



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2020

CORAM:

THE HONOURABLE **MR. JUSTICE C.V.KARTHIKEYAN**

W.P. (MD) No.13326 of 2019

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T.Thangarajadurai

: Petitioner

Vs.

1.The District Collector,
Inspector of Town Panchayats,
Thoothukudi District,
Thoothukudi.

2.The Deputy Director of Town and Country Planning,
Tirunelveli Region, South Bye pass road,
Tirunelveli-5.

3.The Tahsildar,
Kovilpatti Taluk,
Kovilpatti,
Thoothukudi District.

4.The Executive Officer,
Kalugumalai Selection Grade Town Panchayat,
Kalugumalai, Kovilpatti Taluk,
Thoothukudi District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the third respondent to issue the recommendation and field inspection report on the basis of the petitioner application dated 28.02.2019 and 09.04.2019 so as to enable the fourth respondent to issue the DTCP approval and permission for using the said building as a marriage hall to the petitioner within time stipulated by this Court.

For Petitioner : Mr.B.Jameel Arasu

For R1 to R3 : Mr.C.M.Mariyachelliah Prabhu,
Additional Government Pleader.

For R4 : Mr.A.Thiyagarajan,
Standing Counsel.

ORDER

Writ petition filed in the nature of mandamus seeking a direction to the third respondent Tahsildar, Kovilpatti Taluk to issue a recommendation and field inspection report on the basis of



the petitioner application dated 28.02.2019 and 09.04.2019, so that the fourth respondent Executive Officer, Kalugumalai Selection Grade Town Panchayat, Kalugumalai, Kovilpatti Taluk, Thoothukudi District, may issue DTCP approval and permission for using the building as a marriage hall.

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2.The petitioner claims that he is the absolute owner of the property in Survey No.76/480 situated at Kalugumalai Village, Kovilpatti Taluk. He further claims that he had obtained building plan approval for construction of a building, more particularly a godown. He also obtained approval for construction of ground floor and upstairs.

3.W.P.(MD)No.15116 of 2017 had been earlier filed by one R.Selvaraj, as a public interest litigation where the petitioner herein was impleaded as fourth respondent, for a direction to the respondents therein namely, the District Collector, and Inspector of Town Panchayat, Thoothukudi, the Tahsildar, Kovilpattil Taluk, the Executive Officer, Kalugumalai Selection Grade Town Panchayat, Kalugumalai, Kovilpatti Taluk, Thoothukudi District to forbear the use of the said building situated at Door No.7 (S.No.76/480), East Giriprakara Street, Kalugumalai, Kovilpatti Taluk, Thoothukudi District, for any purpose without fulfilling the conditions laid down for a public building and without getting building plan approval and also licence to use as a public building. The said writ petition came for consideration on 01.09.2017 before a Division Bench of this Court. The Division Bench had observed as follows:

6.The pleadings and the documents available on record clearly indicate that the fourth respondent obtained planning permit for construction of Godown. The fourth respondent, thereafter, in total violation of the building permit, constructed a Kalyana Mandapam (Marriage Hall). The Local Body, therefore, cancelled the building permit and sealed the building.

7.In order to construct a Marriage Hall, the fourth respondent must obtain permission under the Tamil Nadu District Municipalities Act, 1920 and the Multi-Storeyed and Public Building Rules, 1973, besides the Tamil Nadu Public Building (License) Act, 1965. The Marriage Hall should have sufficient car parking place. It should have all the other facilities for a public building. The builder should also obtain permission from the Fire Department and the police.

8.The fourth respondent appears to have no regard to the law of the land. The fourth respondent after obtaining building permission for the Godown, constructed a Marriage Hall and thereby, made the life of the local people miserable. The vehicles that would come to the Marriage Hall would be a source of nuisance to the local



people. The Selection Grade Town Panchayat was, therefore, perfectly correct in issuing the stop work notice. We make it clear that the fourth respondent should not be permitted to complete the construction of Marriage Hall or to put it as a Kalyana Mandapam, unless and until he is given the building permit and ensuring that sufficient place is earmarked for car parking and that it would be appropriate to be called as a public building, where the people would assemble. In case the fourth respondent failed to take immediate action for demolition of the building constructed as a Marriage Hall in total violation of the building plan, necessarily, follow-up action shall be taken by the Panchayat for demolition invoking the provisions of the Building Regulations.

9. In the result, a Writ in the nature of a Writ of Mandamus is issued directing the third respondent to take appropriate action against the illegal and unauthorized building constructed by the fourth respondent forthwith.

10. The Writ Petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

3. Thereafter the petitioner appears to have filed W.P.(MD) No.1822 of 2018 before the Division Bench of this Court, which took the same for consideration on 31.01.2018. In the supporting affidavit, the petitioner had stated as follows:

4. In this connection I would like to reiterate that as per the records available with the respondents, it is clearly mentioned that I have sought their permission and approval to construct the godown in the said premises and basing on such approval I have constructed the said premises for use as a godown as stated above. But on erroneous presumptions the said premises were sealed by third respondent as stated above and thus the said entire premises is under lock and seal by the respondents.

5. I now respectfully submit that I have decided to use the said premises as a godown only on the basis of the earlier approvals given in this regard by the respondents and I will not deviate in any manner by making any constructions or using the said premises other than the purpose of using the same as a Godown by me. I once again reiterate that the said premises here after will not at all be used for any other purpose except godown only.

