

W.M.P.No.16874 of 2020 in W.P.No.2459 of 2013, W.M.P.No.16875 of 2020 in W.P.No.4566 of 2013, W.M.P.No.16878 of 2020 in W.P.No.7834 of 2013 and W.M.P.No.16880 of 2020 in W.P.No.35319 of 2012

M.M.SUNDRESH,J.
AND
KRISHNAN RAMASAMY,J.

Krishnan Ramasamy,J.

Petitioners have filed these Writ Miscellaneous Petitions to clarify the common order, dated 14.08.2020, passed in W.P.Nos.2459 of 2013, 4566 of 2013, 7834 of 2013 and 35319 of 2012, on the following issue :

Whether the petitioners have Planning Permission for putting up constructions in the property in question and could any order be passed against them on a Public Interest Litigation, when they are consciously and deliberately not made as parties in the Writ Petition ?

2. Mr.V.Raghavachari, learned counsel for the petitioners, has submitted that this Court was pleased to pass the common order, dated 14.08.2020, dismissing the four Writ Petitions filed by the petitioners, and disposing of the Public Interest Litigation filed in W.P.No.16083 of 2018, whereby ordering demolition of the constructions/structures put up by the

petitioners. According to the learned counsel, the petitioners are using the said property for the purpose of running an Ayurvedic Centre and, in one of the properties, privileged children are living, as the schools of those children are nearby, and the intention was not to use the said properties for residential purpose. He would also submit that W.P.No.16083 of 2018 was filed as a Public Interest Litigation, wherein, none of the petitioners was impleaded as a party and, in the absence of the petitioners having been impleaded as parties, no order can be passed in the said Writ Petition to demolish the structures put up by the petitioners. Further, he would argue, that, by virtue of the said order, the petitioners are deprived of the statutory remedy of appeal.

3. Learned counsel for the petitioner has also submitted that the petitioners have Planning Permission from Muttukadu Panchayat and when the Planning Permission was issued to construct houses, the Court cannot find any illegality therein. At that point of time, sea water was 150 metres away from the plots of the petitioners and it was also a Development Zone and, therefore, Muttukadu Panchayat had granted Planning Permission. Accordingly, he seeks for clarification of the order of this Court, dated 18.04.2020, by filing these Writ Miscellaneous Petitions.

4. Conversely, Mr.E.Manoharan, learned Special Government Pleader, appearing for the respondents-State, has submitted that constructions were made in No Development Zone-I; as per CRZ-III Notification, the petitioners were not entitled to put up any constructions except to the extent as provided in the said Notification; the residential units of the petitioners were not falling within the exempted category of CRZ-III Notification; the Notification was issued in the year 2001; the plots were 150 metres away from sea water; since the said plots were within 200 metres from sea water, the constructions made thereon were totally illegal and the permission granted by Muttukadu Panchayat was contrary to the proceedings of the respondents, dated 14.06.2010.

5. Mr.A.Yogeshwaran, learned counsel for the petitioner in W.P.No.16083 of 2018, which is a Public Interest Litigation, has submitted that the buildings were constructed by the petitioners in between the backwater and the sea water; no construction can be allowed to be put up within 200 metres from sea water as per CRZ-III Notification; the plots of the petitioners come under the purview of No Development Zone-I; no construction is permitted in NDZ-I; the respondent also has not accorded any layout approval for the plots of the petitioners; Muttukadu Panchayat

was permitted to grant building permission only for the approved layouts; in the present case, permission was granted for an unapproved layout and, therefore, the permission itself was illegal. He would also contend that as per the Tamil Nadu Town and Country Planning Act, 1971, the respondent is empowered to demolish the constructions after issuing due notice; though permission was initially granted, the same was subsequently found illegal and, therefore, there is no prohibition under the Act to demolish the illegal constructions and that the Court has rightly dismissed the Writ Petitions and directed the authorities/respondents to demolish the illegal constructions put up by the petitioners and the same does not warrant any clarification, as pleaded by the petitioners.

