



W.P.(MD).No.13545 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.07.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.13545 of 2012

and

M.P(MD)No.2 of 2012

1.B.Sirajudeen

2.S.Fathima

... Petitioners

Vs.

1.The Commissioner,
Town and Country Planning,
807, Anna Salai,
Chennai.

2.The Member Secretary,
Local Planning Authority,
No.10, Second Floor,
Williams Road, Cantonment,
Trichy.

3.The Commissioner,
Tiruchirappalli Corporation,
Trichy.

... Respondents

(Cause title amended vide Court order in M.P(MD)No.4 of 2012, dated 29.10.2012)



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in its proceedings in Na.Ka.No.18378/2011 BA2, dated 05.09.2012 and quash the same and consequently direct the first respondent to exempt the petitioner from obtaining fresh plan approval in respect of the petitioner's Kalyanamandapam by name "Golden Mahal" in D.No.9, Block No.31, New No.10, Singarathope Street, Trichy-08.

For Petitioners : Mrs.J.Maria Roseline

For R-1 & R-2 : Mr.S.Shanmugavel
Additional Government Pleader

For R-3 : Mr.J.Parekhkumar
for Mr.P.Srinivas

ORDER

The present Writ Petition has been filed challenging an order passed by the first respondent herein, in which the application filed by the petitioners under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 for regularization of the first floor building was returned on the ground, that it violates various building rules under the Municipal Laws and Public Building Act. The said order is under



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challenge in the present writ petition.

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2. According to the learned Counsel for the writ petitioners, while they purchased the property in May 2005, already ground floor construction had been completed and there was a tin shed roof in the first floor. After purchasing the property, the petitioners removed the tin shed and converted into an RCC roof . However, the said attempt was objected to by the neighbor who was also running a Kalyanamandapam.

3. The said neighbor had filed W.P(MD)No.7796 of 2007 for demolishing the un-approved construction in the first floor. The petitioner had also filed W.P(MD)No.11917 of 2009 to quash the order, dated 07.11.2008 and direct the Commissioner, City Municipal Corporation, Trichy to consider his plan. Both the writ petitions were heard together and a common order was passed on 14.12.2009. As per the said order, the petitioners were directed to approach the Commissioner Municipal Administration for approval of the construction of the first floor. Till a decision is taken by the said authority, the possession and enjoyment of the petitioners shall not be disturbed.



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Thereafter, a review application in Rev.Aplc(MD)No.42 of 2010 was filed by the neighbor, in which it was pointed out that the concerned authority to approve regularization is the Director of Town and Country Planning and not Commissioner Municipal Administration. Though the Division Bench dismissed the review application, the present writ petitioner was permitted to submit his application before the Director of Town and Country Planning.

4. Pursuant to the orders passed in the review petition, the petitioners have submitted their application under Section 49 on 25.07.2011. Thereafter, the said application has been rejected under the impugned order, dated 05.09.2012. The said order is under challenge.

5. The learned Counsel for the writ petitioners submits that the first respondent has not mentioned which of the building rules or the public building rules have been violated in the impugned order. The impugned order is as vague as it could be that the petitioner is not in a position to rectify the plan and represent it before the first respondent herein. The learned Counsel for the writ petitioners further submits that



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G.O.(Ms).No.111, Housing and Urban Development [UD4(3)],

Department, dated 22.06.2017 has been passed in order to regularize the un-authorized constructions which have been made prior to 01.07.2007.

6. Admittedly, the building in dispute has been constructed prior to 01.07.2007. Hence, the writ petitioners would be eligible for applying under the said scheme and get their building regularized. The learned Counsel for the writ petitioner further submits that the Government has extended the time for filing application under the said Government order and the petitioners are having time for another thirty (30) days to submit their applications.

7. Per contra, the learned Counsel for the respondents submits that the building plan approval submitted by the writ petitioners were not in accordance with the relevant rules and hence, the same have been rejected. In case, if the petitioners would like to avail the benefits under G.O.(Ms).No.111, dated 22.06.2019, the petitioners have to file an application afresh after complying with all the requirements as contemplated in the said G.O.



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8. I have carefully considered the submissions made on either side.

9. A perusal of the impugned order discloses that none of the violations have been specifically pointed out. But the application has been returned with a vague allegation that the building plan approval is in violation of the building rules. However, the petitioner now chooses to approach the said authority under G.O.(Ms).No.111, dated 22.06.2017. In such an event, this Court is inclined to pass the following order:

“(i) The petitioners are directed to present an application as contemplated under G.O.(Ms).No.111, dated 22.06.2017 within the time frame fixed for the said application.

(ii) On submission of the said application, the same shall be considered on merits and in accordance with the above said G.O. and disposed of.



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(iii) Till such application is disposed of, the possession and enjoyment of the writ petitioners over the disputed property shall not be disturbed”.

10. With the above said observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
btr



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R.VIJAYAKUMAR, J.

btr

Order made in
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