



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.6158 of 2022 and W.M.P. Nos.6231 & 6232 of 2022

1.M.Rajakumari

2.M.Muthukumar

... Petitioners

vs

1. The District Collector,
Tiruvannamalai District,
District Collector's Office,
Vengikkal,
Tiruvannamalai - 606 604.
2. The Commissioner,
Tiruvannamalai Municipality,
Thirukovilur Road,
Tiruvannamalai - 606 601.
3. The Superintendent Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
Vengikkal,
Tiruvannamalai District - 606 604.
4. The Superintendent of Police,
O/o the Superintendent of Police,
Collectorate Complex,
Vengikkal,
Tiruvannamalai District - 606 604.

5.M.Sankaranathan

6.M.Saravanan

7.Mohan

8.Periyathai Ammal

9.C.N.Amirtha Raj

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing respondents 1 and 2



herein to consider and pass appropriate orders on the petitioners representation dated 15.01.2021, followed by the representation dated 07.02.2022, wherein these petitioners had prayed to take action under the Tamil Nadu Town and Country Planning Act, 1971, against the 'unauthorised constructions' constructed by the 5th to 9th respondents herein by immediately 'locking and sealing' of the schedule mentioned properties besides cutting the electricity supply given by the third respondent to the illegally constructed buildings and direct the fourth respondent to give necessary police protection at the time of undertaking of 'lock and seal' process of the schedule mentioned buildings without any further delay pending further action to be taken under the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioners : Mr.S.Vediappan

For Respondents : Mr.K.V.Sajeevkumar,
Special Government Pleader
for R1 and 4

Mr.L.P.Maurya,
Standing Counsel for R2

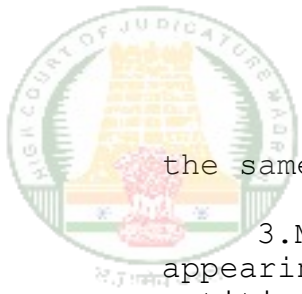
Mr.L.Jaivenkatesh,
TNEB for R3

ORDER

[Order of this Court was delivered by T.RAJA, J.]

M.Rajakumari and M.Muthukumar/petitioners herein have jointly filed this writ petition under Article 226 of the Constitution of India seeking a direction to respondents 1 and 2 herein to consider and pass appropriate orders on their representation dated 15.01.2021, followed by another representation dated 07.02.2022, wherein they have prayed for taking action under the Tamil Nadu Town and Country Planning Act, 1971, against the 'unauthorised construction' constructed by respondents 5 to 9 by immediately 'locking and sealing' of the schedule mentioned properties.

2.Learned counsel appearing for the petitioners submitted that the first petitioner had already filed a writ petition in W.P. No.1033 of 2018 before this Court for the similar relief and this Court, by order 01.08.2019, closed the above writ petition, observing that the authorities are taking action in relation to the un-authorised construction, as no further order is necessary. In spite of the same, till date, no action has been taken. Therefore, the petitioners are before this Court for



the same relief.

3.Mr.K.V.Sajeevkumar, learned Special Government Pleader appearing for respondents 1 and 4 submitted that the first petitioner, who is the second wife of K.R.S.Manicka Mudaliar, is the mother of the second petitioner and respondents 5 and 6 are children born to Manicka Mudaliar and his first wife. After his demise, the petitioners and 2 others, namely, brothers of the second petitioner, have filed an Original Suit in O.S. No.83 of 2017 for partition and as against the dismissal, First Appeal in A.S. No.635 of 2019 filed by the petitioners, was pending for final disposal. Thereafter, the seventh respondent herein also filed W.P. No.16021 of 2020 challenging the impugned notice dated 21.10.2020 bearing Na.Ka.No.2180/2020/F1 issued by the Commissioner, Tiruvannamalai Municipality to quash the same with a further direction to the first respondent to consider the regularisation application dated 25.10.2018 and the same was dismissed by order dated 11.12.2020 on the premise that there was nothing to show that the petitioner therein had approached the first respondent seeking for regularisation of the building and there was no ground to interfere with the notice issued by the first respondent. Again Writ Petition Nos.18151 and 18153 of 2020 were filed by respondents 5 and 6, questioning the very same impugned notice dated 21.10.2020. This Court, by order dated 12.12.2020, dismissed the same, in view of the order passed in W.P. No.16021 of 2020 dated 11.12.2020. Therefore the petitioners need not have come to this Court.

4.Learned counsel for the second respondent Municipality submitted that the allegation made by the petitioners that after disposal of the Writ Petition No.1033 of 2018, no action was taken, cannot be taken on record for double reasons. Firstly, when action was being taken by the official respondents, respondents 5 to 7 came to this Court with the above Writ Petitions and in view of the pendency of the same, they were not able to proceed further and finally, they were dismissed. Secondly, due to the intervention of Covid-19 pandemic situation, followed by imposition of lock down by the State and Central Government, they were not be able to proceed further. In view of the undertaking given by the Municipality second respondent herein, while the order dated 01.08.2019 was passed by this Court in W.P. No.1033 of 2018, now they are taking action with regard to the un-authorized construction. Therefore, learned counsel for the second respondent sought three months time to complete the exercise.

5.It is further submitted by the counsels for the official respondents that since Item Nos.4 and 5 of the schedule mentioned properties are meant for residential purpose and cell phone tower respectively, they are not able to take any action



for locking and sealing the above items.

6. In this regard, it is necessary to refer a Government Order in G.O. Ms. No.177 Municipal Administration and Water Supply (MAI) Department dated 17.12.2002 as under:

'3. The Government after careful examination grant exemption to BTS Towers constructed by Telecom Companies, from the Tamil Nadu District Municipalities Building Rules 1972 and Multistoreyed and Public Building Rules, 1973, subject to the conditions imposed in the G.O. and letter first and fourth read above. However, the exemption granted above is subject to the height restrictions in heritage towns ordered in respect of the Madurai Corporation in G.O. (Ms) No.164, MA&WS, dated 16.06.1994 and in respect of other heritage towns in G.O. (Ms) No.22, MA&WS, dated 30.01.1997.'

7. A perusal of the above G.O. shows that the Government, after careful examination, had granted exemption to BTS Towers, constructed by Telecom Companies, as per Tamil Nadu District Municipalities Building Rules 1972 and Multistoreyed and Public Building Rules, 1973. Therefore, the second respondent is directed to take action with regard to the un-authorized construction in respect of item Nos.1 to 3, within a period of three months from the date of receipt of a copy of this order, in view of the undertaking given by them, vide order dated 01.08.2019, passed by this Court in W.P. No.1033 of 2018.

8. Accordingly, this writ petition stands disposed of. No costs. Consequently, W.M.P. Nos.6231 & 6232 of 2022 stand closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Tiruvannamalai District,
District Collector's Office,
Vengikkal,
Tiruvannamalai - 606 604.



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2. The Commissioner,
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4. The Superintendent of Police,
O/o the Superintendent of Police,
Collectorate Complex, Vengikkal,
Tiruvannamalai District - 606 604.

+lcc to Mr.L.Jaivenkatesh, Advocate, S.R.No.20442
+lcc to Mr.S.Vediappan, Advocate, S.R.No.1940
+lcc to Mr.L.P.Maurya, Advocate, S.R.No.19072
+lcc to the Government Pleader, S.R.No.20034

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MT(CO)
CT 08/04/2022