



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P(MD)No.26670 of 2019

and

W.M.P(MD)No.22996 of 2019

P.Hendry

... Petitioner

-vs-

1.The Secretary to Government,
Housing and Urban Development Department,
Chennai - 9.

2.The Director of Town and Country Planning,
Chennai - 2.

3.The Regional Deputy Director of Town and
Country Planning,
Madurai Region, Madurai.

4.The Executive Authority / Commissioner,
Local Planning Authority,
Kodaikanal Municipality,
Kodaikanal.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents to de-seal the premises by name J.H.Residency, Bear Chola Road, comprised in TS.No.9/3 and 9/4 of Block No.11, Ward No.C, Kodaikanal so as to enable the petitioner to bring the building within the Planning Parameters in respect of the Primary Residential Use Zone Category and also the Petitioner be permitted to use the buildings only for the uses permitted under the Primary Residential Use Zone Category as mentioned in Appendix-A(III), Primary Residential Use Zone-Parameters mentioned in the Modified Master Plan for Kodaikanal Local Planning Area.

For Petitioner : Mr.A.Janasanan
for Mr.S.Sethuraman

For RR 1 to 3 : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader.



For R - 4 : Mr.T.S.Mohammed Mohideen

O R D E R

[Order of the Court was made by M.DURAI SWAMY, J.]

WEB COPY The petitioner has filed the above writ petition to issue a writ of Mandamus, directing the respondents to de-seal the premises by name J.H.Residency, Bear Chola Road, comprised in TS.No.9/3 and 9/4 of Block No.11, Ward No.C, Kodaikanal, so as to enable the petitioner to bring the building within the Planning Parameters in respect of the Primary Residential Use Zone Category and also the Petitioner be permitted to use the buildings only for the uses permitted under the Primary Residential Use Zone Category as mentioned in Appendix-A(III), Primary Residential Use Zone-Parameters mentioned in the Modified Master Plan for Kodaikanal Local Planning Area.

2.It is the case of the petitioner that the fourth respondent had locked and sealed the premises of the petitioner for the reason that a commercial building was constructed in the above mentioned land contrary to the original building plan approval which was only for residential purpose.

3.It is the case of the fourth respondent that the lands in T.S.Nos.9/3 and 9/4 are classified as Primary Residential Zone and therefore, no commercial building is permitted.

4.The learned counsel appearing for the petitioner submitted that the petitioner is ready to demolish the portion of the building which is in violation / deviation of the building plan approval and the fourth respondent may be directed to inspect and thereafter, grant approval for the said building and till such time, he will not use the premises for any purpose either residential or non-residential.

5.In paragraph No.11 of the affidavit filed in support of the petition, the petitioner has also given an undertaking to that effect which reads as follows:

"11.As stated already, the petitioner gives an undertaking that he will not use this building to run a lodge and he gives a further undertaking that both the buildings in T.S.Nos.9/3 and 9/4 will be used by the petitioner as per the Uses permitted under the Primary Residential Zone category as published in the new Master plan. The petitioner submits that since both the buildings were sealed only in pursuance of the direction issued by this Hon'ble High Court, the authorities cannot de-seal the building without further orders passed by the Hon'ble High Court. Under



these circumstances, the petitioner approaches the Hon'ble High Court under Article 226 of the Constitution of India, seeking for the relief as mentioned in the prayer".

6.The learned counsel appearing for the petitioner further submitted that the petitioner would demolish the deviated / violated portion of the building and after demolition, if the building comes within the purview of the modified Master Plan for Kodaikanal Local Planning Area, 2019, in such case, the fourth respondent may grant permission, after conducting inspection.

7.The learned counsel appearing for the fourth respondent has also filed a counter-affidavit and stated that the building was locked on 26.02.2019 for the reason that the petitioner has put up commercial building in the Primary Residential Zone.

8.Since the petitioner himself has given an undertaking that he would demolish the violated / deviated portion of the building and he will not use the building till the approval is granted, we are inclined to direct the fourth respondent to de-seal and unlock the premises for the said purpose.

9.Accordingly, we direct the fourth respondent to de-seal and unlock the premises by name J.H.Residency, Bear Chola Road, comprised in TS.No.9/3 and 9/4 of Block No.11, Ward No.C, Kodaikanal and the petitioner is directed to demolish the violated / deviated portion of the building mentioned in paragraph No.3 of the counter-affidavit filed by the fourth respondent.

10.After demolition of the building, the petitioner shall submit a fresh plan for approval and the respondents 3 and 4 conduct an inspection and thereafter, in case, the building is in the consonance with the Modified Master plan, grant approval to the petitioner. Till the entire exercise is completed, the petitioner is directed not to use the premises for any purpose either residential or non-residential. The fourth respondent is directed to de-seal and unlock the premises within a period of one week from the date of receipt of a copy of this order.

11.With these observations, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Secretary to Government,
Housing and Urban Development Department,
Chennai - 9.

2.The Director of Town and Country Planning,
Chennai - 2.

3.The Regional Deputy Director of Town and
Country Planning,
Madurai Region, Madurai.

4.The Executive Authority / Commissioner,
Local Planning Authority,
Kodaikanal Municipality,
Kodaikanal.

+1 CC to M/s.S.SETHURAMAN, Advocate (SR-3279[F] dated 28/01/2020)

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate (SR-3329[F] 28/01/2020)

+1 CC to M/s.Special Govt.Pleader (SR-3337[F] dated 28/01/2020)

**W.P (MD) No.26670 of 2019
27.01.2020**

ps

SDS(29.01.2020) 4P-8C