



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.14781 of 2012

and

M.P.[MD]No.2 of 2012

K.N.Visakhsenan Pillai

... Petitioner

Vs.

The Commissioner,
Kuzhithurai Municipality,
Vettuvanni,
Marthandam - 629 165.
Kanyakumari District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the proceedings in Form-I (Section 56 notice in Letter No.28/2012/TPI) dated 18.10.2012 on the file of the respondent herein and to quash the same.

For Petitioner : Mrs.J.Anandhavalli
For Respondent : Mr.K.Vamanan

O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mrs.J.Anandhavalli, learned Counsel appearing for the petitioner and Mr.K.Vamanan, learned Counsel appearing for the respondent.

2.This writ petition has been filed challenging the notice issued in Form I under Section 216(1) & (2) of the Tamil Nadu District Municipalities Act, 1920, r/w. Sections 56 & 85 of the Town and Country Planning Act, 1971.

3.The notice alleges that the petitioner has put up unauthorised construction and he has been called upon to restore the building to the original position. The petitioner has challenged the impugned proceedings on the ground that prior to issuance of the impugned notice, no notice was issued under Section 216 (1) of the Act, and straightaway, an order cannot be passed under Section 216 (2) of the Act. Further, the petitioner would state that no notice was issued under Section 56 (1) or 56 (2) of the Act. These averments have not been denied in the counter affidavit, except to state that the following are the violations committed by the petitioner:



Total area of land in T.S.No.B9/38 6 ½ cents and total extent of construction is 1001.84 sq.mt. (10018 Sq.Ft.)	
As per Sale Deed Construction area (year of Construction 1970) 45 Sq.mt.	Total area of Ground Floor construction is 250 Sq.mt.
As per Building plan approval No.293/2000 total area approved is 90.72 Sq.mt.	Total area of First Floor construction is 250 Sq.mt.
As per Building plan approval No.21/2002 total area approved is 41.18.72 Sq.mt.	Total area of Second Floor Construction is 250 Sq.mt.
There is no approval for third floor	Total area of Third Floor construction is 250 Sq.mt.

4.At the time when the writ petition was entertained, an order of interim stay was granted and the interim order is in force till date. In the light of the ministerial error committed by the respondent in issuing the impugned notice, we allow the writ petition and quash the impugned notice, but we give liberty to the respondent municipality to proceed afresh in accordance with law.

5.Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner,
Kuzhithurai Municipality, Vettuvenni,
Marthandam - 629 165, Kanyakumari District.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-24073[F] dated 27/07/2021)

W.P. [MD]No.14781 of 2012

26.07.2021