

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(NPD) No.2007 of 2016
and C.M.P.No.10459 of 2016

Y.Mohammed Iqbal Sait

... Petitioner/Petitioner

-VS-

1. Government of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and
Water Supply (MA1) Department,
Secretariat, Chennai - 600 009.

2. District Collector,
The Nilgris at Uthagamandalam.

3. Commissioner,
Udhagamandalam Municipality at
Udhagamandalam, The Nilgris.

... Respondents/Respondents

PRAYER: Petition is filed under Section 217-L of the Tamil Nadu District Municipalities Act (Act V of 1920 as amended by Tamil Nadu Act VIII of 1992 r/w Section 115 C.P.C) to set aside the Order passed in G.O.(Pa) No.21/M.A.1/2015 dated 18.01.2016 and served on 12.02.2016 passed by the Principal Secretary to Government, Municipal Administration and Water Supply (M.A.1) Department, Secretariat, Chennai / 1st Respondent herein, confirming the order passed by the District Collector, The Nilgris at Udhagamandalam passed in Lr.UAC.No.24/1998 dated 09.01.2001 / 2nd Respondent herein.

For Petitioner : Mr.N.Damodaran

For R1 & R2 : Mr.Y.T.Aravind Gosh
Govt. Advocate

For R3 : M/s.S.Kadarkarai

ORDER

The present petition has been filed, challenging the Order of the District Collector, The Nilgris at Udhagamandalam dated 09.01.2001 passed in Lr.UAC.No.24/1998 under Section 217 (j) l of the Tamil Nadu District Municipalities Act, 1920, by which the petitioner was directed to demolish the unauthorized construction of the building. The said Order was confirmed by the 1st Respondent on 18.01.2016 in G.O.(Pa) No.21/M.A.1/2015 in an appeal filed by the petitioner under Section 217 (K) of the Act. Aggrieved by those two Orders, the petitioner is before this Court.

2. Heard the learned counsel for the parties and perused the material documents available on record.

3. The sum and substance of the issue on hand is that the building in question is in existence since 1993 at the 2nd Floor and the 3rd Floor has also been constructed thereafter. It is the main submission of the petitioner that there is no need to demolish the entire building and the 3rd Floor, which is stated to be in violation as per Paragraph No.3 of the order dated 18.01.2016, alone has got to be demolished and the petitioner also sought for 8 months' time for demolition of the 3rd Floor.

4. The respondents have contended that the entire floors were constructed in violation of the Rules, apart from the fact that the building was used for commercial purpose without obtaining any permission from the District Municipality. It was also

contended that the District Collector had passed an order as early as on 09.01.2001, pointing out four violations and since the subsequent order dated 10.07.2001 was passed by the Authority, who had not heard the matter, on that score, the petition filed before this Court in C.R.P.No.2195 of 2001 was allowed by this Court on 02.09.2015 with a direction to hear the matter afresh and pass an appropriate order thereon and consequent to the said order, the order dated 18.01.2016, which is the subject matter of the present petition was passed. It was further contended that there are no set backs and the entire building is in violation and therefore, the same has got to be demolished.

5. A cursory glance at the order dated 18.01.2016 discloses the fact that the 1st respondent pointed out the following violations:

Sl.No.	Details	Required as per Master Plan	Required as per Hill Station Building Rule	As per Site	% of Violation
1.	Zone Specification	PR	PR	Commercial	Nil
2.	Plot Extent	200m ²	95m ²	-	-
3.	No. of Floors	G+1	G+1	G+4	100%
4.	Height of the Building	7.00m	7.00m	12.8Mt.	100%
5.	Roof of top floor	Slope	Slope	Slope	100%
6.	Front Set Back	3.00m	3.00m	Nil	100%
7.	Side Set Back-1	1.50m	-	Nil	100%
8.	Side Set Back-2	1.50m	-	Nil	100%
9.	Rear Set Back	1.50m	-	Nil	100%
10.	Open Space	-	1/4 th	Nil	100%
11.	Plot coverage	50%	50%	100%	100%
12.	Car Parking	-	-	Not Reported	-

From the above, it is clear that there are 100% violations in addition to other violations mentioned supra. The plea raised by the petitioner that only the 3rd Floor alone has to be removed, cannot be accepted, in view of the fact that it has been specifically stated in Paragraph No.3 of the order dated 18.01.2016 that the 3rd Floor has been constructed in complete violation of the Rules and the 1st and 2nd Floors are in existence from 1993. In Paragraph No.4, it has been mentioned that all the violations are to be rectified and therefore, the observation made in Paragraph No.3 cannot be read in isolation and it has got to be read in consonance with Paragraph No.4, as there are complete violations pointed out and the details are extracted supra and the entire building cannot stand at all.

