



W.P.No. 23380 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 28.11.2023**

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU  
AND  
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No. 23380 of 2023**

S.Kannan

... Petitioner

Vs

1.The District Collector,  
Thiruvarur District,  
Thiruvarur – 610004.

2. The Assistant Director,  
District Urban Planning Office,  
Collectorate, Thiruvarur – 610 004.

3.The Town and Country Planning Officer,  
Thiruvarur District,  
Thiruvarur

4.The Tahsildar,  
Koothanallur Taluk,  
Thiruvarur District – 614 004.

5. The Block Development Officer,  
Koradacherry, Thiruvarur District – 613 703.



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6. The President,  
Kavanur Panchayat  
Koradacherry Taluk,  
Thiruvavarur District.

7. M.Karthikeyan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 1 to 6 to consider the representation of the petitioner dated 19.06.2023 to demolish the unauthorised and illegal construction of marriage party hall in the name and style of Mega Dining and Va.Vu.Si. Hall in S.No.59/3B1 to the extent of 325 Sq.Mt raised by the 7<sup>th</sup> respondent based on the proceedings of the 4<sup>th</sup> respondent in Na.Ka.No.1425/2023/A4 dated 04.07.2023 and the proceedings of the 6<sup>th</sup> respondent dated 14.11.2022.

For Petitioner : Mr. V.Elangovan

For Respondents : Mr.Stalin Abimanyu for R1 to R4  
Additional Government Pleader  
Mr.T.Chezhiyan for R6  
Mr.S.Sathia Chandran for R7

### **ORDER**

**(Order of the Court was made by J.Nisha Banu,J)**

This writ petition has been filed to direct the respondents 1 to 6 to consider the representation of the petitioner dated 19.06.2023 seeking to demolish the unauthorised and illegal construction of marriage party hall



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raised by the 7<sup>th</sup> respondent.

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2. It is averred in the writ petition that the 7<sup>th</sup> respondent made an application to the 6<sup>th</sup> respondent for the construction of commercial building in S.No.59/3B1 to the extent of 2000 Sq.ft and the 6<sup>th</sup> respondent granted planning approval to the 7<sup>th</sup> respondent, by applying G.O.Ms.No.154 of Housing and Urban Development dated 13.10.2020.

3. The petitioner further averred that the 7<sup>th</sup> respondent in contravention of planning approval, constructed a commercial building viz., Marriage Party Hall. Therefore, members of the panchayat council made a complaint to the BDO, Koradachery. The 5<sup>th</sup> respondent/BDO directed the 6<sup>th</sup> respondent to cancel the planning permission dated 21.10.2020.

4. As a consequence, the 6<sup>th</sup> respondent cancelled the planning permission on 25.10.2021 and instructed the 7<sup>th</sup> respondent to get permission from the appropriate authority. The 7<sup>th</sup> respondent without following the instructions, continued the said building for commercial purpose. On 19.06.2023, the petitioner made a complaint to the official respondents



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seeking to demolish the unauthorized construction put up by the 7<sup>th</sup> respondent.

5. On 04.07.2023, the 4th respondent had issued notice stating that unless the 7<sup>th</sup> respondent restrained himself from using the building for public purpose, stringent action will be taken against him by invoking Section 16 of the Tamil Nadu Public Building (Licensing) Act, 1965. However, the 7th respondent still continuing his operations in the said premises without any approval inspite of all proceedings taken against him. Hence, the present writ petition.

6. Learned counsel for the petitioner drew the attention of this Court to the Judgment dated 06.07.2018 in the case of ***The Tamil Nadu Unaided Polytechnic Management Association & another vs The State of Tamil Nadu Represented by the Secretary to Government Housing & Urban Development Department, Chennai & others***, in which paragraph No.46 reads as follows:

“ 46. In cases, which may include the petitioners herein, where the Executive Authority of the Panchayat might not have consulted either the Joint Director or the



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*Deputy Director of Town and Country Planning before granting permission for construction of public buildings, this Court declares:*

*(a) In all such cases, the Executive Authority is directed to forward the papers to the Town Planning Authority, who may now consider them, and if required visit the premises in question, and offer his advice if the constructions have complied with all necessary 53 statutory Rules and Regulations, and the latter shall forward his views or opinions to the Executive Authority. If opinions offered are positive, in that if the constructions are found to have complied with the Rules and Regulations and such other legal requirements, then the Executive Authority shall issue an order ratifying his earlier order granting his permission. This will apply only to those public buildings in the Panchayat area constructed after the coming into force of the Tamil Nadu Panchayat Building Rules, 1997 till today, the date of this Order, and not to any future application for constructions.*

*(b) Where any permission has been granted by the Executive Authority of the Panchayat without consulting the joint or Deputy Director of Panchayat in terms of Proviso to Rule 25, but no construction has yet commenced, it shall not be commenced, till opinion of the Town Planning Authority is obtained. If the opinion is not negative, then the earlier permission granted shall, subject to other provisions of law, remain in force. If the opinion of the Town Planning Authority is negative, the Executive Authority of the Panchayat shall forthwith cancel the permission earlier granted after following the due process of law.*

