



W.P.(MD)No.14871 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.14871 of 2011

and

M.P.(MD)Nos.1 and 2 of 2011

K.S.Beevi Nurrani

... Petitioner

Vs.

1.The Member Secretary,
Local Planning Authority,
Madurai Corporation Building 3rd Floor,
Madurai.

2.The Commissioner,
Madurai Corporation, Madurai.

3.M.Muthuraman

4.M.Pakkiam

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the planning permission No.Nil, dated 05.11.2009 issued by the 1st respondent and that of the building permission No.501/2009, dated 05.11.2009 issued by the 2nd respondent and quash the same as without jurisdiction, illegal and null and void and directing the respondents, more particularly, the respondents 1 and 2 jointly and severally to



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demolish the building being built by the respondents 3 and 4 allegedly under the above said permits and further, directing the respondents to put the land thereat to proper and lawful use in accordance with law.

For Petitioner : Mr.S.Sitharthan
For R1 : Mr.T.Amjadkhan, Government Advocate
For R2 : Mr.K.K.Kannan, Standing Counsel
For R3 & R4 : Mr.H.Arumugam,
For Mr.P.P.Alwin Balan

ORDER

(Order of the Court was made by ***V.LAKSHMINARAYANAN, J.***)

This Writ Petition is filed challenging the planning permission issued by the respondents 1 and 2 with consequential direction to the respondents 1 and 2 jointly and severally to demolish the building being built by the respondents 3 and 4 allegedly under the above said permits and to put the land thereat to proper and lawful use in accordance with law.

2. The case of the writ petitioner is that the respondents 3 and 4 are the owners of the plot measuring 4378 Sq.ft at No.5F, II Street, Vinayaga Nagar, Madurai. The petitioner is the neighbour of the respondents 3 and 4. In March 2010, the third and fourth respondents started putting up a hotel and a lodge. The



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petitioner came to know that the construction to an extent of 10 floors (including stilt and ground floors) is an unauthorized one. She pleaded that the construction is in contravention of the approval. No set backs had been left out. With great effort, she secured a copy of the building permission, which is impugned in the present Writ Petition.

3. The plea of the petitioner is that the Commissioner, Madurai Corporation had granted permission for a commercial building in a residential zone. On account of the multi-storeyed construction, it has affected the sewerage connections and the building has been constructed in violation of the approval. Feeling aggrieved by the sanction granted by the second respondent, she challenges the planning permission granted on the following grounds:

- a) Permission of commercial building in a residential zone is bad,
- b) The permission violates Multi-storeyed and Public Buildings Rules, 1973,
- c) The planning permission and building permission were approved by the same authority and the construction is illegal.

Challenging the planning permission on these grounds, the petitioner prayed for allowing the Writ Petition.



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4. The first respondent, Local Planning Authority filed a counter stating that the third and fourth respondents have not secured any building permission from it. The appropriate authority to grant permission for a multi-storeyed commercial building is the Director of Town and Country Planning, Chennai. The second respondent, namely, the Madurai Corporation had been empowered only to give planning permission for 200 Sq.m (2152 Sq.ft) in case of residential buildings and 100 Sq.m (1056 Sq.ft) in case of commercial buildings. This is in terms of the delegation, which had been given by the Director of Town and Country Planning, Madras, in his Circular No.41474/1993/D1 dated 24.09.1993. The building, which is existing, excluding the stilt floor is 1826.72 Sq.m and therefore, exceeds the power delegated to the second respondent.

5. As per G.O.Ms.No.164, Municipal Administration and Water Supply Department dated 15.06.1994, no building can be constructed or re-constructed in the City of Madurai when it exceeds 15 meter, whereas, the existing building is of an extent of 31.90 meter.

