



WP (MD) No. 6778 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 24.11.2022

Delivered On : 16.12.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 6778 of 2022

P. Kumar

.. Petitioner

Versus

1. The District Collector
Dindigul District
Dindigul
2. The Commissioner
Dindigul Municipal Corporation
Dindigul
3. The Member Secretary
Local Planning Authority
Dindigul
4. V.K. Raja

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachment caused by the fourth respondent in 40 feet road located at the land in Survey No. 1954/1B, Anna Nagar, Dindigul Town within a time frame as may be fixed by this Court

For Petitioner : Mr. B. Saravanan

For Respondents : Mr. G.V. Vairam Santhosh
Additional Government Pleader for RR1 & 3
Mr. V.R. Venkatesan for R4



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ORDER

WEB C **R. MAHADEVAN, J**

The petitioner, complaining that the fourth respondent has encroached upon a public road, has come forward with this writ petition seeking to issue a Writ of Mandamus directing the respondents 1 to 3 to remove such encroachment caused by the fourth respondent in 40 feet road located at the land in Survey No. 1954/1B, Anna Nagar, Dindigul Town within a time frame as may be fixed by this Court.

2. According to the petitioner, his father Late. Pappu purchased the land bearing Plot No. 6 in an approved layout comprised in Survey No. 1954/1B in Anna Nagar, Dindigul Town by way of a registered sale deed dated 26.09.1975 and from then his father was in possession of the land. On 12.08.2020, the father of the petitioner died leaving behind the petitioner's mother, the petitioner, his two brothers and a sister to succeed his estate. It is further stated that on the Northern side of Plot No.6, there was a 40 feet road which serves as the access to reach Plot No.6 belonged to the petitioner's family from the Eastern side. The grievance of the petitioner is that the fourth respondent, by encroaching the 40 feet road on the Northern side of his Plot bearing Plot No.5 proceeded with a construction, unauthorisedly. It is stated that the second respondent Corporation is maintaining the 40 feet road which



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is also specifically indicated in the layout approval in respect of the Plot No.6 purchased by the petitioner's father. While so, the fourth respondent has no right to proceed with a construction in the public Road. In this context, the petitioner submitted representations on 10.02.2022, 21.02.2022 and 28.02.2022 to the respondents 1 to 3 seeking to take action against the fourth respondent for having put up construction in the 40 feet road. However, the respondents 1 to 3 did not take any action on such representations, therefore, he has filed this writ petition.

3. The learned counsel appearing for the petitioner reiterated the averments made in the writ petition and submitted that the fourth respondent had encroached public road and putting up a construction thereof. Even though representations have been sent, the respondents 1 to 3 failed and neglected to take any action and therefore, he prayed for issuing a Mandamus.

4. Per contra, the learned counsel appearing for the second respondent submitted that on receipt of the representations from the petitioner, a notice dated 28.02.2022 was issued by the second respondent to the fourth respondent invoking Section 441 of the Dindigul City Municipality Act, calling upon the fourth respondent to forthwith stop the construction and to approach the office of the second respondent Corporation with necessary drawings to show that due approval has been obtained prior to putting up the



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construction. Another notice was also issued under Sections 296 (1) and (2) of the Dindigul City Municipal Corporation Act declaring that the construction put up by the fourth respondent is unauthorised and therefore, he was called upon to show cause as to why action should not be initiated against him for such unauthorised construction. As the fourth respondent did not respond to the notices dated 28.02.2022, a further notice dated 28.03.2022 was issued calling for his explanation as to why the unauthorised construction put up by him be not demolished and to recover the costs incurred thereof from him. Further, another notice dated 02.05.2022 was issued intimating the fourth respondent that steps are being taken to prosecute him before the competent Judicial Magistrate Court for having committed the offence under Section 447 of the Indian Penal Code read with Section 296 (1) and 296 (2) of the Dindigul City Municipal Corporation Act. According to the learned counsel for the second respondent, inspite of the earlier notices, the fourth respondent proceeded with the construction and therefore, a final notice dated 19.07.2022 was issued to the fourth respondent calling upon him to forthwith stop all further constructions. Therefore, it is submitted by the learned Standing counsel for the second respondent that it is not as if the representations sent by the petitioner were not considered and no action was taken against the fourth respondent. The notices already issued to the fourth respondent are in adherence to due process of law. While so, it cannot be said that the second respondent failed to take any action against the unauthorised construction put