6. We have heard the learned counsel for the parties and also perused the documents.

7. The prime argument advanced by the petitioners is that they have Planning Permission for putting up constructions in the property in question. No doubt, the Planning Permission of Muttukadu Panchayat was placed before this Court and arguments were made by referring to the said document. However, this Court found that the said Planning Permission, issued by Muttukadu Panchayat, was illegal, as it was issued for an

unapproved layout and in No Development Zone of CRZ-III Notification, whereunder, no construction activity was permitted without the accord of Coastal Regulatory Authorities.

8. In this regard, it is relevant to refer to Paragraphs 13, 13.1 and 13.2 of the order of this Court, dated 14.08.2020, which are as under :

"13. **Issue No.1** : Originally, Mamallapuram Local Planning Authority is empowered to issue Planning Permission for any kind of development including ordinary residential building as per Section 49 of the Act. However, in order to reduce the burden of the developer to obtain permission from both the local planning authority and the local body, certain delegation of powers under Section 91 of the Act has been made to the local body to issue Planning Permission on behalf of Member Secretary, Mamallapuram Local Planning Authority up to a ceiling of residential building having plinth area of 4000 sq.ft. in an approved layout as per the Director of Town and Country Planning Proceedings No.9862/2010, BA1, dated 14.06.2010, based on a declaration in Tamil Nadu Legislative Assembly, Housing and Urban Development announcement 2010-2011 by the then Hon'ble Housing Minister.

13.1. Therefore, as per the delegation of power, the President of Muttukadu Panchayat is empowered to issue

Planning Permission only for the approved layouts/plots. In the present case, the plots situated in Survey No.114 are all unapproved. That being so, the President of Muttukadu Panchayat does not have any power to issue any Planning Permission to unapproved layouts/plots. As such, the Planning Permission issued by the President of Muttukadu Panchayat is in clear violation of the delegation of power and he has acted in excess of his powers.

13.2. That apart, in the case on hand, Survey No.114 falls within 200 metres from the High Tidal Line (HTL) of sea, which has been earmarked as "No Development Zone" as per Coastal Regulation Zone (CRZ) Notification 2011, declared by the Ministry of Environment and Forests, Government of India, under the provisions of the Environmental Protection Act, 1986."

Therefore, this Court found that the Planning Permission granted to the petitioners by Muttukadu Panchayat was illegal.

9. Turning to the other point made by the petitioners as to whether any order could be passed on a Public Interest Litigation when they are consciously and deliberately not made as parties in the Writ Petition, the contention of the petitioners is that they have not been impleaded as parties in the Public Interest Litigation and, therefore, no adverse order could have been passed against them without providing an opportunity to them

to demolish the residential buildings.

10. It is seen from the records that the Public Interest Litigation and all other four Writ Petitions of the petitioners had been heard together on several occasions and they were adjourned from time to time for making submissions. All the petitioners and the respondents were heard together. The petitioners were permitted to submit a reply to the submissions of the petitioner in the Public Interest Litigation as well. Therefore, the argument of the petitioners that orders have been passed in the Public Interest Litigation without impleading them as parties does not merit acceptance.

11. As a matter of fact, the plots of the petitioners were not approved by the respondents and they were falling under the purview of No Development Zone of CRZ-III Notification within the radius of 200 metres from sea water, wherein, no development activities were permitted. In such circumstances, the respondents were entitled to take appropriate action to demolish the illegal constructions.

12. We are unable to trace any apt reason as to why the

buildings/constructions of the petitioners cannot be demolished, as they are constructed in unapproved plots with the illegal Planning Permission, that too in No Development Zone of CRZ-III Notification.

13. Added to the above, what are all the points that are raised in these Miscellaneous Petitions have already been dealt with by us *in extenso* and no fresh point is made out herein.

14. For all the foregoing reasons, we do not see any clarification to be made in these Writ Miscellaneous Petitions as requested by the petitioners and they are, accordingly, dismissed.

dixit

(M.M.S.,J.) (K.R.,J.)
01-10-2020

सत्यमेव जयते

WEB COPY

M.M.SUNDRESH,J.

