



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 20079 of 2017

and

W.M.P. (MD) Nos. 4635 and 4636 of 2018, 16364 and 16365 of 2017

WEB COPY

1. Jambunathan
2. Dhanalakshmi

... Petitioners

Vs.

1. The Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli.

2. The Assistant Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli.

3. The Junior Engineer Grade-II,
Srirangam Division,
Tiruchirappalli Corporation,
Tiruchirappalli.

4. Venkatachalam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.3033/2017/F1(Sri), dated 18.08.2017, quash the same and consequently, direct the respondent 1 and 2 to grant building plan approval to the petitioner's house situated at Door No.15/16, Mela U1 Veedhi, Thiruvanaikoil, Trichy-620 005.

For Petitioners : Mr. J. Anandhavalli
For R1 To R3 : Mr. N. S. Karthikeyan
For R4 : Mr. C. Deepak

ORDER

The writ petitioners are the owners of the house bearing Door No.15/16, Mela U1 Veedhi, Thiruvanaikoil.

2. The said house was put up several decades ago. Since it had become rather old and unsafe for human habitation, the petitioners wanted to pull it down and construct a new house. Before demolishing an existing building, the permission from the local body will have to be obtained.



3.Unfortunately, in the present case, the writ petitioners did not do so. They went ahead to put up a new construction without getting prior approval. The petitioners filed O.S.No.470 of 2003 on the file of the District Munsif Court, Tiruchirapalli, against the respondent Corporation and the fourth respondent herein. The said suit is still pending. The relief sought for in the said suit is to declare that the petitioners herein are the owners of the western wall. The petitioners also filed O.S.No.684 of 2017 on the file of the District Munsif Court, Tiruchirapali, seeking the relief of permanent injunction against the respondent Corporation restraining them from interfering with the petitioner's right to carry out the repair works.

4.The learned counsel appearing for the petitioners states that the petitioners would withdraw O.S.No.684 of 2017. The said submission is recorded.

5.The petitioner's request for putting up construction has been declined by the second respondent on two grounds. The first ground is that the petitioners have not provided any setback space. The second ground is that the petitioners have commenced the building work without getting prior approval.

6.It is not in dispute that in Mela Ul Veedhi, there are only street houses/row houses. This Court can take judicial notice of the fact that the phenomena of street houses is quite prevalent in every town. In fact, in the streets around the major temples, we see only row houses. When a row house has become old and dilapidated, a new house will have to come up in its place.

7.In the very nature of things, the house owner cannot provide for any setback space. Hence, the insistence of providing setback space in the case of row houses cannot be said to be reasonable. Therefore, this Court will have to necessarily interfere with this part of the impugned communication. It is true that the petitioners have commenced the construction in question without getting prior approval. But then, the petitioners cannot be eternally damned for the said lapse committed by them. It is open to the Corporation to levy any nominal fine for this lapse committed by the petitioners herein. The case on hand cannot be compared to religious structures being put up without the prior approval of the District Collector.

8.The learned counsel appearing for the fourth respondent submitted that when the writ petitioners put up their houses, they should carry out their work in such a way as not to cause any damage to the existing house of the fourth respondent which is on the eastern side.

9.The learned counsel appearing for the writ petitioners on <https://hcservices.ecourts.gov.in/hcservices/> instructions, states that the petitioners would not cause any damage to the fourth respondent building.



10. The order that is now passed will not be taken advantage by the writ petitioners in A.S.No.29 of 2017 on the file of the Principal Sub Court, Tiruchirappalli.

11. For the foregoing reasons, the impugned communication is quashed and the respondents 1 and 2 are directed to grant approval to the petitioners' building plan. It is of-course open to the authorities to stipulate appropriate conditions. It is made clear that the petitioners' application will be disposed of on merits and in accordance with law. The only relaxation given in this writ petition is that the authorities will not insist on providing setback space. Such approval shall be given within a period of eight weeks from the date of receipt of a copy of this order. It is open to the petitioners to submit a copy of the application earlier given by them. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

To

1. The Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli.

2. The Assistant Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli.

3. The Junior Engineer Grade-II,
Srirangam Division,
Tiruchirappalli Corporation,
Tiruchirappalli.

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-56679[F] dated 26/03/2019)
+1 CC to M/s.C.DEEPAK, Advocate (SR-5537[I] dated 26/03/2019)
+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-56350[F] dated 25/03/2019)

W.P. (MD) No.20079 of 2017
25.03.2019

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