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up by the fourth respondent and consequently, a Mandamus as prayed for by the petitioner need not be granted. Accordingly, the learned counsel for the second respondent prayed for dismissal of the writ petition.

5. Repudiating the averments made in the writ petition, the learned counsel for the fourth respondent would submit that to the notice dated 19.07.2022 issued by the second respondent, a detailed reply dated 23.07.2022 was issued by the fourth respondent. In the reply dated 23.07.2022, it was specifically stated that the fourth respondent had stopped all further construction work and put back all the construction materials inside the building for safe custody. However, when the authorities inspected the building, they were under the impression that the fourth respondent is proceeding with the construction work and warned him not to proceed with the construction work. The learned counsel for the fourth respondent submitted that the Dindigul Municipality issued a notification in the year 1967 for the purpose of Town Planning Scheme and earmarked several lands including the land of the petitioner for formulation of a scheme. However, as required under Section 38 of The Tamil Nadu Town and Country Planning Act, 1971, within three years from the date of publication of the notice, no declaration has been made and consequently, the scheme has not been implemented. If no declaration as required under Sub-Section (2) of Section 37 of Tamil Nadu



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land, such land is not acquired by agreement and it shall be deemed to have been released from such reservation. In the present case, the scheme lapsed 50 years ago and therefore, the construction put up by the fourth respondent in the scheme land is proper. It is also stated by the learned counsel for the fourth respondent that the fourth respondent has not encroached into the land in Survey No. 1954/1B, as alleged. The land owned by the fourth respondent is situated in Survey No. 1956/2 in T.S. No. 27 and therefore, the question of encroaching the public land in Survey No. 1954/1B does not arise.

6. The learned counsel for the fourth respondent proceeded to contend that the land in question was purchased by the fourth respondent in a Court auction in O.S. No. 400 of 2000 on the file of Sub Court, Dindigul. In fact, after purchase, the revenue officials failed to issue sub-division patta in respect of his land in Survey No. 1955/2 and 1956/2 inspite of his repeated representations. Therefore, the fourth respondent filed WP No. 33741 of 2003 before the Principal Bench of this Court for a Mandamus to consider his representation and it was disposed of on 21.11.2003 directing the respondents therein to consider his representation. Pursuant to such direction, the Tahsildar, Dindigul in his proceeding in Na.Ka.No.1/35/2002 made sub-division of the lands on 23.01.2004 and issued sub-division patta in his name.

Therefore, the learned counsel for the fourth respondent submitted that the allegations raised by the petitioner in the writ petition are motivated. The



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fourth respondent has not encroached upon any public road, as alleged. The writ petition is devoid of any merits and he prayed for dismissal of the writ petition.

7. When the writ petition was taken up for hearing on 17.11.2022, it was asserted by the learned counsel for the second respondent Corporation that no planning permission was given to the fourth respondent for construction and the entire construction is unauthorised one. He further submitted that despite the order dated 09.06.2022 passed by this Court, restraining the fourth respondent from proceeding with the construction, the fourth respondent continued with the construction activities. It was also stated that the second respondent Corporation had put up a lock and seal over the building constructed by the fourth respondent but inspite of the same, the fourth respondent, by removing the seal, proceeded with the construction activities. However, the learned counsel for the fourth respondent denied such submission and submitted that the fourth respondent did not proceed with the construction after the building was sealed by the corporation. In view of such rival submissions made, this Court, by the order dated 17.11.2022 appointed an Advocate Commissioner to inspect the building in question, ascertain the stage of construction and to submit a report. Accordingly, a report dated 24.11.2022 was submitted by the Advocate Commissioner before this Court, in which, it was stated as follows:-



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"4. The subject mentioned property was identified and measured with the help of Corporation officials.

