



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

W.P. (MD) .No.6057 of 2013

K.Amuthavalli

... Petitioner

Vs.

1.Kodaikanal Municipality
rep. by its Commissioner,
Kodaikanal.

2.Thiru S.Govindan
Chairman,
Kodaikanal Municipality,
Kodaikanal.

3.Thiru. Periyasamy,
Town Planning Officer,
Kodaikanal Municipality,
Kodaikanal.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to compensate the petitioner for having illegally demolished the walls of the petitioner's approved building bearing D.No.22/5, 22/5-1 to 22/5-25, Post Office Road, Kodaikanal, Dindigul District.

For Petitioner : Mr.T.Antony Arulraj

For Respondents : Mr.T.S.Mohammed Mohideen for R1

ORDER

This writ petition has been filed for the issue of writ of Mandamus, directing the respondents to compensate the petitioner for illegally demolishing the walls of the building belonging to the petitioner.

2.The case of the petitioner is that the petitioner had got proper approval and had put up a building. While so, on 05.04.2013, at about 11.00 a.m., the officials belonging to the first respondent came to the spot and demolished the entire wall illegally. According to the petitioner, no notice was given to her and not even a survey was conducted to determine as to whether there was any encroachment. Therefore, according to the petitioner, it was a malafide exercise of power by the second and third respondents. Hence, the present writ petition has been filed seeking for compensation.



3.The first respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

3.The 3rd respondent is no more and the 2nd respondent is not acting as chairman as on date. It is seen the building located in survey ward D, Block No.5, T.S.No.6, KAS Shopping Complex has been approved by the Kodaikanal Local Body in the year 1991. The building measures as here under:

- a)Basement floor 272.00 sq.mt.
- b)Ground floor 272.00 sq.mt.
- c)First floor 272.00 sq.mt.
- d)Second floor 272.00 sq.mt.

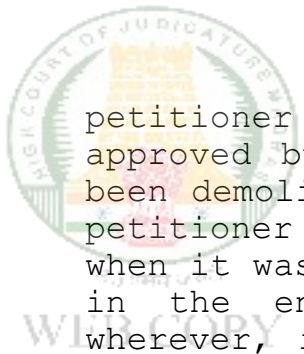
4.Totally the building measures 1088 sq.mt. The building is constructed before the date of Kodaikanal Master Plan. The record shows that the building has been assessed in the name of this petitioner in assessment No.10085 to 10110 (Totally 26 Tax assessments). As on date petitioner has to pay Rs.7,93,332/- as tax. It is learned, that in the year 2013 the petitioner tried to put up a permanent telephone booth by encroaching the road. The petitioner was not allowed to raise the brick works by, then town planning officer, the 3rd respondent herein.

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7.The petitioner, who has admitted that he has developed an unauthorized construction cannot a maintain a writ petition under Article 226 of Constitution. When facts are disputed in respect of nature of construction writ is not maintainable. In Kodaikanal hills 304 buildings were locked and sealed following this Hon'ble Court order pending W.P.(MD).No.914 of 2018. The petitioner's prayer for compensation may be rejected as she has encroached the Municipal Road."

4.Heard Mr.T.Antony Arulraj, learned counsel appearing for the petitioner and Mr.T.S.Mohammed Mohideen, learned counsel appearing for the first respondent.

5.On a careful perusal of the materials placed before this Court, it is seen that the first respondent has proceeded to demolish the wall that was attempted to be put up by the petitioner on the ground that there was an encroachment. The grievance of the



petitioner is that he had only put up reinforcing the walls in an approved building and even without giving a notice, the wall has been demolished. Even the photos that have been relied upon by the petitioner shows that the wall has been demolished even at the time when it was sought to be constructed. This exercise had taken place in the entire road and the first respondent has demolished, wherever, it was found that there was encroachment into the public road.

6.In the considered view of this Court, the present case involves disputed questions of fact and the respondents who were expected to take immediate action on encroachment had proceeded to take action. If at all there is any negligence, that can only be agitated before a competent civil Court by letting in evidence. This Court cannot undertake such an exercise in writ jurisdiction under Article 226 of the Constitution of India. Therefore, this Court is not inclined to grant the relief sought for by the petitioner. If the petitioner is aggrieved by the act of the respondents, it will be left open to the petitioner to agitate her rights before a competent civil court.

7.This writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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,
Kodaikanal Municipality,
Kodaikanal.

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate (SR-20590[F] dated 29/06/2021)

+1 CC to M/s.T.ANTONY ARULARULRAJ, Advocate (SR-20797[F] dated 01/07/2021)

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