6. Apart from the fact that the second respondent did not have the power, the building violates the Multi-storeyed and Public Buildings Rules, 1973 as stated below:



S. No	Description	As per rule	As per approved plan	Deviation	Percentage of violation
1	Maximum FSI(Section 9)	1.60	4.74 (2087.68/440.33)	3.14	196.25%
2	Maximum plot coverage	40%	59.26% (260.96/440.33X 100)	19.26	48.15%
3	Minimum set back (height of building 31.90m)	11.0 m on all the four sides	Front side:- 4.5 m	6.5m	59.09%
			Back Side:-3.0m	8.0 m	72.73%
			Northern side:-1.5m	9.5m	86.36%
			Southern side:-1.5m	9.5m	86.36%

7. Though the permission granted by the second respondent is illegal, even after securing such permission, the third respondent did not construct as per the plan. The percentage of violations are given hereunder:

S. No	Description	As per rule	As per site	Deviation	Percentage of violation
1	Maximum FSI(Section 9)	1.60	7.58 (3337.92/440.33)	5.98	373.75%
2	Maximum plot coverage	40%	94.75% (417.24/440.33X 100)	54.75	137%
3	Minimum set back (height of building 31.90m)	11.0 m on all the four sides	Front side:- 0.6 m	10.4 m	94.5%
			Back Side:-0.4m	10.6 m	96.3%
			Northern side:-0.15 m	10.85 m	98.6%
			Southern side:-0.15m	10.85 m	98.6%



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8. Insofar as zoning violation is concerned, as per the Madhichiyam Detailed Development Plan Part III-B, the area in which the building has been constructed has been classified partly as 'Residential Use Zone' and partly as 'Commercial use Zone'. No multi-storeyed construction can be permitted in this zone without the approval of the Government. As per the Town Planning Scheme read with Section 4(a) of the Multi-Storeyed and Public Buildings Rules, 1973, a construction of a multi-storeyed building should not exceed the maximum number of height prescribed for the particular area. Crucially and most importantly, the first respondent had taken a stand that the approval had been granted by the second respondent forging the seal of the Local Planning Authority. We will deal with this later.

9. The second respondent filed a counter affidavit stating that as per the proceedings dated 30.12.1993, in exercise of the powers under Section 91-A(1) of the Town and Country Planning Act, the Local Planning Authority, namely, the first respondent had delegated the power to grant planning permission in respect of all buildings in favour of the Commissioner, Madurai Corporation. This is in terms of the proceedings of the Director of Town and Country Planning, Madras dated 24.09.1993. This delegation of power was withdrawn only on 14.06.2010.



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Therefore, it is the specific plea of the second respondent that for the period commencing from 30.12.1993 to 01.08.2010, it was the second respondent, who had the power to approve all building plans.

10. Insofar as the present case is concerned, the second respondent pleaded that building permission was granted on 05.11.2009 in terms of the delegation dated 30.12.1993. According to him, the Corporation followed all the rules and regulations prior to granting approval to the third and fourth respondents. Having supported the power to approve plans, the second respondent submitted that it was regularly inspecting the construction of the third and fourth respondents and found that there were certain deviations from the original plan. In view of the same, the second respondent had issued a notice on 25.01.2011 in terms of Section 282, 296(1) and 296(2) of the Madurai City Municipal Corporation Act. It further records that despite the notice having been given about the deviation, no reply was given by the private respondents and therefore, the deviation was confirmed on 06.01.2011. Despite the confirmation of the deviations in terms of the aforesaid proceedings, since the private respondents did not rectify the deviation, the second respondent imposed a penalty and in acceptance of the deviations, the private respondents also paid the same.



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11. The second respondent further pleaded that the Multi-storeyed and Public Buildings Rules do not apply to the Madurai Corporation, since it was enacted under a different statute. Therefore, the second respondent prayed for dismissal of the Writ Petition.

12. The third and fourth respondents filed a common counter on 01.10.2012. In the said counter, it was stated that they were putting up a ten storeyed construction only after obtaining proper permission and permit. They denied the fact that there were deviations in the set back, but at the same time, pleaded that a revised proposal had been submitted to the second respondent, for which, they had paid a sum of Rs.2,02,516/- and that the same was pending. The plea on zoning regulation was denied. It was argued that it is a mixed residential zone and therefore, construction of building was proper. It was further argued that it is always open to the authorities to regularise the deviations in terms of the Town and Country Planning Act.

13. The private respondents also argued that in terms of the delegation of powers dated 30.12.1993, the plan approval granted by the second respondent is valid. Therefore, a plea was made for dismissal of the Writ Petition.



