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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.P. No. 13752 of 2018

and

W.M.P. Nos. 16223 and 16224 of 2018

1. Sai Vasanthi V.N.
Represented by Power Agent
Baba Prasad V.N.

2. P.Nirmala

3. R.Dorai

...Petitioners

Vs.

1. The Commissioner of Municipal Administration
Ezhilagam Annexe Building - VI Floor
Chepauk,
Chennai - 600 005.
2. The District Collector
District Collector Office
Coimbatore - 641 018.
3. The Municipal Commissioner
Mettupalayam Municipal Office
Housing Unit
Mettupalayam - 641 301.
4. The Deputy Director Town and Country Planning
Corporation Shopping Complex - II Floor
Dr. Nanjappa Road,
Coimbatore - 641 018.
5. The Executive Engineer cum
Administrative Officer
Tamil Nadu Housing Board
Coimbatore Housing Unit
No.7, Hudco Colony, Tatabad
Coimbatore - 641 012.
6. J.Gunasingh



7. S.Senthilkumar

8. M/s. Sathya Agencies Private Ltd.
Represented by its Director
No.147, B8 H8 Housing Unit
Kovai Main Road
Mettupalayam - 641 301.

9. Nagaraj
[R9 impleaded vide order dated
13.08.2019 made in W.M.P.
No. 15912 of 2019 in W.P. No.
13752 of 2018]

10. A.Mubarak Ali
[R10 impleaded vide order dated
19.02.2021 made in W.M.P.
No. 16600 of 2020 in W.P. No.
13752 of 2018]

11. The Secretary to the
Government of Tamil Nadu
Housing and Urban Development Department
Secretariat, Fort St. George
Chennai - 600 009.

...Respondents

[R11 suo motu impleaded by this Court
vide order dated 01.07.2021.]

Prayer This Petition filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus, directing the Respondents 1 to 5 to take such appropriate action for demolition and removal of the unauthorised and illegal construction put up by the Respondent Nos. 6 to 8 at No. 147, B8 H8 Housing Unit, Mettupalayam.

For Petitioners : Mr. T.Saikrishnan

For Respondents : Mr. P.Balathandayutham
(For R1, R2 & R4 & R11)
State Government Counsel

Mr. S.N.Parthasarathy (For R3)
Mr.R.Bharathkumar (For R5)
Mr.B.M.Subash (For R9 & R10)
Mr.A.Sundaravadanam (For R6 to 8)



ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The matter was heard through 'Video Conference'.

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2. The Petitioners have come before this Court, seeking Writ of Mandamus, directing Official Respondents to take action against Private Respondent Nos. 6 to 8 for putting up unauthorised and illegal construction made in the subject property situated at Plot No. 147 / B8 H8 Housing Unit, Kovai Main Road, Mettupalayam-1 and to remove the said encroachment.

3. According to the Petitioner, Private Respondent Nos. 6 to 8 had put up unauthorised and illegal construction at Plot No. 147 / B8 H8 Housing Unit, Kovai Main Road, Mettupalayam, without any approved plan. Though notices have been served upon Private Respondent Nos. 6 to 8 for the unauthorised and illegal construction made, no action has been taken. Therefore, the Petitioners are before this Court.

4. Heard Mr.T.Saikrishnan, Learned Counsel for the Petitioner, Mr.P.Balathandayutham, Learned State Government Counsel appearing for the First, Second and Fourth Respondents, Mr. S.N.Parthasarathi, Learned Counsel appearing for the Third Respondent, Mr. R.Bharath Kumar, Learned Counsel appearing for the Fifth Respondent and Mr. B.M.Subash, Learned Counsel appearing for the Ninth and Tenth Respondents, Mr. A.Sundaravadanam, Learned Counsel appearing for the Sixth to Eighth Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

5. It is evident from the planning approval dated 24.11.2016 and the building construction permission dated 21.02.2016 that permission has been granted for putting up housing units only, whereas a huge commercial construction has been made and commercial activities are going on in the ground and two floors by Private Respondent Nos. 6 to 8, contrary to the approved plan.

6. Counter-Affidavit dated 16.03.2019 has been filed by the Third Respondent viz., the Commissioner, Mettupalayam Municipality, wherein Paragraph 17 is extracted as follows : -

"17. I submit that further the permission was granted for the extent of 73.11 square meter in the ground floor and an extent of 57.97 square meter was permitted to construct in the I Floor. But Contrary to this, the Petitioners 6 and 7 constructed building, an extent of 116.54 square meter in the I Floor and further raised another floor, that is II floor and



constructed building an extent of 116.54 square meter. So the Respondents 6 and 7 have violated the permission granted by this Respondent"

7. However, after this Writ Petition has been filed, notice dated 24.06.2019 has been issued under Section 205 (1)(2) of the Tamil Nadu District Municipality Act, 1920 (hereinafter referred to as 'the Act' for short), followed by another notice dated 05.08.2019 issued under Section 205 (3) of the Act. Thereafter, it seems that the Third Respondent did not follow up the said notices, with regard to the offending construction made by Private Respondent Nos. 6 to 8. Meanwhile, Private Respondent Nos. 6 to 8 sold the subject property to Respondent Nos. 9 and 10.

8. Therefore, during the earlier hearing on 23.06.2021, this Court directed the Third Respondent to file an Affidavit with regard to what are all the steps taken against the illegal constructions made by the Private Respondents.

9. When the matter is taken up for hearing today, it is represented by Mr. T.Saikrishnan, Learned Counsel for the Petitioner, Mr. A.Sundaravadanam, Learned Counsel appearing for Private Respondent Nos.6 to 8 and Mr. S.N.Parthasarathi, Learned Counsel appearing for Third Respondent that the property has been sealed and no commercial activities are permitted now.

10. Since it is represented by Mr. B.M.Subash, Learned Counsel appearing for Respondent Nos. 9 and 10 that they have already filed an Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the Secretary to the Government of Tamil Nadu, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai, this Court, suo motu, impleads the Secretary to the Government of Tamil Nadu, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai as the Eleventh Respondent in this Writ Petition. Mr.P.Balathandayutham, Learned State Government Counsel takes notice for the Eleventh Respondent.

11. Considering the fact that the appeal filed by Respondent Nos.9 and 10 is pending before the Eleventh Respondent, this Court directs the Eleventh Respondent to dispose of the appeal filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, within a period of twelve weeks from the date of receipt of a copy of this order, after hearing the Petitioner. Apart from the Appeal filed, it is always open to Private Respondent Nos.9 and 10 to file an Application for regularization available under the Act.

12. Recording the submissions made, this Writ Petition is



disposed of. However, it is made clear that Official Respondents shall continue to follow up the matter to reach its logical conclusion. Consequently, connected Miscellaneous Petitions are closed. No costs.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Maya

To

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6. The Secretary to the
Government of Tamil Nadu
Housing and Urban Development Department
Secretariat, Fort St. George, Chennai - 600 009.

+1cc to Mr.R.Bharathkumar, Advocate, S.R.No.31140

+1cc to Mr.B.Mohan, Advocate, S.R.No.30754

W.P. No. 13752 of 2018

PCH(CO)
RGA(19/08/2021)