5. The subject mentioned property is located in Survey No. 1954/1B. The subject mentioned property is north facing building, which has ground floor and first floor with a headroom.

6. The subject mentioned property is a building in the size of 42.5 X 45 feet, totalling measuring 1912.5 square feet in ground floor and 1912.5 square feet in first floor. The ground floor has 2 bed rooms with attached bathrooms, kitchen, with store room, pooja room, hall and a portico.

7. The plastering is completed in the ground floor, the tilling is pending in hall and pooja room alone. Both the bathrooms are in functional state. Windows and doors are installed in the ground floor

8. The staircase in the south east direction of the hall leads to the first floor. The first floor has 3 bedrooms with attached bathrooms (plumbing and wiring is partially done) and 2 balconies. The plastering is partially completed in the first floor. Tiling is not at all done in the first floor. The construction looks fresh. Especially the wiring and plumbing.

9. The 1st floor has a headroom which has got two polyvinyl water tanks.

10. The lock and seal were intact. However, the schedule mentioned building has got a way for ingress and egress in the north east.

11. The corporation officials provided Approved Layout Plan and detailed Development Plan Part III.

12. As per the above two documents and on physical measurement of the subject mentioned property, namely the building constructed by the fourth respondent is situated in the existing layout road of 40 feet and proposed scheme road of 20 feet. The building has been constructed in way of obstructing the existing road."

8. We have heard the learned counsel on either side and perused the materials placed on record, including the report of the advocate commissioner.



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9. The learned counsel appearing for the petitioner would contend that the construction put up by the fourth respondent is unauthorised. Even though the petitioner had sent several representations to the respondents 1 to 3 to initiate appropriate action against the unauthorised construction put up by the fourth respondent, no concrete action has been taken thereof. Therefore, the learned counsel for the petitioner prayed this Court to issue appropriate direction to the respondents 1 to 3 in this writ petition to remove the unauthorised construction put up by the fourth respondent within a time frame that may be stipulated by this Court.

10. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would contend that the construction put up by the fourth respondent is unauthorised and therefore, notices dated 28.02.2022 and 28.03.2002 were issued to him seeking his explanation as to why the unauthorised construction put up by him be not demolished. Subsequently, another notice dated 02.05.2022 was issued intimating the fourth respondent that steps are being taken to prosecute him before the competent Criminal Court for having committed the offence under Section 447 of the Indian Penal Code read with Section 296 (1) and 296 (2) of the Dindigul City Municipal Corporation Act. As the fourth respondent did not respond, a final notice dated 19.07.2022 was issued calling up him to stop all further constructions.

By pointing out the above, the learned Additional Government Pleader would



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only submits that respondents 1 to 3 have already taken action against the unauthorised construction put up by the fourth respondent by following the established procedures contemplated under law. While so, the present writ petition filed by the petitioner has to be dismissed enabling the respondents 1 to 3 to proceed with the process of demolition of the unauthorised construction made by the fourth respondent.

11. On considering the submissions made by the counsel for both sides, the relevant provisions contemplated under The Tamil Nadu Town and Country Planning Act as well as the Dindigul City Municipal Corporation Act, it is apparent that the constructions should be made by strictly adhering to the planning permission and any deviations will be viewed seriously, so as to compel the parties to follow the requisite norms, rules and regulations in order to curtail unauthorised construction. In the present case, the notices issued by the second respondent to the fourth respondent as well as the report of the advocate commissioner would clearly indicates that the building in question has been constructed by the fourth respondent without any Building Planning permission from the competent authorities.