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14. Heard Mr.S.Sitharthan, learned counsel for the petitioner, Mr.T.Amjadkhan, learned Government Advocate for the first respondent, Mr.K.K.Kannan, learned Standing Counsel for the second respondent and Mr.H.Arumugam, learned counsel for the third and fourth respondents.

15. The sheet anchor of the case of the respondents 2 to 4 is that the Madurai City Municipal Corporation has the jurisdiction to approve constructions as the same had been delegated by the Local Planning Authority. It is here that we have to extract the said delegation in the notification, which reads as follows:

“ORDER:

Powers to issue Planning Permission have already been delegated to Commissioner, Madurai Corporation for buildings in non detailed Development Plan areas and residential buildings in detailed development areas in the Resolutions 1st & 2nd cited.

The Director of the Town and Country Planning has given Guidelines in the reference 3rd cited regarding the power delegation to local bodies with reference to issue of Planning Permission.

By considering all the views and in supersession of the resolutions already passed and in exercise of the powers conferred under Section 91-A(1) of the Town and Country Planning Act, 1971, the Madurai Local Planning Authority delegates its power to the Commissioner,



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Madurai Corporation to issue Planning Permission for the following cases as resolved in its Resolution No. 7 dated 6.12.1993:

1. To issue Planning Permission for all the buildings in Madurai Corporation which satisfy all the rules in force.

2. Those cases which are in contravene to the Master Plan, Zoning Regulations, proposals of the Detailed Development Plans, Scheme clauses, Parking Bye-laws, Madurai City Corporation Building Rules, Multi-storied and Public Building Rules, Layout conditions, etc., in existence should be forwarded to Director of Town and Country Planning, Madras through Local Planning Authority.

A reading of this proceedings shows that power had been delegated under Section 91-A(1) of the Town and Country Planning Act by the Madurai Local Planning Authority to the Commissioner, Madurai Corporation. This was conditional on the following:

(i) It was to be in terms of the delegation made by the Director of Town and Country Planning in terms of his Circular No.41474/1993/D1 dated 24.09.1993.

(ii) Cases which contravened the following:

- a) zoning regulation,
- b) detailed development plans,
- c) scheme clauses



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d) parking bye-laws,

e) Madurai City Corporation Building Rules,

f) Multi-storied and Public Building Rules, layout conditions, etc.,

would have to be placed before the Director of Town and Country Planning, Madras through the Local Planning Authority. Therefore, necessarily, we have to refer to the proceedings dated 24.09.1993. The extract of the proceedings dated 24.09.1993 are hereunder for ready reference:

உள்ளூர் திட்டக் குழுமங்கள் மற்றும் புறநகர் வளர்ச்சி குழுமங்களின் கட்டுப்பாட்டில் உள்ள அனைத்து உள்ளாட்சிகளுக்கு விதிகளுக்கு உட்பட்டு திட்ட அனுமதி வழங்கும் அதிகாரம் கீழ்காண் வகையில் வழங்கப்பட்டுள்ளது.

வ. எண்	கட்டிடப் பயன்பாடு	மொத்த தளங்கள்	குடியிருப்பு எண்ணிக்கை	மொத்த தளப்பரப்பு	கட்டிட பயன்பாடு
1	குடியிருப்பு	தரை தளம் + முதல் தளம்	1	200 சதுர மீட்டர்	தனித்த கட்டிடம்
2	வணிக கட்டிடம்	தரை தளம் + முதல் தளம்	-	100 சதுர மீட்டர்	தனித்த கட்டிடம்

A reading of this shows that the Director of Town and Country Planning had delegated the powers of the local bodies to issue planning permission, if the residential buildings were within 200 Sq.m and in case of commercial (non-residential) buildings, then it was restricted to 100 Sq.m. Apart from that,



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the delegation also specifically states that the buildings to be approved by the Corporation can consist of a ground floor and first floor. These guidelines are specifically referred to in the proceedings dated 30.12.1993.

