



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.13947 of 2020

and

W.M.P. (MD)Nos.11607, 11609, 11611 of 2020

N.Pushpam

... Petitioner

-Vs-

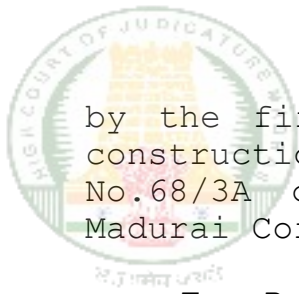
- 1.The Commissioner,
Madurai Corporation Office,
Aringar Anna Maligai,
Outpost, Thallakulam,
Madurai-625 002.
- 2.The District Collector,
Madurai Collectorate Office,
Madurai-625 020.
- 3.The Tahsildar (Madurai North)
Madurai Collectorate Office,
Madurai-625 020.
- 4.The Inspector of Police,
Thallakulam Police Station,
Madurai.
- 5.Executive Engineer,
Tamilnadu Electricity Board,
Bishop House Road,
Madurai-625 007.
- 6.The Assistant Engineer,
Tamilnadu Electricity Board,
Bishop House Road,
Madurai-625 007.

7.A.Thangaraj

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records vide order of Building Permission No.Ma2/382/20, dated 15.07.2020 passed

<https://hcservices.ecourts.gov.in/hcservices/>



by the first respondent in favour of the seventh respondent for construction of building on his Plot No.7A comprised in UDR survey No.68/3A of Meenakshi Amman nagar (formerly Saradha Nagar) of Madurai Corporation Limits and quash the same.

For Petitioner : Mr.A.Mohan

For R1 : Mr.T.S.Mohammed Mohideen
Standing Counsel

For R2 to R4 : Mr.C.Ramar
Additional Government Pleader

For R5 & R6 : Ms.M.Parameswari
for Mr.S.M.S.Johny Basha

For R7 : Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates.

ORDER

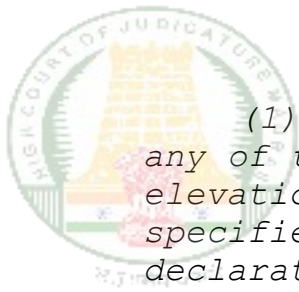
Heard the learned counsel appearing for the petitioner, learned Standing Counsel appearing for the official respondents and the learned Additional Government Pleader appearing for the respondents 2 to 4.

2.The petitioner and the seventh respondent are neighbors. The petitioner challenges the building approval plan granted by the fourth respondent in favour of the seventh respondent.

3.The grievance of the petitioner is that in the place, on which, the seventh respondent is proposing to construct his building, there existed a well. The existence of the well does not appear to be in dispute. While the petitioner would claim that it was hastily closed recently, the seventh respondent would state that it was closed long time back. Be that as it may, the petitioner expresses certain serious apprehensions as regards the safety of the proposed construction.

4.I am afraid that on this ground, the impugned proceedings cannot be set aside. As rightly pointed out by the learned counsel appearing for the seventh respondent, the grant of the building plan can be challenged only on the ground set out in Section 278 of the Madurai City Municipal Corporation Act, 1971. The said provision reads as follows:-

278.Ground on which approval of site for or permission to construct or reconstruct building may be refused- The only grounds on which approval of a site for the construction or reconstruction of a building or permission to construct or reconstruct a building may be refused are the following namely:-



(1) that the work of the use of the site for the work or any of the particulars comprised in the site-plan, ground-plan, elevations, Sections; or specification would contravene some specified provision of any law or some specified order, rule, declaration or by-law made under any law;

(2) that the application for such permission does not contain the particulars or is not prepared in the manner required under rules or by-laws;

(3) that any of the documents referred to in Section 272 have not been signed as required under rules or by-laws;

(4) that any information or document required by the Commissioner under the rules or by-laws has or have not been fully furnished.

(5) that streets or roads have not been made as required by Section 250.

(6) that the proposed building would be an encroachment upon Government or Municipal land;

(7) that the site of such building does not abut on a street or a projected street, and there is no access to such building from any such street by a passage or pathway appertaining to such site and not less than 3.5 metres wide at any part;

(8) that the site is required for a public purpose under any law for the time being in force;

Whenever the Commissioner or the Standing Committee refuses to approve a site for a building, or to grant permission to construct or re-construct a building the reasons for such refusal shall be specifically stated in the order.

5.The case projected by the petitioner does not fall under any of the aforementioned provision. Therefore, I am of the view that the grant of building plan cannot be challenged as such. However, there is another provision, to which, my attention is drawn. It is Section 284 of the Madurai City Municipal Corporation Act, 1971 and it reads as follows:

284. Stoppage of work endangering human life-

Notwithstanding anything contained in any of the preceding Sections, the Commissioner may at any time stop the construction or re-construction of any building if in his opinion the work in progress contravenes any of the rules, regulations, or by-laws framed under this Act or endangers human life.

6.The case of the petitioner is that if the construction is allowed to proceed without taking proper precaution, it is bound to endanger human life.

7.Even while sustaining the impugned proceedings, I direct the Commissioner to take note of the apprehension expressed by the petitioner.



petitioner and ensure that the construction put up by the seventh respondent is in such a way that it does not endanger human life.

8. With these observations and direction to the first respondent, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Rmi

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 District Collector,
Madurai Collectorate Office,
Madurai-625 020.
2. The Tahsildar (Madurai North)
Madurai Collectorate Office,
Madurai-625 020.
3. The Inspector of Police,
Thallakulam Police Station,
Madurai.

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate (SR-709[F] dated 08/01/2021)

+1 CC to M/s.GP (SR-651[F] dated 08/01/2021)

W.P. (MD)No.13947 of 2020

(KG)CO

AP(08/02/2021) 4P 6C