



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (MD) .No.7094 of 2022

and

W.M.P. (MD) .No.5379 of 2022

M.Mohamed Ali

... Petitioner

Vs.

1.The District Collector,
Pudukottai District,
Pudukottai.

2.The Block Development Officer,
(Village Panchayat),
Aranthangi,
Pudukottai District.

3.The President,
Merpanaikadu Village Panchayat,
Aranthangi Taluk,
Pudukottai District.

... Respondents

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 pertaining to the impugned order passed by the third respondent in his proceedings Nil dated 05.04.2022 and quash the same as illegal, consequently directing the third respondent to consider the petitioner's applications dated 29.08.2019 and 15.03.2022 to grant approval to the alteration work to be carried out in the building situated at Survey No.204/4 situated at Merpanaikadi Village, Aranthangi Taluk, Pudukottai District.

For Petitioner	:	Mr.T.Lenin Kumar
For R-1	:	Mr.D.Sasikumar, Additional Government Pleader.
For R-2 and R-3	:	Mr.S.P.Maharajan, Special Government Pleader.



ORDER

This Writ Petition has been filed challenging the order dated 05.04.2022 passed by the third respondent calling upon the petitioner to remove the two pillars in his building within a period of ten days.

2. The petitioner has challenged the impugned order on the following grounds:

A) No opportunity of hearing has been granted to the petitioner by the third respondent before passing the impugned order and that the principles of natural justice have been violated.

B) The third respondent failed to follow the procedure contemplated under Rule 34 of the Tamil Nadu Panchayats Building Rules, 1997.

3. According to the petitioner, he constructed the building in memory of his late wife after getting approval from the third respondent on 19.01.2018. Thereafter, he was desirous of putting two pillars in the said building for convenient utilisation of the building. According to him, he applied for planning approval on 29.08.2019 with the third respondent and orally, he was informed to proceed with the construction by the third respondent. It is the case of the petitioner that due to political rivalry, the third respondent, at the instigation of the petitioner's rivals, has passed the impugned order calling upon the petitioner to remove the two pillars in his building within a period of ten days. The petitioner has challenged the impugned order on the above-mentioned two grounds.

4. Heard Mr.T.Lenin Kumar, learned counsel for the petitioner, Mr.D.Sasikumar, learned Additional Government Pleader, who accepts notice on behalf of the first respondent and Mr.S.P.Maharajan, learned Special Government Pleader, who accepts notice on behalf of the second and third respondents.

5. Learned counsel for the petitioner drew the attention of this Court to Rule 34 of the Tamil Nadu Panchayats Building Rules, 1997, which reads as follows:

"34. Demolition or alteration of building works unlawfully commenced carries on or completed:

(1) If the executive authority is satisfied-
(i) that the construction or reconstruction of any building-
(a) has been commenced without obtaining the permission of the Executive Authority;
or



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(b) is being carried or has been completed otherwise than in accordance with the plans and particulars on which such approval or order was passed; or

(c) is being carried on, or has been completed in breach of any of the provisions of this Rules;

(ii) that any alterations required by any notice issued under these Rules have not been duly made; or

(iii) that any alteration of or addition to any building on any other work made or done for any purpose, into or upon any building has been commenced or is being carried on or being completed in breach of Rules, he may make a provisional order requiring the owner or the builder to demolish the work done or so much of it as, in the opinion of the Executive Authority, has been unlawfully executed on to make such alteration as may in the opinion of the Executive Authority be necessary to bring the work into conformity with the Rules, direction or requisitions as aforesaid or with the plans and particulars on which such permission or order was passed and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building.

(2) The Executive Authority shall serve a copy of the provisional order made under sub-rule(1) on the owner of the building together with a notice requiring him to show cause within a reasonable time to be named in such notice, why the order should not be confirmed.

(3) If the owner fails to show cause to the satisfaction of the Executive Authority, the Executive Authority may confirm the order with any modification as he may think fit to make and such order shall then be binding on the owner"

6. In particular, learned counsel for the petitioner highlighted Rule 34(2) referred to supra and would submit that the Executive Authority has to serve a copy of the provisional order made under sub-rule (1) on the owner of the building together with a notice requiring him to show cause within a reasonable time to be named in such notice, as to why the order should not be confirmed.

He would further submit that, in the case on hand, the said



statutory procedure has been violated, as no show cause notice was issued along with the impugned order calling upon the petitioner to submit an explanation within a reasonable time.

7. As seen from the impugned order, as rightly contended by the learned counsel for the petitioner, no show cause notice has been issued to the petitioner along with the impugned provisional order dated 05.04.2022 calling upon the petitioner to remove the two pillars in his building within a period of ten days. The issuance of show cause notice along with the impugned order is mandatory as per the provisions of Rule 34(2) of the Tamil Nadu Panchayats Building Rules, 1997, referred to supra. No opportunity of hearing was also granted to the petitioner thereafter.

8. For the foregoing reasons, since the third respondent has not followed the statutory procedure as contemplated under Rule 34 (2) of the Tamil Nadu Panchayats Building Rules 1997, which is mandatory, the petitioner cannot be directed to demolish the two pillars in his building, unless and until he was given an opportunity of replying to the show cause notice which has to be accompanied along with the impugned order passed under Rule 34(2) of the Tamil Nadu Panchayats Building Rules, 1997. Since show cause notice has not been issued along with the impugned order, the petitioner must be permitted to send a reply to the third respondent, who shall consider the same on merits and in accordance with law.

9. For the foregoing reasons, the impugned order dated 05.04.2022 passed by the third respondent is treated as a show cause notice issued under Rule 34(2) of the Tamil Nadu Panchayats Building Rules, 1997 and the petitioner is directed to send a reply within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of the same, the third respondent shall pass final orders within a period of four (4) weeks thereafter. Till final orders are passed, the status quo, as on date, with regard to the pillars shall be maintained by the respondents. While passing final orders, the third respondent shall consider the application submitted by the petitioner seeking for alteration of his existing building, which was submitted on 29.08.2019 on merits and in accordance with law.

10. With the aforesaid direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (RTI)

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/ /2022

Sub Assistant Registrar (CS)

Lm



To

1.The District Collector,
Pudukottai District,
Pudukottai.

2.The Block Development Officer,
(Village Panchayat),
Aranthangi,
Pudukottai District.

3.The President,
Merpanaikadu Village Panchayat,
Aranthangi Taluk,
Pudukottai District.

+1 CC to M/s.S.P. MAHARAJAN, Advocate(SR-19229[F] dated
19/04/2022)

+1 CC to M/s.T. LENIN KUMAR, Advocate(SR-19298[F] dated
19/04/2022)

+1 CC to M/s.SPL.GP(SR-19336[F] dated 19/04/2022)

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MGJ(02.05.2022) 5P 7C