16. It is in the light of this Circular, that we have to refer Clause 1 of the power of delegation, which reads as follows:

*“1. To issue Planning Permission for all the buildings in Madurai Corporation which satisfy **all the rules in force.**”*

Therefore, it is the duty of the second respondent to ensure that the approval of the buildings are in tune with the Circular issued by the Director of Town and Country Planning dated 24.09.1993 and in terms of the delegation dated 30.12.1993. This is the reason why Clause 2 of the delegation order specifically states in case there is any deviation, it has to be placed before the Director of Town and Country Planning through the Local Planning Authority. This has not been done in the present case. On the contrary, the second respondent had violated the Rules as well as the powers by exceeding the power of delegation and approving a superstructure of more than one floor.

17. It is admitted by the second respondent as well as by the private



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respondents that the papers were never placed before the first respondent or before the Director of Town and Country Planning. Though the second respondent only had the power to approve buildings, which consists of a ground and first floor, it proceeded further and has granted permission for a building, which today stands ten storeys. Under such circumstances, we are unable to agree to the contention of the second respondent as well as the private respondents that the Madurai City Municipal Corporation had the power to grant permission to put up superstructure beyond those which had been delegated by the first respondent or by the Director of Town and Country Planning.

18. The law has been well settled by the Supreme Court in several judgments. It would be suffice to refer to three of them. The first one being ***Minerva Mills v UOI, AIR 1980 SC 1789***, the Supreme Court was pleased to hold as follows:

“The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one”.

Similarly, in ***Deepak Agro Foods v. State of Rajasthan, (2008) 7 SCC 748***, the Supreme Court held that where an authority lacks jurisdiction, the order is null, non est and void *ab initio*. The relevant paragraph is extracted hereunder:

“Where an authority making order lacks inherent



jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See Kiran Singh v. Chaman Paswan) [AIR 1954 SC 340].”

This position has been reiterated in ***DLF Universal Limited v. Director, Town and Country Planning Department, Haryana, (2010) 14 SCC 1***. The relevant portion is extracted hereunder:

“54. It is thus clear that there is no provision in the Act, the Rules or in the licence that empowers the Director to fix the sale price of the plots or the cost of flats. The impugned directions issued by the Director are beyond the limits provided by the empowering Act. The directions so issued by the Director suffer from lack of power. It needs no restatement that any order which is ultra vires or outside jurisdiction is void in law i.e. deprived of its legal effect. An order which is not within the powers given by the empowering Act, it has no legal leg to stand on. The order which is ultra vires is a nullity, utterly without existence or effect in law.”

19. From the facts and law stated above, we are able to discern that the



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second respondent exceeded the limited power of delegation granted to it and converted the limited power to grant planning permission for buildings, which are to a maximum of 100 Sq.m in case of commercial buildings and 200 Sq.m in case of residential buildings, into an unlimited one and has granted permission for a building, which is about nearly 1830 Sq.m, a whopping eighteen times the authorisation granted by the Director of Town and Country Planning. For the exercise of this power, it did not have the necessary jurisdiction. Therefore, the planning permission has to be interfered with.

20. This takes us to the next point, namely, whether there has been any zoning violation in the present case. The counter affidavit filed by the second respondent Corporation reveals a lot. Though a specific plea has been taken that there has been a contravention of the zoning regulation, it has not been stated by the second respondent that, that is not the situation. On the contrary, the first respondent has specifically stated that the area in which the building has been situated, was partly given as a residential use zone and partly as a commercial zone. It also specifically states that multi-storeyed building cannot be constructed in this zone. This leads us to the a conclusion that there is a zoning violation. If there is a zoning violation, then as per the delegation dated 30.12.1993, the entire



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file should have been placed before the Director of Town and Country Planning.

This is because the power to change zones is not available with the second respondent or even with the first respondent, but is vested only with the State of Tamil Nadu. Therefore, we come to an irresistible conclusion that even on the ground of zoning violation, the building could not have been approved by the second respondent.

21. Insofar as the argument on Multi-storied and Public Buildings Rules, 1973, is concerned, we are not in agreement with the writ petitioner, since the said Rules itself states that it is applicable to all City Municipal Corporations except Madurai and Chennai. Therefore, the argument of the writ petitioner that the building is in contravention of the said Rules is rejected.