9/11

W.M.P.No.16874/2020 in W.P.No.2459/2013

AND

KRISHNAN RAMASAMY,J.

dixit



W.M.P.No.16874 of 2020
in W.P.No.2459 of 2013 & Batch

WEB COPY

01-10-2020

**W.M.P.No.16874 of 2020 in W.P.No.2459 of 2013,
W.M.P.No.16875 of 2020 in W.P.No.4566 of 2013,
W.M.P.No.16878 of 2020 in W.P.No.7834 of 2013 and
W.M.P.No.16880 of 2020 in W.P.No.35319 of 2012**

**M.M.SUNDRESH, J.
AND
KRISHNAN RAMASAMY, J.**

(Order of the Court was made by M.M.SUNDRESH, J.)

After pronouncement of the order, the learned counsel appearing for the petitioner seeks deferment of coercive action by way of demolition for a period of one month.

2. Accordingly, we direct the respondents not to demolish the buildings in question for a further period of one month from today (01.10.2020).

(M.M.S.J.) (K.R.J.)

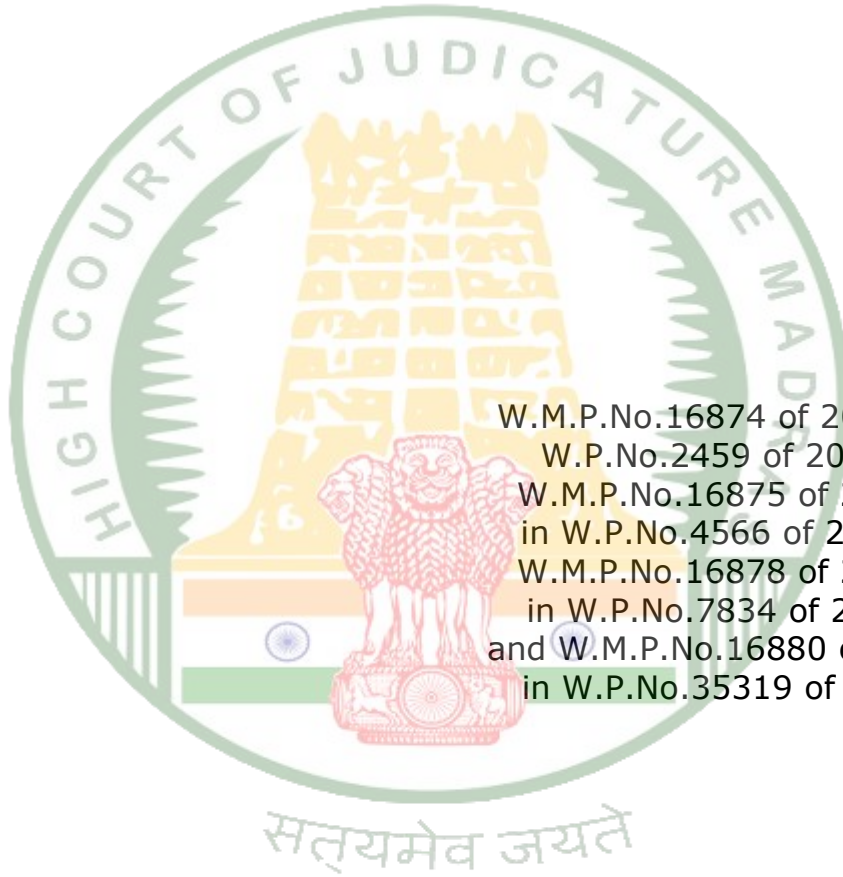
01.10.2020

Note: Registry is directed to upload the order copy today itself.

raa

**M.M.SUNDRESH, J.
AND
KRISHNAN RAMASAMY,J.**

raa



W.M.P.No.16874 of 2020 in
W.P.No.2459 of 2013,
W.M.P.No.16875 of 2020
in W.P.No.4566 of 2013,
W.M.P.No.16878 of 2020
in W.P.No.7834 of 2013
and W.M.P.No.16880 of 2020
in W.P.No.35319 of 2012

WEB COPY

01.10.2020