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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

W.P. No. 8998 of 2021

A. Francis Yagappa ..Petitioner

Vs.

1. The State of Tamil Nadu
Secretary to Government,
Housing and Urban Development
Dept., Secretariat,
Chennai -9.

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

3. The Deputy Director of Town and
Country Planning,
Dindigul, Dindigul District.

4. The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 1st respondent to consider the representations of the petitioner dated 22.10.2020 and 04.01.2021 and 10.02.2021 and pass orders on the same in regard to revised building plan submitted as per the order of the Government in Letter No. 6767/UD4 – (L.Re)/2019 – 1 dated 13.10.2020.

For Petitioner :: Mr.R. Singgaravelan
Senior Counsel for
Mr.G. Elanchezhian

For Respondents :: Mrs.R.Anitha,
State Govt. Counsel for R1 to R3
Mr. T.S.Mohammed Mohideen for R4

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O R D E R

(Order of the Court was made by Justice N. Kirubakaran)

The matter is heard through videoconferencing.

2. The petitioner is the owner of the property beraing Door No. 10-22/48, Ward No. D, Block No.7, Town Survey No. 47/1B, Noyce Road, Kodaikanal, Dindigul District. The superstructure, which is standing on the property is utilised for commercial purpose of lodging. In 1968, New Block II was raised with the approval dated 23.10.1968 and Block II was constructed in the first floor with the plan approval dated 06.03.1974. The petitioner again obtained approval in the year 1989 for constructing Block III. Originally, there was an approved plan for four rooms in the ground floor as reflected in the above said approved plans. Moreover, a residential portion was also constructed with proper planning permission granted in BL. NO. 94 of 2010. Further construction was done only in the four rooms block and now there is basement floor + 2 floors. According to the petitioner, as per the modified Master Plan of the year 2019, the building can be regularised as the property falls under the Multi Use Zone. The petitioner applied for regularization of the building situated in Door No. 10-22/48, Ward No.D, Block No.7, Town Survey No. 47/1B, Noyce Road, Kodaikanal for commercial purpose constructing the Block Nos.I, II, III under the Tamil Nadu Town and Country Planning Act, 1971 and enclosed all the supporting documents along with the application. According to the petitioner, as per the modified Master Plan, the building is eligible for regularization. Eventhough the revised plan and details of the constructions were already given, as there was some deviation, the 4th respondent, namely, the Commissioner, Kodaikanal Municipality, issued a lock and seal order under Sections 56 & 57 of the aforesaid Act against which the petitioner preferred an appeal under Section 80A of the Act to the Government on 18.03.2019 to remove the lock and seal and allow him to rectify the deviation and also permit him to submit the revised plan.

3. On receipt of the appeal petition, the Additional Secretary (Technical), Chennai -9 had issued an interim order of cancellation of lock and seal order dated 13.10.2020 and also permitted the petitioner to submit revised building plan to the Kodaikanal Municipality within a period of three months. Thereafter, the petitioner had rectified the deviation in the construction and had also submitted a revised plan to the Kodaikanal Municipality. Subsequently, the petitioner submitted a representation to the 1st respondent on 22.10.2020 to cancel the lock and seal order issued by the 4th respondent permanently and grant approval based on his revised building plan. There was

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no reply to the same and a reminder petition was also sent by the petitioner on 04.01.2021 to which, after a lapse of four months, the 4th respondent sent a letter dated 25.01.2021 stating that there is a difference in the site plan and actual site construction and directed the petitioner to rectify the defect and submit the correct plan. On receipt of the said letter, the petitioner sent a detailed representation to the 1st respondent on 10.02.2021 through the 4th respondent stating that in the 4th respondent's letter dated 25.02.2021, there are no details about the violation mentioned and there is no difference between the site plan and the site construction and even if there is a minor deviation, it would be below 10% which can be rectified and requested the authority to pass necessary orders. Since there was no response, the petitioner has come forward with the present writ petition.

4. Heard Mr.R. Singgaravelan, learned Senior Counsel for the petitioner; Mrs. R. Anitha, learned State Government Counsel for respondents 1 to 3 and Mr.T.S. Mohammed Mohideen, learned counsel for the 4th respondent.

5. As per the earlier order of this Court dated 09.04.2021, the petitioner's regularization application can be processed only after getting inspection report from the 4th respondent. Eventhough there are deviations, the petitioner is said to have rectified the same. If that is so, the 4th respondent is duty bound to inspect the property and send a report to the 1st respondent. Based on the inspection report, appropriate orders can be passed on the petitioner's application for regularization. No orders can be passed by the 1st respondent without the inspection report.

6. Therefore, the 4th respondent is directed to make an inspection and send a report within four weeks from the date of receipt of a copy of this order, if the report has not been already sent and thereafter, the 1st respondent shall pass appropriate orders, after giving an opportunity to the petitioner in the regularization application, within eight weeks thereafter. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nv

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To

1. The Secretary to Government,
   The State of Tamil Nadu,
   Housing and Urban Development
   Dept., Secretariat,
   Chennai -9.

2. The Director of Town and Country
   Planning, 807,
   Anna Salai, Chennai -2.

3. The Deputy Director of Town and
   Country Planning,
   Dindigul, Dindigul District.

4. The Commissioner,
   Kodaikanal Municipality,
   Kodaikanal,
   Dindigul District.

+1cc to Mr.G. Elanchezhian, Advocate, S.R.No.29897
+1cc to the Government Pleader, S.R.No.30202

W.P.No. 8998 of 2021

KJ(CO)
HS(23/07/2021)

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