



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD)No.16954 of 2019
and
W.M.P. (MD)No.13528 and 17212 of 2019

S.A.Joy Raja

.. Petitioner

Vs.

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Form II notice made in Na.Ka.No.3440/2019/F1, dated 25.06.2019 as well as the impugned Form I notice made in Ka.Vi.No.3440/2019/F1, dated 26.06.2019 passed by the second respondent and quash the same.

For Petitioner : Mr.D.Sadiq Raja

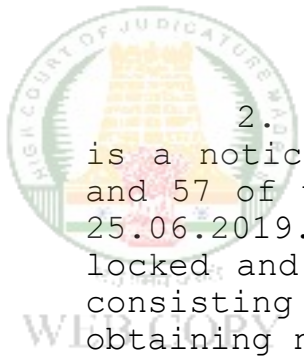
For R1 : Mr.V.R.Shanmuganathan
Special Government Pleader

For R2 : Mr.P.Aathimoolapandian

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.D.Sadiq Raja, learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader, appearing for the first respondent and Mr.P.Aathimoolapandian, learned counsel for the second respondent.



2. The proceedings, which is impugned in this writ petition is a notice issued by the respondent Corporation under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, dated 25.06.2019. By the said order, the petitioner's building has been locked and sealed on the ground that he has put up a construction consisting of Ground + 3 floors including cellar floor without obtaining necessary approval.

3. The respondent Corporation issued Form I notice, dated 26.06.2019, which is in the nature of show cause notice and the case of the respondent Corporation is that the petitioner did not respond to the notice. Consequently, the impugned Form 2, locking and sealing notice has been issued.

4. When the writ petition was entertained, an interim order was granted on 31.07.2019 indicating that the impugned notice issued by the second respondent Corporation *prima facie* appears to be without jurisdiction, because the impugned notice does not indicate as to whether the disputed constructions were made after the deletion of Section 5-A(1)(vii) of the Tamil Nadu Cinemas (Regulation) Act, 1955. Subsequently the order of interim stay was extended until further orders, as a result of which it appears that the building has not been locked and sealed till date. The question is whether the petitioner would be entitled to seek abridge under the provisions of the Tamil Nadu Cinemas (Regulation) Act, 1955 or not.

5. One fact, which appears to be not in dispute is that the construction was put up in the year 1984 and the cinema theatre was established and there is a proof to show that the theatre was issued license in Form 'C' during 1985-86.

6. The case projected by the respondent Corporation in the counter affidavit is that there has been a total structural alteration of building and the building as of now consists of Ground + 3 floors, two cinema theatres in the third floor and there are 17 shops and it is not a cinema theatre, but it is a shopping mall with two cinema screens in the third floor. If such is the stand taken in the counter affidavit, it should have been reflected in the impugned order, dated 25.06.2019. But we find that no such details were mentioned in the said notice and this is the first error committed by the second respondent Corporation.

7. The second aspect is what would be the effect of the approval, if any granted in the year 1984, while establishing cinema theatre. If the petitioner has changed the entire construction, will the petitioner be entitled to rely upon the original permission granted by the District Collector under the Cinemas Regulation Act for the purpose of running cinema theatre. This aspect should be analysed by the respondent before they take action in issuing



been conducted of the building and the photograph, which has been incorporated in the impugned notice shows that it is a huge construction and the board indicates, it is a shopping mall.

8. *Prima facie* when the respondent seeks to take action to demolish an unauthorized construction, then the respondent Corporation should come with a definite case. In the light of the above technical aspect, we allow this writ petition and set aside the order, dated 25.06.2019 and remand the matter to the second respondent Corporation. The commissioner is directed to inspect the petitioner's building within a period of two weeks from the date of receipt of a copy of this order, after notice to the petitioner and the petitioner shall extend full cooperation to the inspecting team. The inspection report shall be drawn and copy of the report shall be given to the petitioner. On such report was drawn, the Commissioner shall examine the records available in the District Collectorate and thereafter, issue a fresh Form I notice giving sufficient opportunity to the petitioner to submit objections and thereafter proceed in accordance with law. Till final orders are passed under Sections 56 and 57 of the Act, the building shall not be locked and sealed. Further there shall be no additional construction or any change in physical feature done by the petitioner in the interregnum. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The District Collector,
Nagercoil, Kanyakumari District.

+1 CC to M/s.SPL GP (SR-96334[F] dated 06/11/2019)

+1 CC to M/s.D. SADIQ RAJA, Advocate (SR-96411[F] dated
06/11/2019)

W.P (MD) No.16954 of 2019

05.11.2019

JMN(15.11.2019) 3P : 4C