



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS. JUSTICE R.THARANI

W.P (MD) No. 23601 of 2019

and

W.M.P. (MD) No. 20226 of 2019

1.S.Mohamed Yasin

2.S.Abuthahir

.. Petitioners

Vs.

1.The District Collector,
Madurai District.

2.The Executive Officer,
Peraiyur Town Panchayat,
Madurai District.

3.Mohammed Abbas

4.Syed Mohammed Abuthahir

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice dated 09.10.2019 in Na.Ka.No.31/2019 passed by the second respondent and quash the same and consequentially to forbear the second respondent from initiating any action for demolition and removal of the properties in Door Nos.1-1-84, 1-1-85, 1-1-92C, 1-1-92C1, 1-1-92C2, 1-1-92C3, 1-1-92C4, 1-1-92C5, 1-1-92D, 1-1-92E, 1-1-92F, 1-1-92G and 1-1-92H, Usilampatti Road, Peraiyur in Survey No.93/4B, Peraiyur, Madurai District.

For Petitioner : Mr.J.Barathan

For R1 and R2 : Mr.A.K.Baskara Pandian
Special Government Pleader



ORDER

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

Heard Mr.J.Barathan, learned counsel appearing for the petitioner and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents. By consent on either side, this writ petition is taken up for final disposal.

2. The petitioner is aggrieved by a notice issued by the second respondent stating that the entire construction put up by the petitioner is unauthorized.

3. The learned counsel for the petitioner would submit that the impugned notice is culled out by bias and *mala fide*, because the Government Pleader, who has given opinion to issue notice, is the counsel, who appeared for the fourth respondent.

4. If enquiry is conducted into this matter, it may take the matter to a different level and ultimately, it will dilute the proceedings. Therefore, we do not wish to go further into the matter, except to observe that if a counsel appeared for a party in a civil proceedings and he also happens to hold the Government post, such as Government Pleader or Assistant Public Prosecutor, he should recuse himself from rendering any opinion concerning the same parties. The impugned notice is bereft of particulars and especially in the light of the statement of the leaned counsel for the petitioner that there is a building plan approval granted in favour of the petitioner.

5. The learned Special Government Pleader on instructions received by him today, would submit that it is true that there was a building plan approval. But the construction put up by the petitioner appears to be in excess than the approved plan.

6. If that is so, then the impugned notice has to be held to be unsustainable, because, the impugned notice has been issued stating that the entire construction is unauthorized. This should be born in mind by the second respondent.

7. So far as the second and third respondents are concerned, they have been impleaded by the petitioner only to state that the impugned order itself is as a result of the procedure exerted by the private respondent on the second respondent. Since we have opined that the notice issued by the second respondent is bereft of particulars and is not sustainable, we are not required to hear the respondents 3 and 4 as the *lis* is only between the petitioners and the second respondent / Town Panchayat.



8. For the above reasons, this writ petition is allowed and the impugned notice is quashed. The second respondent is directed to issue notice to the petitioners, call for the original approved building plan, conduct inspection of the building in the presence of the petitioners, note down the physical features and if there is any deviation found, after issuing show cause notice, proceedings to be initiated in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Madurai District.

2.The Executive Officer,
Peraiyur Town Panchayat,
Madurai District.

+1CC TO MR.T.R.JEYAPALAM, Advocate Sr. No.97211

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 97273

W.P(MD)No.23601 of 2019

08.11.2019

AL(CO)

TR(21.11.2019) 3P 5C