



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.16498 of 2019
and
W.M.P.(MD)No.13149 of 2019

D.John Alfred : Petitioner
Vs.

1.State of Tamil Nadu,
Rep. by its Secretary,
Department of Town and Country Planning,
St. George Fort, Chennai.

2.The Director,
Department of Town and Country Planning,
Anna Salai, Chennai.

3.The Nagercoil Local Planning Authority,
Rep. by its member Secretary (District Collector),
Collectorate, Nagercoil,
Kanyakumari District.

4.The Nagercoil Corporation,
Rep. through its Commissioner,
Nagercoil, Kanyakumari District. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of impugned order passed by the fourth respondent herein in his proceedings in Ka.Vi.No.805/99/F3, dated 10.07.2019 (Form II) under Sections 56 and 57 of Town and Country Planning Act, 1971 and quash the same as illegal and further direct the respondents herein not to interfere with the petitioner's peaceful possession and enjoyment of building D.D.J. Centre constructed in S.No.E11/10-1, 2, 9 (Part) at Balamor Road, Nagercoil.

For Petitioner : Mr.M.Vallinayagam
Senior Counsel

For R-1 to R-3 : Mr.V.R.Shanmuganathan
Special Government Pleader

R-4 : Mr.P.Athimoolapandian.



O R D E R

WEB COPY [Order of the Court was made by **K.RAVICHANDRABAABU, J.**]

The petitioner is aggrieved against the Form II notice, dated 10.07.2019 issued under Sections 56 and 57 of the Town and Country Planning Act., 1971.

2.It is stated that that a planning permission was granted by the third respondent to the petitioner on 29.06.1996 followed by approval of the plan by the Municipality on 16.07.1996. It is seen that the above permission and approval granted were subsequently cancelled by an order dated 03.12.1996. The petitioner challenged the said order of cancellation in W.P.No.18607 of 1996. The Writ Court, by order, dated 28.01.1997 set aside the said order of cancellation only on the reason that it was not a speaking order. Consequently, the Writ Court remitted the matter back to Nagercoil Municipality for passing a speaking order after affording an opportunity of hearing to the petitioner. Thereafter, notice was issued to the petitioner on 26.04.2001. The petitioner also filed a revised building plan on 21.12.2001. However, the revised plan so submitted by the petitioner was once again rejected by proceedings dated 31.12.2001 and 22.01.2002 issued by Nagercoil Municipality. The reason stated for such rejection was that the construction made by the writ petitioner is also form part of the Government Poramboke land, where a channel is running. Challenging the said rejection, the petitioner preferred an appeal before the Director of Town and Country Planning, Chennai, on 18.03.2002. While the said appeal is pending, Nagercoil Municipality has filed a suit in O.S.No.12 of 2002 for mandatory injunction against the writ petitioner and another. Equally, the writ petitioner and another have also filed a counter suit in O.S.No.54 of 2002 on the file of the District Munsif Court, Nagercoil, seeking for permanent injunction. By a common Judgment and decree dated 11.04.2008, the Second Additional District Munsif Court, Nagercoil, dismissed the suit filed by the Municipality and allowed the suit filed by the writ petitioner. It is further seen that an appeal sought to be filed by the Municipality against the said Judgment and decree of the trial Court, however with a delay of 248 days. The application for condonation of delay was rejected by the learned Principal Sub Judge, Nagercoil, on 03.03.2010. Thereafter, Nagercoil Municipality issued Form-I notice, dated 02.07.2019. The petitioner filed reply on 06.07.2019 referring to the findings rendered by the Civil Court in O.S.No.54 of 2002 in support of their contention. Subsequently, the impugned Form II notice, dated 10.07.2019 was issued.



3.The main grievance of the writ petitioner before this Court is that when the appeal preferred by the petitioner as against the rejection order in respect of the revised plan submitted by the petitioner, is still pending before the competent appellate authority, the present impugned proceedings is totally unwarranted and therefore, the same is liable to be set aside. He further submitted that even though the appeal was filed as early as in the year 2003, the same was not disposed of only because of the pendency of the Civil Suits as stated supra.

4.The learned Senior Counsel appearing for the petitioner invited our attention to the proceedings dated 04.08.2003 issued by the Director of Town and Country Planning, indicating that the appeal presented by the petitioner can be disposed of only after the disposal of the said Civil Suits.

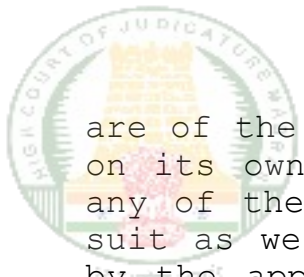
5.On the other hand, the learned counsel appearing for the respondents submitted that admittedly as on date, the writ petitioner is not having any valid planning permission in respect of the subject matter construction and therefore, the notice impugned was rightly issued. The learned counsels however admitted the position that the appeal presented by the petitioner before the Director of Town and Country Planning, is not disposed of on merits so far.

6.Heard both sides and perused the materials placed before this Court.

7.There is no dispute to the fact that the revised planning permission sought for by the petitioner was rejected and as against such rejection, the petitioner has also filed an appeal before the competent appellate authority. However, perusal of the proceedings dated 04.08.2003 issued by the Director of Town and Country Planning indicates that the said appeal papers were returned to the writ petitioner on the reason of the pendency of O.S.No.54 of 2002 on the file of District Munsif Court, Nagercoil. Therefore, it is evident that the appeal presented by the petitioner as against the rejection order has not been considered and decided on merits so far.

8.The learned Special Government Pleader though is not disputing the above stated position, however submitted that since the appeals papers were already returned to the writ petitioner, it is for them to re-present the same so as to enable the said appellate authority to consider the same and pass orders on merits and in accordance with law.

9.In view of the fact that the appeal has already been preferred by the writ petitioner as against the order of rejection of the revised planning permission sought for by the petitioner, we



are of the view that the said appeal has to be taken up and decided on its own merits and in accordance with law without reference to any of the findings rendered by the Civil Court in the above said suit as well as the order passed in the condone delay application, by the appellate Court. Therefore, without expressing any view on the merits of the claim made by the respective parties, this writ petition is disposed of as follows:-

(i).The petitioner is directed to re-present the appeal before the appellate authority viz., the Director of Town and Country Planning/second respondent herein with all relevant papers within a period of two weeks from the date of receipt of a copy of this order.

(ii). On receipt of such appeal with necessary documents, the second respondent/appellate authority shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter.

(iii). Till an order is passed by the appellate authority, *status-quo* as on today shall be maintained by both parties.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar.

To

- 1.The Secretary, State of Tamil Nadu, Department of Town and Country Planning, St. George Fort, Chennai.
- 2.The Director, Department of Town and Country Planning, Anna Salai, Chennai.
- 3.The Nagercoil Local Planning Authority, Rep. by its member Secretary (District Collector), Collectorate, Nagercoil, Kanyakumari District.
- 4.The Commissioner, Nagercoil Corporation, Nagercoil, Kanyakumari District.

+1 CC to M/s.SPL GP (SR-79278[F] dated 01/08/2019)

W. P. (MD) No. 16498 of 2019

31.07.2019

AM/13.08.2019/4P/6C