22. Furthermore, the plea of the writ petitioner that the building is contrary to G.O(Ms)No.164, Municipal Administration and Water Supply Department dated 15.06.1994, is concerned, it has been clarified in G.O.(Ms) No.22, Municipal Administration and Water Supply Department, dated 30.01.1997 as follows:

“2. மேற்படி ஆணைகளின்படி புராதன நகரங்களில் கட்டக் கூடிய கட்டடங்களுக்கான அனுமதியை அரசிடம் பெற வேண்டும்



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என்பதில் நடைமுறையில் ஏற்படுகிற பல சிக்கல்களையும் காலதாமதங்களையும், பொது மக்களுக்கு ஏற்படுகிற பிரச்சனைகளையும் தவிர்க்கும் பொருட்டு, மேற்படி அரசாணைகளை இரத்து செய்வது பற்றி அரசு பரிசீலனை செய்தது.

3. பரிசீலனைக்குப்பின் மேலே பத்தி 1ல் கூறப்பட்டுள்ள அரசாணைகளை அரசு இரத்து செய்கிறது. மேலும் இணைப்பில் கண்டுள்ள 38 புராதன நகரங்களிலும், புராதன கோயிலின் சுற்றுச் சுவரிலிருந்து 1 கிலோ மீட்டர் சுற்றளவிற்குள் கட்டப்படும் கட்டிடங்கள் (தரைத் தளம் மற்றும் முதல் தளம்) 9 மீட்டர் உயரத்திற்கு மிகாமல் கட்டப்பட வேண்டும் எனவும் இந்த கட்டுப்பாட்டின் அடிப்படையில் சம்பந்தப்பட்ட உள்ளாட்சி நிறுவனங்கள் கட்டிடங்களுக்கான அனுமதியை வழங்கலாம் எனவும் அரசு ஆணை பிறப்பிக்கிறது.”

The City of Madurai is found in Clause 11 of the schedule and therefore, nothing turns on the basis of G.O.(Ms)No.164 dated 15.06.1994.

23. Apart from the above, a building has to answer floor space index, zoning regulations, plot coverage as well as setback requirements as per the Tamil Nadu Town and Country Planning Act and the Local Body Act. In this particular case, there is no dispute insofar as the factum that there had been no application made to the Government to change zonal regulations. It is the Government of Tamil Nadu, which possesses jurisdiction to change the zonal regulations under the Act. If there is any violation of the zonal regulations, even then the second



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respondent would not have the jurisdiction to approve the same in terms of delegation dated 30.12.1993.

24. The building, for which the writ petition has been filed, is situated in partly residential and partly commercial zones. However, entire commercial property had been put up in violation of the zoning regulations. The tabular column furnished by the first respondent above, containing the violations in the building make it clear that the building is not only violated the permission granted by the second respondent, but is one constructed in total violation of the zoning laws.

25. This shows floor space index violation, maximum plot coverage violation and apart from that there has been rampant disregard of the side setbacks of the building, which had been raised to height of 31.90 m. These facts would go to show that the delegatee had sought to exercise a power, which was not vested with it.

26. It is here that two judgments, which are relied upon by Mr.H.Arumugam, i.e.,

(i) *Apesh Construction Limited Vs. The Corporation of Madurai,*



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through its Commissioner and others, 2013 (2) CTC 180 and

WEB COPY (ii)*District Collector / Chairman, Local Planning Authority and others*

Vs. Danial Thangaraj and another, 2013 (2) CWC 321, become relevant.

27. In *Apesh Construction Limited's* case, the issues that had been framed in that case are extracted in paragraph No.15 therein. The basic issues that had been dealt with in that particular case were whether the 2nd respondent had jurisdiction to grant approval for a building or whether all such building applications should have been gone before the Town and Country Planning authorities / Local Planning Authority. However, the direct issue that arises in the case before us as to whether the 2nd respondent had jurisdiction to grant permission of a building, which violates floor space index, height regulations, zonal regulations and setback violations, was never gone into by the High Court.

