for Kodaikanal. It is further claimed that the usage of the site was regularized by the Commissioner, Kodaikanal Municipality in the year 2009.

2.A mere perusal of the materials enclosed in the typed set of papers would indicate that the District Collector, Dindigul had issued a notice dated 08.05.1997 informing the husband of the second petitioner herein that the construction was an unauthorised one. Action was threatened to be taken. The reply dated 24.05.1997 submitted by the building owners does not challenge the basic facts set out in the show cause notice. In the notice dated 06.03.1998, the details of the violation have been specifically stated. The confirmation order was also passed on 23.11.2007 by the District Collector, Dindigul. When consequential action was sought to be taken by the Local Planning Authority, Kodaikanal under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, challenging the same, the husband of the second petitioner in this petition filed W.P(MD).No.16408 of 2015. The said writ petition was taken up along with a batch of similar writ petitions and the second petitioner was permitted to move the Government. In terms of the liberty given to the second petitioner, the petitioner moved the Government by filing a review. The review petition was dismissed by order dated 27.10.2015. Consequential proceedings were issued on 20.11.2017 by the Local Planning Authority, Kodaikanal. These proceedings are under challenge in this writ petition.

3.It is not in dispute that the following violations have been found:



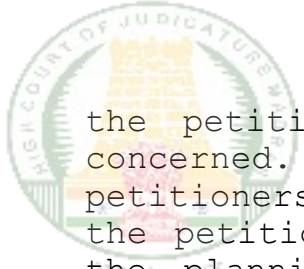
WEB COPY

SL.No.	Details	Required as per MASTER PLAN	Required as per Hill Station Building Rule	As Per Site	% of Violation
1.	Zone Specification	Sparse Residential	...	9 flats constructed	More than one residential is not permitted
2.	Plot Extent	1000 sq.m	95%	243 sqm	75.7%
3.	No. of Floors	G+1	G+1	BF-1+ BF-2+ GF	100%
4.	Height of the Building	7 m	7 m	9.70 m	38.5%
5.	Roof of top floor	Gable Roof	Gable Roof	Gable Roof	..
6.	Front Set Back	15 m	1.30 m	...	100%
7.	Side Set Back-1	4.50 m	...	1.40 m	68.8%
8.	Side Set Back-1	4.50 m	...	1.40 m	68.8%
9.	Rear set back	6 m	...	1 m	83.3%
10.	Open Space	70%	25%	32%	54%
11.	Plot coverage	30%	75%	68%	126%
12.	Car Parking	...	85 sq.mt.	Only 3 Nos. of parking space provided	Insufficient space

4. Therefore, the petitioners' counsel took the alternate route of contending that the provisions of Tamil Nadu Town and Country Planning Act, 1971 cannot be made applicable in this case. He would claim that they would apply only in respect of the buildings constructed after the year 2008. A similar contention was raised before the earlier Division Bench of this Court and the same was rejected vide order dated 22.09.2017 in W.P(MD).Nos.8630 and 5135 of 2017. We therefore find no ground to interfere. However, in the additional typed set of papers, the petitioner has enclosed an additional representation dated 28.01.2019.

<https://hcservices.ecourts.gov.in/hcservices/>

5. We also have to take note of the subsequent developments. A modified master plan has come into existence. We therefore permit



the petitioners to submit a fresh application to the authority concerned. It is open to the concerned authority to consider the petitioners' case and proceed strictly in accordance with law. If the petitioners' building can fit in with the new master plan and the planning and building norms, subject to terms that may be imposed by the authorities, the petitioners' building can escape from demolition. If the authorities insist on making structural alterations and changes, the petitioners are bound to make the same. The petitioners cannot flout the planning norms and demand that they should be allowed to keep the building intact. Of-course, the respondents will not demolish the petition mentioned building, till orders are passed on the petitioners' representation. If the petitioners had not already made an application, liberty is given to the petitioners to make a fresh application to the authority concerned within a period of three weeks from the date of receipt of a copy of this order. The petitioners' application shall be disposed of on merits and in accordance with law within a period of six months. Till then, the order impugned in the writ petition will be kept in abeyance. If any order is passed on the petitioners' application, the impugned proceedings will certainly abide by the said outcome. Of-course, till such orders are passed, the status quo that is prevailing as on date shall continue.

6. The petitioners' building should be in tune and conformity with the planning norms. The authorities cannot pass any stereotyped order. It will vary from case to case. The authorities have to conduct a spot inspection and consider the petitioners' case in the light of the revised master plan. They will have to issue fresh proceeding. The authorities will have to ensure that the petitioners' building is in consonance with every rule and law of the land. There should be periodical inspection. If the authorities fail to ensure conformity of the petitioners' building with the planning norms, the authorities will be liable to be proceeded against.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Secretary,
Department of Municipal Administration
and Water Supply
Fort. St. George
Chennai- 9.



2. The District Collector,
Dindigul District,
Dindigul.

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

4. The Executive Engineer,
TANGEDO, Kodaikanal Municipality.

W.P. (MD) No.163 of 2019

and

W.M.P. (MD) Nos.145,146,147

and 1763 of 2019

25.07.2019

RMK

MK (14.08.2019) 5P 5C