6. It is to be always remembered that the building is in Nilgiris, a Hill Station and the safety is the prime concern in such areas. The building will have to be constructed strictly in accordance with the Rules and sanctioned plan and there cannot be any slight violation permissible. Hence, this Court is of the view that the order dated 18.01.2016 passed by the 1st Respondent herein does not warrant any interference by this Court and the present petition is liable to be dismissed.

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7. Accordingly, the Civil Revision Petition is dismissed. It is needless to mention here that if there is no rectification made by the petitioner within a period of three months, it is open to the respondents to seek the assistance of Military Forces as per the dictum laid down by a Division Bench of this Court in the case of V.B.R.Menon vs. State and others.

[W.P.13648 of 2016] decided on 29.04.2019 for demolition of the building, as there are chances of resistance and that the State Police cannot be an effective machinery to remove the encroachment. No costs. Consequently, connected Miscellaneous Petition is closed.

12.03.2020

Index: Yes / No
Internet: Yes / No
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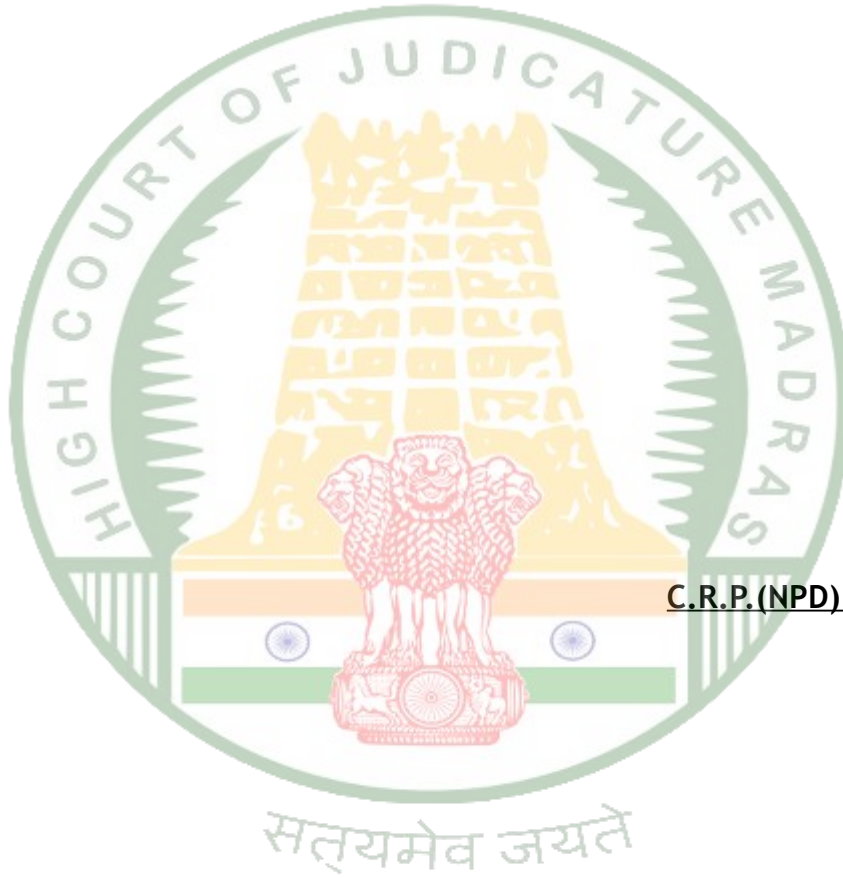
To:

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration and
Water Supply (MA1) Department,
Secretariat, Chennai - 600 009.
2. The District Collector,
The Nilgris at Uthagamandalam.



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S.VAIDYANATHAN,J.
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