28. The law of precedents is not a straight jacket formula. We have to see whether the precedent applies to the facts and circumstances of a case. I recollect the principle expounded by Lord Halsbury in *Quinn Vs. Leatham, (1901) A.C 495* that “a case is an authority for what it actually decides, and not for what is logically deducible from it”. Even a slight change in the facts of the case would render the precedent inapplicable. This issue was directly considered by a Constitution Bench in *Padma Sundara Rao Vs. State of Tamil Nadu, (2002)*



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3 SCC 533. The Bench held as follows:

*“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”*

29. After reminding myself of these principles, I went through the two judgments cited by Mr.H.Arumugam. As stated in the previous paragraph, the judgments dealt with the issue whether the issuance of lock and seal notice under the Town and Country Planning Act, 1971 issued by the second respondent to the petitioners therein were valid. It is pertinent to point out here that, as in the present case, the permission itself was not under challenge. The learned Single Judge in paragraph 50 of the said judgment held that unless and until the planning permission granted by the Madurai City Municipal Corporation is set aside, it does not have the jurisdiction to issue a lock and seal notice.

30. This issue is further clarified in the appellate judgment, which was relied upon by Mr.H.Arumugam. The Division Bench was pleased to hold as follows:

20/30



“It is a well settled principle of law that even if planning permissions obtained by the first respondents in these writ appeals are not granted as per law, as asserted by the appellants, the same have to be cancelled/challenged, in the manner known to law.”

Basing their judgment on this premise, the Division Bench concluded as follows:

“14. Applying the above decision to the facts of these cases, and as long as the planning permissions granted to the first respondents in these writ appeals are not cancelled, the appellants are not entitled to direct the first respondents/building owners to get planning approval from the District Collector/Chairman, Local Planning Authority, or, having jurisdiction to pass the order of lock and seal, except on the ground that the building is construction in violation of the planning approval already granted.”

Therefore, the two authorities, though at the first blush seem to support the case of the private respondents, they are in fact inapplicable in the aforesaid circumstances. Hence, reliance placed on the same is misplaced.

31. Further, both the judgments while dealing with batch cases did not go into the issues and went only into whether there had been delegations and come to the conclusion that there had been delegation. Therefore, the notice issued by the second respondent Corporation has to be set aside. The Court held that the second respondent Corporation having approved the plan should not have been issued demolition notice. However, the issue that we face directly in this case is



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whether the second respondent is the competent authority to approve the plan or not was never raised and hence, not considered. The very delegations relied upon by Mr.H.Arumugam would show that in terms of Clause 1, the second respondent did not have jurisdiction and therefore, no relevance can be placed on the aforesaid authorities. Apart from that the issue whether the building satisfies all the rules in force was not gone into by the Court in the previous cases.

32. Apart from that, the fact that the respondents 3 and 4 have accepted the penalty as directed by the second respondent and had paid the same, would lead us to conclude that the building is in fact in violations of four crucial aspects, which have been pointed above.

33. We also wanted to see if the private respondents had constructed the building in terms of the plan obtained by them. The tabular column set forth below gives the humongous extent of deviation:

S. No	Description	As per rule	As per site	Deviation	Percentage of violation
1	Maximum FSI(Section 9)	1.60	7.58 (3337.92/440.33)	5.98	373.75%
2	Maximum plot coverage	40%	94.75% (417.24/440.33X 100)	54.75	137%



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3	Minimum set back (height of building 31.90m)	11.0 m on all the four sides	Front side:- 0.6 m	10.4 m	94.5%
			Back Side:-0.4m	10.6 m	96.3%
			Northern side:-0.15 m	10.85 m	98.6%
			Southern side:-0.15m	10.85 m	98.6%

This shows that the building has been constructed in utter disregard to the alleged approved plan. There has been violation of FSI, plot coverage area as well as the set back regulations, making the entire building not only unauthorized, but entirely illegal.