*(c) In cases of partially constructed buildings, no completion certificate or other amenities be provided unless a favourable opinion is given 54 by the Town Planning Authority.*



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*(d) In all cases falling under (a) and (c), if the opinion of the Town Planning Authority is negative, then such authorities as are empowered to initiate action for illegal constructions shall initiate appropriate actions as per law. The power to grant sanction for construction by the Panchayat is no answer to a builder or a developer violating Rules and Regulations pertaining to construction activities.*

*47. In conclusion, this Court holds that (a) neither Section 49 nor Section 111(3)(b) of the Tamil Nadu Town and Country Planning Act is unconstitutional; (b) Sec.111(3)(b) of the TCP Act, to the extent it relates to constructions made without permission under Sec.49 of the TCP Act after the commencement of Tamil Nadu Panchayat Building Rules, 1997, is declared inoperable, and accordingly, subject to the declaration/directions given in paragraphs 44 and 46, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.”*

The learned counsel submitted that any development intended by any person confirms to the development plans.



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7. The learned counsel appearing for the 6<sup>th</sup> respondent-Kovanur Panchayat President would submit that the Executive Authority/6<sup>th</sup> respondent granted NOC for the building plan. The 7<sup>th</sup> respondent constructed the building beyond the permitted area in the plan approval. In this regard, the competent Authorities had issued several notices to the 7<sup>th</sup> respondent, restraining him from conducting public functions and to stop the usage of the said building. He further submitted that the 3<sup>rd</sup> respondent is the Competent Authority to take appropriation action under Sections 56 and 57 of Tamilnadu Town and Country Planning Act, 1971.

8. Learned counsel appearing for the 7<sup>th</sup> respondent would submit that Panchayat President is the Executive Authority of the Village Panchayat as per Rule 2(3) of the Tamil Nadu Panchyat Building Rules, 1997.

9. He further submitted that Rule 25 of the said Rules deals with Multi-storeyed and Public buildings wherein it is stated that every person who is intending to construct, reconstruct, add or alter any public building other than Government building shall follow the



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provisions of the Multi-storeyed and Public Building Rules 1973 and the proviso to the Rules states that Executive Authority should grant permission only after consulting the concerned Joint Director of Deputy Director of Town and Country Planning.

10. The learned counsel for the 7<sup>th</sup> respondent contended that since he obtained planning approval from the Panchayat, there is no need for him to apply for permission for construction to the Town Planning Authority under Section 49 of the TCP Act. He would further submit that 7<sup>th</sup> respondent applied for Building Plan Approval to the competent authority and obtained the same and constructed the building as per the approved plan. The petitioner with vested interest filed this writ petition and has no merits.

11. We have heard submissions of the learned counsel made on either side and perused the materials available on record.

12. We perused the facts of the case and the submissions made by the learned counsel for the respective parties and carefully



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gone through the the dictum laid down by this court in the Judgment made in W.P.Nos.17236 of 2013 and 3622 of 2014 dated 06.07.2018

*[The Tamil Nadu Unaided Polytechnic Management Association & another vs The State of Tamil Nadu Represented by the Secretary to Government Housing & Urban Development Department, Chennai & others]* and the Government Order issued in G.O.(Ms).No.154 Housing and Urban Development [UD4(3)] Department dated 13.10.2020.

The Division Bench of this court in the above referred to judgment has held that there is no need for a person to apply for permission for a construction within the Panchayat to the Town Planning Authority under Section 49 of the TCP Act; the Executive Authority shall engage in a consultative process with the Joint Director or Deputy Director, Town and Country Planning providing the latter with all necessary materials and particulars for the latter to form his opinion and advice. In paragraph 46 of the said judgment, this court has further held that the power to grant sanction for construction by the Panchayat is no answer to a builder or a developer violating Rules and Regulations pertaining to construction activities.



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13. Even though the petitioner relied on the observation of the said judgment that the constructions made without application made under Section 49 of the TCP Act after the commencement of Tamil Nadu Panchayat Building Rules, 1997 is unlawful, as per the Government Order in G.O.Ms.No.154 H&UD Department dated 13.10.2020, the Government delegated the power to Local Bodies for grant of Planning permission for residential buildings as well as for commercial buildings upto 10,000 sq.ft. Therefore, we direct the 7<sup>th</sup> respondent to represent before the 3<sup>rd</sup> respondent with all relevant documents in respect of Notice issued by the 4<sup>th</sup> respondent for continuation of the functioning of the Marriage hall. The competent authority shall scrutinise the application, approval already granted and the Government Orders issued in this regard and pass necessary orders after affording due opportunity to the 7<sup>th</sup> respondent and the parties concerned. The said exercise shall be completed within a period of eight(8) weeks by following due process of law.

14. The writ petition is disposed of with the above directions.  
No costs.

Index : Yes / No  
msv

(J.N.B,J.) (N.M., J.)  
28.11.2023



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**J. NISHA BANU, J.**

**and**

**N.MALA,J.**

msv



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