12. It is time and again held that unauthorised construction (s) put up with deviation or without any building planning approval should not be encouraged and that the construction of the building must be made by



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scrupulously following the Rules. In the event of any violation brought to the notice of this Court, the same has to be curtailed with iron hands. A Division Bench of this Court, in similar circumstances, passed an order dated 09.01.2018 in the case of ***Kiran bai vs. District Collector, Coimbatore and others in WP No. 14250 of 2017***, wherein, a residential house was constructed in violation of the planning permission and the portion of the offending superstructure was directed to be demolished. In yet another case in ***P. Selvarajan vs. The Commissioner of Municipal Administration, Chennai - 600 005 and others***, a Division Bench of this Court had an occasion to consider an identical case and passed an order dated 13.02.2018 in WP No. 21639 of 2017. In that case, a five-floor commercial complex was constructed in Attur Town, Salem Taluk and District though the building planning permission was obtained to construct ground and first floors only. As the entire building was constructed in violation of the building plan, a notice was issued for removal of unauthorised construction within seven days. The petitioner therein did not challenge the notice, but submitted a representation to the authorities to re-consider their decision. The Division Bench of this Court, after appreciating the facts in detail, ordered that the portion of the construction made in violation of the building plan has to be erased to ground.

13. Again, in the order dated 13.03.2018 passed in WP (MD) No.

<https://www.mhc.tn.gov.in/judis>

21406 of 2017 in the case of ***S. Nagajothi vs. Commissioner of Madurai City***



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Municipal Corporation and others, it was noticed by a Division Bench of this Court that on the basis of a complaint given by the neighbour, the proceedings under the Tamil Nadu Town and Country Planning Act, 1971 were initiated against the petitioner therein. It was also found that the petitioner therein had constructed the building without leaving sufficient side set backs, besides, she had put up a construction on the compound wall, contrary to the building planning permission. Therefore, it was directed that the offending construction has to be removed within a period of forty days by the petitioner herself failing which the Corporation was directed to do so without affecting the stability of the main building and to recover the cost thereof from the petitioner.

14. At this juncture, it would be apposite to refer to a decision of this Court in ***Consumer Action Group v. The State of Tamil Nadu and others*** [(2006) 4 CTC 483 = (2006) 4 LW 41], wherein, the plea of the Consumer Action Group with respect to the violations of the Building norms in the construction of shopping complexes at T. Nagar and at N.S.C. Bose Road, Chennai without allotting Car and Two Wheeler parking spaces in such multi-storied buildings, was considered and after elaborate discussion with all the relevant decisions in the field, it was held at paragraph 37 as follows:

“37. Mere reading of this reveals administrative failure, regulatory inefficiency and laxity on the part of the authorities concerned being conceded which has led to the result, that half of the city buildings are unauthorised, violating the town planning legislation and with staring eyes the Government feels helpless to let it pass; as the period of limitation has gone, so no action could be taken. This mess is the creation



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out of the inefficiency, callousness and the failure of the statutory functionaries to perform their obligation under the Act. Because of the largeness of the illegalities it has placed the Government in a situation of helplessness as knowing the illegalities, which are writ large, no administrative action of demolition of such a large number of cases is feasible. The seriousness of the situation does not stay here when it further records, this is the pattern in other metropolitan cities of India. What is the reason? Does the Act and Rules not clearly lay down, what constructions are legal, what not? Are the consequences of such illegal constructions not laid down? Does the statute not provide for controlled development of cities and rural lands in the interest of the welfare of the people to cater to public convenience, safety, health etc.? Why this inaction? The Government may have a gainful eye in this process of regularisation to gain affluence by enriching coffers of the State resources but this gain is insignificant compared to the loss to the public, which is State concern also as it waters down all preceding developments. Before such pattern becomes cancerous and spreads to all parts of this country, it is high time that remedial measure was taken by the State to check this pattern. Unless the administration is toned up, the persons entrusted to implement the scheme of the Act are made answerable to the laches on their failure to perform their statutory obligations, it would continue to result with wrongful gains to the violators of the law at the cost of the public, and instead of development bring back cities into the hazards of pollution, disorderly traffic, security risks, etc. Such a pattern retards development, jeopardises all purposeful plans of any city, and liquidates the expenditure incurred in such development process.