6. I further state that in view of the putting of seal on my property, I am unable to use the same and I am not able to eak out any income for my maintenance I am having



large family more fully my aged parents and wife and children are depending on my income only. Due to the seal on my premises the same is not being used for the last so many months.

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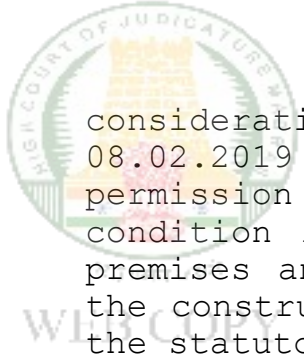
7.I hereby undertake that I would be abiding any conditions that may be imposed by this Hon'ble Court while ordering removal of the seal by the authorities. I further undertake that I will not construct any marriage hall or convert the said premises as a Marriage Hall unless proper approvals and permission are obtained from the competent authorities. It is therefore just and necessary that this Hon'ble Court may be pleased to order for removal of the seal put up in my premises bearing Door No.73 (survey no.76/480) East Giriprakara Street, Kalugumalai, Kovilpatti Taluk, Thoothukudi District by the third respondent on 30.08.2017, otherwise I will be put to great loss and hardship. It is further pertinent to point out here that there is no bar in the order passed by this Hon'ble Court in W.P.(MD)No.15116 of 2017 dated 01.09.2017 to use the said premises as a godown by me.

8.I respectfully submit that in this connection I have sent a representation to the respondents on j26.12.2017 in person seeking for removing the seal in my above said property and to use the same as a godown only. But so far no action has been taken in the said representation causing severe mental agony and hardship to me.

4.On the basis of the said affidavit, the Division Bench of this Court passed the following order:

2.Even though this Court passed on order in W.P.(MD) No.15116 of 2017 dated 01.09.2017, directing the third respondent to take appropriate action against the illegal unauthorized buildings constructed by the petitioner herein, the petitioner has filed an affidavit before this Court, wherein, in paragraph No.7 he has stated that he got approval only for construction of a godown and he would continue to use it as a godown and he would not make any alteration and use it as Kalyana Mahal. Therefore, there shall be an order of interim direction to the third respondent to remove the seal put up by the third respondent in the petitioner's premises bearing Door No.73 (survey no.76/480) East Giriprakara Street, Kalugumalai, Kovilpatti Taluk, Thoothukudi District.

5.The learned counsel for the petitioner submitted that thereafter the petitioner had given an application seeking to utilize the said building as a Kalyana Mandambam. This came up for



consideration before the second respondent, who by proceedings dated 08.02.2019 in Na.Ka.No.8909/2018 communicated to the petitioner that permission will be granted subject to 12 conditions. The first condition is that the fourth respondent herein has to inspect the premises and should file an inspection report regarding whether by the construction of the premises there has been violation of any of the statutory rules.

6.The petitioner claims that he has satisfied all other conditions. The petitioner claims he has also given an application on 28.02.2019 to the fourth respondent herein to inspect the premises of the petitioner.

7.This Court, taking into consideration the representation and the delay in filing an inspection report, directed the presence of the third and fourth respondents. They are present today.

8.Counter affidavit of the fourth respondent has also filed. In the counter affidavit it had been stated that the application of the petitioner had actually been rejected by proceedings in Na.Ka.No.03/2019/A1, dated 17.06.2019 and it had been stated that prior to the passing of rejection order, field inspection was conducted by the fourth respondent and it was found that the locality in which the building was situated was not suitable for constructing a marriage hall. It is also stated that there are no parking facilities. It was stated that the locality was a residential area. It was further stated that the vehicles which would come to the marriage hall would be a source of nuisance to the local people. It was stated that is was on these grounds the Division Bench had directed sealing of the premises vide order in W.P.(MD)No.15116 of 2017.

9.In the rejection order it has been stated that there parking place has not been provided and the building is situated in a residential area. It has also been stated that the Division Bench of this Court had directed that the building should not be used as marriage hall and that it can be used only as godown.

10.The petitioner had given an undertaking to use the building as a godown and he also stated in paragraph no.7 that he shall not convert the said building as marriage hall. In paragraph no.5, he had very specifically stated that he has decided to use the premises as a godown only. He had also stated that he will not change the usage of the building in any manner.

11.If the petitioner wants to use the subject building, it is only appropriate that he should get necessary permission by filing necessary affidavit before the Division Bench which had directed the premises to be sealed.

12.This Court, cannot pass any orders in contradiction to the orders passed by the Division Bench. Therefore, I am not able to



grant any relief to the petitioner. The writ petition is dismissed. No costs. The petitioner may, if he feels it appropriate, approach the Division Bench.

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Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To

- 1.The District Collector,
Inspector of Town Panchayats,
Thoothukudi District,
Thoothukudi.
- 2.The Deputy Director of Town and Country Planning,
Tirunelveli Region, South Bye pass road,
Tirunelveli-5.
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Kovilpatti Taluk,
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Kalugumalai Selection Grade Town Panchayat,
Kalugumalai, Kovilpatti Taluk,
Thoothukudi District.

+1 CC to M/s.SPL.GP (SR-11800[F] dated 16/03/2020)

W.P. (MD) No.13326 of 2019

13.03.2020

SPU (10.06.2020) 6P-6C