



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2019

CORAM:

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

**W.P. (MD) Nos.18908 and 22312 of 2019
and W.M.P. (MD) Nos.15244 & 15245 of 2019
in W.P. (MD) No.18908 of 2019
and W.M.P. (MD) Nos.19081 & 19082 of 2019
in W.P. (MD) No.22312 of 2019**

Abdul Nazar ... Petitioner in both the Writ Petitions

-VS-

1.The Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

2.Mr.Saravanakumar,
Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

... Respondents in both
the Writ Petitions

PRAYER in W.P. (MD) No.18908 of 2019: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the 1st respondent dated 07.05.2019 and 24.07.2019 and quash the same as illegal.

PRAYER in W.P. (MD) No.22312 of 2019: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent made in Na.Ka.No.1479/2012/F1, dated 09.10.2019 and quash the same as illegal and consequently, directing the respondent to unlock and unseal the petitioner's premises, sealed on 11.12.2019.

For Petitioner in both the : Mr.M.Ajmal Khan,
Writ Petitions Senior Counsel for
M/s.Ajmal Associates

For 1st Respondent in both the : Mr.P.Aathimoola Pandian
the Writ Petitions Standing Counsel



COMMON ORDER

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

Since these Writ Petitions are connected and the parties to the writ petitions are one and the same, they are taken up together for disposal by this Common Order.

2.Heard Mr.Ajmal Khan, learned Senior Counsel for M/s.Ajmal Associates appearing for the petitioner and Mr.P.Athimoola Pandian, learned Standing Counsel appearing for the respondent Municipality.

3.The petitioner has filed W.P.(MD) No.22312 of 2019 to quash the notice issued by the respondent stating that they will lock and seal the petitioner's Lodging premises on the ground that the petitioner is not being able to produce full set of planning permission available for the building, which was issued to him.

4.The petitioner approached this Court earlier by filing W.P. (MD) No.18908 of 2019, wherein they sought for issuance of a Writ of Certiorarified Mandamus to quash the notices of the respondent Municipality dated 07.05.2019 and 24.07.2019 to lock and seal the petitioner's building. In the said Writ Petition, an interim order was granted, directing the first respondent to remove the lock and seal and keep the impugned notices in abeyance and the petitioner was directed to file documents within 6 weeks in support of his claim that his building is approved building and not an un-authorised construction. The Court also safeguarded the Municipality stating that if the petitioner fails to produce such documents, it is open to the respondent Municipality to reseal the premises. The said Writ Petition is pending.

5.In terms of the directions issued by this Court in W.P.(MD) No.18908 of 2019, the petitioner produced copy of the plan, which was marked by the petitioner as A4 in O.S.No.693 of 2002 on the file of the Principal District Munsif Court, Nagercoil. This plan was submitted with representation dated 01.10.2019 and sent by registered post. The respondent Municipality admits that they have received the copy of the plan, but the plan consists of 11 sheets and the petitioner has produced only sheet No.6. Further, there is no sufficient opening space left by the petitioner while constructing the building. Accordingly, the petitioner is informed that on 11.10.2019, the respondent is proposed to lock and seal the building.

6.In the light of the subsequent development after the grant of interim order granted in W.P.(MD) No.18908 of 2019, we directed the Registry to tag W.P.(MD) No.18908 of 2019 along with W.P.(MD) No.22312 of 2019.



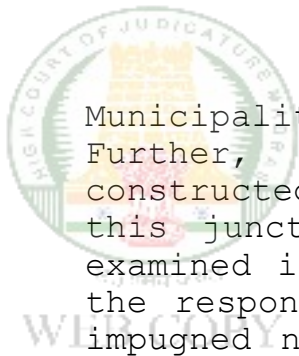
7.The first allegation against the petitioner by the Municipality while issuing notice under Sections 56 and 57 of the Town and Country Planning Act, 1971 dated 24.07.2019 was that the building was totally unauthorized because the petitioner has not submitted any building plan permission and the petitioner has put up construction in 7278 Square feet consisting of 2426 square feet in the ground floor, 2426 square feet in the first floor and 2426 square feet in the second floor. The photograph of the building showing its front elevation was incorporated in the notice.

8.It is pointed out by the learned Senior Counsel appearing for the petitioner in these Writ Petitions that in the Civil Suit O.S.No.693 of 2002, filed before the Principal District Munsif Court, Nagercoil, the respondent Municipality has filed a written statement, in which, they have stated that the constructions were deviated from the approved plan submitted for S.M. Lodge. This observation, contrary to the observation made in the proceedings of the respondent Municipality dated 24.07.2019 stating that the building has been constructed without building plan approval, is incorrect.

9.After the directions issued in W.P.(MD) No.18908 of 2019, there is a slight change in the stand taken by the Municipality because the petitioner has been able to produce a copy of the approved plan dated 27.03.1968. In fact this plan was filed in the civil suit before the Principal District Munsif Court, which pertains to a compound wall put up by the Municipality segregating the petitioner's building and the Municipal bus stand, which appears to be on northern side. Therefore, the veracity of the plan submitted by the petitioner cannot be doubted as there is seal of the Municipal Commissioner.

10.The stand now taken in the impugned notice is that the petitioner has produced one page out of 11 pages. In the light of the said stand, it cannot be stated that the building is unauthorized construction because prima-facie the plan, which was produced, shows that the building has ground + first floor + second floor. The front and north-west elevations clearly match the photographs produced by the Municipality before us. On seeing the photograph, we find that the building is a very old structure. The design is also old and the North-West elevation was used for the purpose of erecting hoardings as still frame is there, though the hoardings are removed. Thus, it cannot be stated that the building is an unauthorized building.

11.We failed to understand why the Municipality does not have any record as regards the approval granted to the building and why they have to call upon the petitioner to produce the same. We are satisfied that the petitioner has discharged his onus cast upon him by producing the approved plan and now the burden shifts to the



Municipality to show that there is deviation from the original plan. Further, the larger question would be whether the building constructed in the year 1968 requires to be locked and sealed at this juncture. If there are deviations, what is required to be examined is where are the deviation and to what extent. Therefore, the respondent Municipality cannot proceed further pursuant to the impugned notices because it is clear that the building is not an unauthorized construction, but has a building plan and it is open to the respondent Municipality to examine whether there is violation of the approval.

12.In the light of the above, both the Writ Petitions are allowed and the notices impugned therein are set aside and liberty is granted to the respondent Municipality to examine as to whether there is any additional construction or any construction in deviation of the approved plan and if it is so, appropriate notice should be issued giving full details and after affording adequate opportunity to the petitioner, the respondent Municipality shall proceed in accordance with law. Consequently, connected Miscellaneous Petitions are closed. No costs.

13.Mr.P.Athimoola Pandian, learned Standing Counsel appearing for the first respondent Municipality undertakes to intimate the operative portion of the order to the Commissioner, Nagercoil Municipality and also advise him to forthwith remove the lock and seal in the petitioner premises.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

sj

TO

1.The Commissioner,
Nagercoil Municipality,
Nagercoil,
Kanyakumari District.

+1CC TO MR.AJMAL ASSO., Advocate Sr. No. 94804

W.P. (MD) Nos.18908 and 22312 of 2019
25.10.2019

TR(08.11.2019) 4P 3C