



W.P.(MD)No.3474 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **11.10.2023**

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD)No.3474 of 2010
and M.P.(MD) No.1 of 2010

Balakrishnan

...Petitioner

-Vs.-

1.The Commissioner,
Madurai City Municipal Corporation,
Madurai.

2.Kathija Beevi
(R2 impleaded as per order of this Court
dated 23.03.2010 in M.P.(MD) No.2/2010
in W.P.(MD) No.3474 of 2010.

...Respondents

PRAYER:- Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondent from taking any coercive action of demolishing and removal of the construction of the petitioner in door number I.A. Olai pattinam Second Lane, Munichalai Road, Madurai, pending disposal of the appeal plan for regularisation by the Directorate of Town Planning, Chennai.



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W.P.(MD)No.3474 of 2010

For Petitioner : Mr.J.Barathan

For Respondents : Mr.K.Manisekaran for R1

No appearance for R2

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The relief sought for is to forbear the first respondent from taking any coercive action of demolition and removal of the construction of the petitioner in door number I.A. Olaipattinam Second Lane, Munichalai Road, Madurai, pending disposal of the appeal plan for regularization by the Directorate of Town Planning, Chennai.

2. The petitioner is the owner of a house measuring 650 square feet situated at Olaipattinam Second Lane, Munichalai Road, Madurai. The second respondent, neighbour of the petitioner, filed a civil suit in O.S.No.289 of 1991 on the file of the Principal District Court at Madurai, seeking a decree for permanent injunction and mandatory injunction. The suit claim was for easementary right of light and air of the property belonging to the second respondent. The suit was dismissed on



W.P.(MD)No.3474 of 2010

17.09.2001. Appeal Suit filed in A.S.No.50 of 2002 was also dismissed on 30.09.2009. The judgment and decree in appeal suit became final.

3. The second respondent made a representation to the first respondent Commissioner stating that the petitioner has violated the building plan approval and therefore, the residential building is to be demolished. Since the Corporation initiated action, the petitioner is constrained to move the present Writ Petition. That apart, the petitioner filed an application seeking regularization of the violations in the prescribed format. During the pendency of the application for regularization, action was initiated.

4. The learned counsel for the petitioner mainly contended that the subject property is a small residential house constructed in 650 square feet and the petitioner and his family members are residing there. The application seeking regularization submitted before the first respondent is pending and yet to be disposed of.

5. Learned counsel appearing on behalf of the Corporation made a submission that the application, if at all submitted 13 years back,



W.P.(MD)No.3474 of 2010

has not been pursued by the petitioner and therefore, the Corporation is not in a position to consider the same at this length of time.

6. The petitioner has enclosed the copy of the letter dated 08.02.2010, wherein, the Commissioner, Madurai Corporation, has forwarded the regularization application to the directorate of Town and Country Planning. Thus, the application is now pending before the Directorate, which is to be pursued by the petitioner. On account of efflux of time, if the application is not available, the petitioner is at liberty to submit a fresh application in the manner contemplated under the provisions of the Act. In the event of submitting any such application, the same may be considered on merits and in accordance with law by following the procedures contemplated.

7. At the outset, the petitioner is at liberty to pursue the application already submitted or submit a fresh application seeking regularization of the violations committed by him in respect of the building plan approved by the competent authorities.



W.P.(MD)No.3474 of 2010

8. With this liberty, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC :Yes/No
Index :Yes/No
SJ

**[S.M.S.J.,] & [V.L.N.J.,]
11.10.2023**



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W.P.(MD)No.3474 of 2010

S.M.SUBRAMANIAM, J.
AND
V. LAKSHMINARAYANAN, J.

SJ

W.P.(MD)No.3474 of 2010

11.10.2023