34. It is here that we have to consider the argument of Mr.H.Arumugam that an application has been filed for regularisation of the said building with the second respondent. When the second respondent does not have the power, as we have noted above, in terms of the delegation dated 30.12.1993, to approve the original plan as there has been a violation of zoning regulations, FSI and other Rules in force, the second respondent cannot be vested with the power to regularise an act over which it has no jurisdiction. The building having been constructed without permission from the State of Tamil Nadu, vis-a-vis., the zoning regulation and the approval have been granted by an incompetent authority, the said incompetent authority cannot be vested with the power of



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regularisation. The power to approve itself, as seen from the delegation order dated 30.12.1993, is vested only with the Director of Town and Country Planning on the application being forwarded to the Local Planning Authority. That not having been done, we are constrained to hold that the entire building is illegal and regularisation is impermissible.

35. Having read the power of delegation, we are clear that the second respondent did not have the jurisdiction to approve the plan and therefore, it also does not possess jurisdiction and to issue any order of regularisation.

36. Now, we deal with one more aspect, namely, the seal affixed in the application that had been made by the respondents 3 and 4 to the second respondent.

37. Fraud unravels all acts. The first respondent is the authority through whom the plan should have been forwarded to the Director of Town and Country Planning for approval. This is clear from the delegation dated 30.12.1993. Instead of forwarding the same, the second respondent has, as stated by the first respondent, forged the official seal of the Local Planning Authority. An act of forgery can never be condoned and it has not been condoned by the first respondent. The Court would also have to look against the person who has committed such illegal and unlawful acts and against those who have benefitted



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from such an act of forgery.

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38. The first respondent has taken a specific stand in his counter affidavit in paragraph No.12, which reads as follows:-

*“12.Regarding the averments made in the “Grounds” (v), it is admitted that, the planning permission as well as building permission was illegally approved by the Corporation Authorities themselves and on behalf of Local Planning Authority also and **the office seal of the Local Planning Authority affixed thereon was a forged one.**”*

39. This counter affidavit was filed as early as on 13.10.2012 and had been served on the learned counsel for the petitioner as well as the respondents 3 and 4 on the very same date. Surprisingly, though the aforesaid paragraph would go to show that there had been a fraud of the official's seal as well as on the several violations that had been pointed out, no reply affidavit had been filed by the respondents 3 and 4. It is well settled what has not been traversed by way of pleadings is deemed to have been admitted.

40. Since the planning permission itself is invalid, we have to take note of the law that has been laid down by the Supreme Court with respect to unauthorized buildings. The following judgments throw the light on this area:

(i) ***Pratibha Cooperative Housing Society Limited and another v. State of***



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Maharashtra and others, AIR 1991 SCC 1453:

“We are of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety occupiers and residents.... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and by-laws are made by the Corporations or Development Authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits”

(ii) *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, (1999) 6 SCC 464*

“73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or



perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions.”

(iii) *V.M. Kurian v. State of Kerala, (2001) 4 SCC 215*

“Observance and compliance with the Rules is for public safety and convenience. There cannot be relaxation of the Rules which are mandatory in nature and cannot be dispensed with especially in the case of a high-rise building. The position may be different in the case of one or two-storeyed building where there are minor deviations from the Rules, which do not affect the public safety and convenience. In the present case, we find that the deviations are of high magnitude, which are contrary to public safety and convenience. We are, therefore, of the view that the order passed by the State Government exempting the provisions of the Rules for constructing an eight-storeyed building was contrary to the mandatory provisions of the Rules and therefore, is not sustainable in law.”

(iv) *Dipak Kumar Mukherjee v. Kolkata Municipal Corpn., (2013) 5 SCC 336*

“29. It must be remembered that while preparing master plans/zonal



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plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

41. In the light of the above, as the building has been constructed pending Writ Petition and after the original order of interim injunction granted had been vacated and since we have found that the plan itself had been approved by the authority, who did not have jurisdiction, the entire building has to be construed as illegal and unauthorized one. The jurisdiction having been held as against the second respondent, this Writ Petition is allowed and the respondents 1 and 2 are directed to initiate steps to ensure that the unauthorized building is demolished and restored to the original position, as it was prior to the development, within a period of two (2) months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.



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(S.M.S., J.) & (V.L.N., J.)
13.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Yuva/Lm

To

- 1.The Member Secretary,
Local Planning Authority,
Madurai Corporation Building 3rd Floor,
Madurai.
- 2.The Commissioner,
Madurai Corporation, Madurai.



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S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

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