



WP (MD) No. 17975 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.11.2022

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

Writ Petition (MD) No. 17975 of 2017

S. Muthupandiyan

.. Petitioner

Versus

1. The District Collector
Madurai District, Madurai
2. The Corporation of Madurai
through its Commissioner
Arignar Anna Maaligai
Madurai - 2
3. Madurai Local Planning Authority
rep. by its Member Secretary
Corporation Building Complex
III Floor, Arignar Anna Maaligai
Madurai - 2
4. The District Officer
Fire and Rescue Service
Madurai District
Madurai
5. The Theni Anantham Pvt Ltd.,
Through its Managing Director
having office at No.709,
Kochi/Madurai/Thanushkodi Road
N.R.T. Nagar, Theni Allinagaram
Theni - 625 531



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Now presently running at
Theni Anantham Silks and Ready-mades
Goripalayam
Madurai - 2

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider and take appropriate action on the petitioner's representation dated 08.09.2017 and take necessary action against the fifth respondent company building in pursuance of Section 15 of Special Rules of Multi Store and Public Buildings Act and to protect the river bed of Vaigai.

For Petitioner : Mr. S. Mahendrapathy

For Respondents : Mr. S.P. Maharajan
Special Government Pleader for RR1, 3 and 4

Mr. T.S. Mohammed Mohideen for R2

Mr. J. Anandkumar for R5

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

The petitioner has filed this writ petition as a *Pro-bono Publico* praying to issue a Writ of Mandamus directing the respondents 1 to 4 to consider his representation dated 08.09.2017 and take appropriate action against the fifth respondent company for having constructed a multi-storeyed building in contravention of Rule 15 of the Special Rules for the Multi Storeyed and Public Buildings, 1974, so as to protect the river bed of Vaigai.



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2. The case projected by the petitioner in the writ petition is as follows:

2.1. The fifth respondent company has constructed a multi storey building consisting of seven floors, where they are carrying on ready made textile business from 15.09.2017, which is adjacent to the Vaigai river bed and very near to Goripalayam to Simmakal Albert Victor Bridge. The apprehension of the petitioner is that due to existence of such a huge construction in the river bed, there is every likelihood of damage to the building during flood and other natural calamities, in which event, it will be dangerous to general public, who pass through the bridge.

2.2. Further, the fifth respondent has constructed the building without providing adequate facility for parking, as a result of which, those who visit the show room, are made to park the vehicle on the river, thereby causing ecological damage and pollution to the river water. Further, the building was constructed without following the safety parameters, in the event of any fire mishap. Thus, according to the petitioner, a commercial building of this size ought not to have been permitted to be constructed in the river bed or near a public overbridge.



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2.3. The petitioner came to know that earlier, the authorities concerned refused to accord approval to the building to be constructed by the fifth respondent. Challenging the same, the predecessor of the fifth respondent initiated a litigation, which ultimately ended in an order dated 07.10.2016 passed by the Hon'ble Supreme Court in Civil Appeal No. 10425 of 2014, in which, the second respondent was directed to consider the claim of the petitioner therein with respect to deviation and consider the building plan submitted by the owner of the building in accordance with law. However, the second respondent, without proper verification, granted permission for construction of the said building.

2.4. Stating that the fifth respondent, in violation of the relevant rules, has constructed the building and opened it for public use, the petitioner sent a representation dated 08.09.2017 to the respondents 1 to 4 seeking to initiate appropriate action against the fifth respondent. Since the said representation has not been considered till date, he has come up with this writ petition.

3. Upon notice, the second respondent filed a detailed counter affidavit, wherein, it is *inter alia* stated that the building put up by the fifth respondent is located in the land comprised in T.S. No. 1399/2 and 1400, Ward



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No.36, Zone II, Thiruvakadapuram, Madurai Corporation. The building plan was approved by Madurai Corporation by its proceedings in No. NE1/03888/2009 bearing Order No.214/2009 dated 25.04.2019 for commercial usage. A stability certificate was also provided by a competent Engineer. However, by pointing out certain deviations, a notice under Sections 282, 293 (1) and (2) of Madurai Corporation Act, 1971 was issued, after completion of the building. Challenging the said notice, the fifth respondent filed WP (MD) No. 9854 of 2012 and it was disposed of by this Court on 13.12.2012 with a direction to provide sufficient opportunity to the petitioner therein (fifth respondent herein) to submit their explanation and proceed further in accordance with law. Aggrieved by the said order, the Corporation filed appeal before this court and thereafter, further appeal before the Hon'ble Supreme Court in SLP (Civil) No. 10425 of 2014, which was disposed of, with a direction to consider the claim of the owner of the building in accordance with law. Pursuant to the same, the claim of the fifth respondent was considered and ultimately, a completion certificate was issued on 05.04.2017, subject to certain conditions. It is further stated in the counter affidavit that the representation of the petitioner dated 08.09.2017 was considered and a detailed reply was sent by the second respondent through letter bearing No. 102/13/17067/17 dated 27.12.2017, rejecting the claim of the petitioner and therefore, the relief sought in this writ petition has become



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infructuous. With these averments, the second respondent prayed for dismissal of this writ petition.

4. We have heard the learned counsel for both sides and perused the materials placed on record.

5. In this writ petition, the petitioner stated that his representation dated 08.09.2017 seeking appropriate action against the fifth respondent for having constructed a multi storey building near the river bed of Vaigai in violation of Rule 15 of the Special Rules for the Multi Storeyed and Public Buildings, 1974, has not been considered by the respondent authorities and hence, it warrants the issuance of a mandamus.

6. However, when the matter was taken up for consideration, the learned counsel appearing for the second respondent reiterated the averments made in the counter affidavit and produced a copy of the communication dated 27.12.2017, wherein, it was categorically stated that the fifth respondent has constructed the building with all the safety measures in accordance with the relevant rules, and hence, the claim of the petitioner was rejected.



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7. In view of the above, this court is of the opinion that the representation of the petitioner has already been considered by the second respondent and hence, the prayer made herein no longer survives for consideration. In such circumstances, this writ petition stands closed, leaving it open to the petitioner to challenge the proceedings dated 27.12.2017 sent by the second respondent in the manner known to law, if so advised. No costs.

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

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Index : Yes / No

Internet : Yes / No

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