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W.P.(MD)NO.16761 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16761 of 2020

K. Sundaram

... Petitioner

Vs.

The Commissioner,
Nagercoil Corporation,
Nagercoil.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent corporation to grant building approval to renovate and construct the residential building in Re-survey No.D8/163 (Door Nos.2&3), Patthavillai, Nagercoil, Kanyakumari District, by considering the petitioner's final representation dated 12.10.2020.

For Petitioner : Mr.M.P. Senthil

For Respondent : Mr.P. Aathimoola Pandian,
Standing counsel.

* * *



3. The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief to the petitioner.

4. Per contra, the learned Standing counsel appearing for the respondent raised very many contentions. His foremost contention was that in case after case in similar circumstances, this Court had relegated the individuals to file appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act. According to him, there is no need to make a departure in this case. He would also contend that the conduct of the petitioner cannot be condoned. The petitioner is not new to litigation. He is conversant with the legal formalities. He knew that he cannot put up construction without prior approval from the authorities concerned. Yet he went ahead putting up the impugned construction. That is why, the respondent corporation was constrained to take action against the petitioner. He would also add that the petitioner had also committed encroachment. He called upon this Court to dismiss this writ petition.



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5. I carefully considered the rival contentions and went through the materials on record.

6. Though all the contentions advanced by the learned Standing counsel appearing for the respondent cannot be rejected, the special facts and circumstances obtaining in this case will have to be taken note of. The petitioner did not put up the construction for the first time. He was already residing in the petition mentioned place. I can take judicial notice of the fact that Kanyakumari District witnessed widespread damage and destruction during Okchi cyclone. Photographs produced before this Court clearly indicate that the residence that originally stood in the petition mentioned site suffered severe damage. Therefore, the petitioner was left with no other option but to put up a fresh construction.

7. Right to shelter is a fundamental right. Due to the aforesaid circumstances the petitioner went ahead and put up the construction even without prior approval from the respondent



authority. While I cannot condone the petitioner's act, I can very well understand the same. While I would not fault the respondent corporation for having taken the impugned action, still in the special facts and circumstances obtaining in this case, the petitioner can very well be permitted to seek relief from the respondent, instead of relegating him to file appeal. In case after case in similar circumstances, the appellate authority has granted interim relief enabling the individuals whose premise has been locked and sealed to reopen the same. The petitioner deserves the very same consideration.

8. I therefore permit the petitioner to submit an application to the respondent. The petitioner's application shall not be rejected on the ground that the petitioner had encroached the Government land. This is because, the petitioner had already obtained declaratory decree in his favour in O.S.No.261 of 1981 on the file of the Principal District Munsif, Nagercoil on 13.01.1982. The Government of Tamil Nadu was shown as the eighth defendant in the said suit. Nagercoil Municipality was shown as the ninth defendant



in the said suit. The petitioner obtained declaration in his favour in respect of the $2\frac{3}{4}$ cents of land out of $8\frac{1}{4}$ cents in old Survey No.347/2 of Nagercoil. The petitioner's counsel categorically asserts that the proposed construction will come up within $2\frac{3}{4}$ cents. If this turns out to be incorrect, then the respondent can reject the petitioner's application. If the petitioner's construction will come up within $2\frac{3}{4}$ cents and fulfils the other parameters, the respondent is obliged to grant permission to the petitioner. The entire exercise shall be completed within a period of three weeks after submission of the application by the writ petitioner. It is stated that the petitioner's wife suffered Paralysis and died recently. The petitioner wants to breathe his last in his own house. It is for this reason, I have granted the aforesaid direction. This writ petition stands disposed of in the above terms. No costs.

06.07.2022

Index : Yes / No
Internet : Yes/ No

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G.R.SWAMINATHAN,J.

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To:

The Commissioner,
Nagercoil Corporation,
Nagercoil.

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