15. In ***Esha Ekta Apartments Coop Housing Society Limited v. Municipal Corporation of Mumbai [(2013) 5 Supreme Court Cases = (2013) 3 Supreme Court Cases (Civil) 89]***, it was observed by the Hon'ble Supreme Court that the courts are expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions and the relevant passage of the said decision is extracted below:

"1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and



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environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal construction by way of compounding and otherwise."

"8.At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their own hands and get away with it."

"56.We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

16. The aforesaid view was reiterated by the Hon'ble Supreme Court in the decision rendered in ***Supertech Limited v. Emerald Court Owner Resident Welfare Association and others [(2021) 10 Supreme Court Cases 1]*** by holding that illegal constructions have to be dealt with strictly to ensure compliance with rule of law. Paragraphs 159, 160 and 161 of the same read as under:

"159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from the different departments (fire, garden, sewage etc.) and the issuance of occupation and completion certificates. While the



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availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations - the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach of the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns."

17. In **Kerala State Costal Zone Management Authority vs. Maradu Municipality [(2021) 16 Supreme Court Cases 822]**, the Hon'ble Supreme Court has once again reiterated that illegal and unauthorised constructions put up with brazen immunity, cannot be permitted to remain. The relevant passage of the said decision is quoted below:

"107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safeguards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an



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argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument. We find that the view taken by the Kerala High Court in aforesaid decision is appropriate. Permission granted by the Panchayat was illegal and void. No such development activity could have taken place. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

18. Applying the parameters laid down by this Court as well as the Hon'ble Supreme Court in the decisions mentioned supra to the present case, it must be observed that the practice of putting up illegal construction and subsequently seek for regularisation or rectification should not be encouraged as it would give a wrong impression that a building can be unauthorisedly constructed and later, defects could be rectified. In such cases, the plea for regularisation or rectification should not be entertained either as a matter of course or routine and it should be considered sparingly and reasonably. If it is shown that an unauthorised construction has been put up, it should be ordered to be demolished, thereby sending a strong warning signal to the perpetrators of such offences. It may not be out of context to point out at this juncture that the object with which the enactments were made is to promote 'Planned Development' in the city, however, by defeating such object, buildings are constructed with impunity and most of such buildings have gone unchecked.

The officials have seldom initiated proceedings by invoking the Act, that too



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after complaints are given by neighbour or by the person aggrieved by such unauthorised construction in any manner. In most of the cases, buildings are not constructed as per the building planning permission and they are constructed by flouting the building norms, as a result, the concept of planned development becomes a day dream. Unless there is strict enforcement with respect to building norms by identifying the unauthorised construction or deviation at the earliest point of time, before the beneficiaries or owners of the building take possession, it will be difficult for the Courts to issue directives against the parties, who purchase the same for valuable consideration through bank loans, without the knowledge of the deviations in the construction of the building.

19. In the present case, the fourth respondent had constructed the building in question without any building planning permission. Further, the fourth respondent also did not respond to the notices issued by the second respondent corporation within the time, which resulted in sealing of the premises. Despite sealing, the construction was carried on further by the fourth respondent. The report of the advocate commissioner also clearly indicates that building in question had been put up by obstructing the road. Having regard to the above facts, the respondents 1 to 3 are directed to take appropriate steps, as are required, to demolish the unauthorised building put up by the fourth respondent herein, within a period of two weeks from the date of receipt of a copy of this order. It is open to the respondents 1 to 3 to seek



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the police aid, if necessary, to carry out the demolition work.

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20. With the above direction, this writ petition is disposed of. No costs.

(R.M.D., J) (J.S.N.P. J)

16.12.2022

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To

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