



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.10.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .No.21873 of 2019

and

W.M.P. (MD) .Nos.18628 and 18631 of 2019

M.Malukku Mohammad

... 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/Special Officer,
Nagercoil,
Kanyakumari District.
- ... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified, calling for the records of the impugned order issued by the fourth respondent herein in his proceedings in க.வி.எண்.82/1996/ எம் 2 dated 05.09.2019 and consequential order of lock and seal dated 09.10.2019 (wrongly addressed to Writ Petitioner's vendor) and quash the same as illegal.

For Petitioner	:Mr.D.Nallathambi
For R1 to R3	:Mr.S.Angappan
	Government Advocate
For R4	:Mr.P.Aathimoolapandian

ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J**)



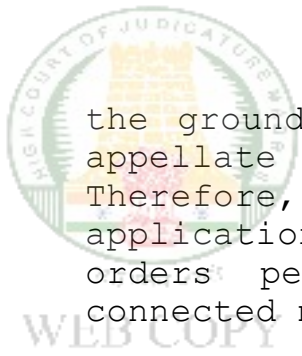
Heard Mr.D.Nallathambi, learned counsel appearing for the petitioner, Mr.S.Angappan, learned Government Advocate appearing for the respondent Nos.1 to 3 and Mr.Mr.P.Aathimoolapandian, learned counsel appearing for the fourth respondent.

2.By consent on either side, this writ petition is taken up for disposal.

3.The petitioner has filed this writ petition challenging the order passed by the respondent/Corporation for locking and sealing the petitioner's shop. According to the petitioner, he purchased the shop from one Mr.Clitus, who had obtained the building plan approval in the year 1995 for construction of 8 shops in the ground floor alone and the petitioner has purchased only one of the 8 shops. Though those 8 shops, according to the petitioner, is in accordance with the approved building plan, without noticing this, merely because, the petitioner has put up additional construction over and above the permitted area, has sealed with the petitioner's shop.

4.The impugned notice states that the construction existing as on date in the ground floor is 138.84 Sq.m., as against what was permitted as per the approved plan viz., 291.87 s.q.m. As on date, the building consists of ground floor plus four floors. Admittedly, the constructions made in 1 to 4 floors are totally unauthorized and they have not only to be locked and sealed but also to be demolished. So far as the prayer sought for by the petitioner to de-seal the premises, we cannot countenance such a prayer in the writ petition as the writ petitioner has an effective alternative remedy by filing an appeal under Section 180 (a) of the Tamil Nadu Town and Country Planning Act, 1971. Before the appellate authority, the petitioner can establish his case by producing the documents that the extent purchased by him falls within the extent, which was approved during 1995 in B.A.No.82/95 and if the petitioner is able to succeed in establishing the same, the petitioner would have a fair chance of the premises from de-sealing.

5.Since the unauthorized construction has been the order of the day through out the State of Tamil Nadu, stringent action has been taken against the unauthorized construction and also deviated construction, we cannot take a different view in the present writ petition permitting the petitioner to bye pass the appeal remedy. We hold that the writ petition is not maintainable and accordingly, the same is dismissed. No costs. However, we grant liberty to the petitioner to file an appeal before the appellate authority, if such appeal is filed within a period of two weeks from the date of receipt of a copy of this order, the appellate authority shall entertain the appeal without rejecting the same on



the ground of limitation. Under the provisions of the Act, the appellate authority is entitled to grant interim orders. Therefore, it is well open to the petitioner to file an interim application before the appellate authority and pray for interim orders pending disposal of the appeal. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

- 1.The Secretary,
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- 2.The Director,
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- 3.The Nagercoil Local Planning Authority,
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Rep Through its Commissioner/Special Officer,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-92216[F] dated 16/10/2019)

+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate (SR-92300[F] dated 17/10/2019)

+1 CC to M/s.SPL GP (SR-92474[F] dated 17/10/2019)

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KM/ (30.10.2019) 3P 8C