



W.P.(MD)No.9573 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD)No.9573 of 2023

and

W.M.P(MD)No.8527 of 2023

V.Palanisamy

... Petitioner

Vs.

1.The Commissioner,  
Tenkasi Municipality,  
Tenkasi District.

2.P.Ramu

... Respondents

(R-2 is impleaded as per the order made in  
W.M.P(MD)No.14371 of 2023, dated 14.09.2023  
by SSSRJ & DBCJ)

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue  
a Writ of Certiorari to call for the records in the notice issued by the first  
respondent in Notice No.2/2023 dated 28.03.2023 and quash the same.

For Petitioner :Mr.P.Thirumahilmaran

For R-1 :Mr.P.Athimoolapandian

For R-2 :Mr.A.Mohan

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**ORDER**

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

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. This writ petition is filed challenging the notice issued by the first respondent, dated 28.03.2023, under section 56(1) of the Tamil Nadu Town and Country Planning Act 1971.

3. It is the case of the petitioner that he has put up a construction in his own land. The total area of the site according to the petitioner is 850 sq. ft., and the petitioner has submitted a building plan for an extent of 489 sq. ft., for the ground floor. However, the impugned notice is issued directing him to discontinue the use of the building within thirty days.

4. It is the further case of the petitioner that his neighbour has filed a suit earlier in O.S.No.88 of 2001 on the file of the Principal District Munsif, Tenkasi, for a declaration and injunction in respect of a portion of the property of the petitioner, stating that the neighbour has an exclusive right to use the land which is just adjacent to the building. It is seen that the civil suit has ended in favour of the petitioner.



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5. Against the same, a second appeal has also been filed before this Court. This Court dismissed not only the second appeal in S.A(MD)No.855 of 2009 but also the review application filed by the second respondent in review application(MD) No.126 of 2009. Yet another suit is also filed in O.S.No.312 of 2020 before the District Munsif Court, Tenkasi and it is seen that the second respondent is instrumental in the second appeal also. The impugned order is an order by which the petitioner was directed to carry out certain works in accordance with the planning permission obtained by the petitioner himself.

6. The impugned order is on the basis of an inspection and measurement taken by the officials. In such circumstances, the petitioner either should apply for regularisation or for retention of building in accordance with the Rules. Therefore, leaving it open to the petitioner to submit a fresh building plan for approval or for retention of the building showing that the existing construction is in accordance with the building Rules, this Writ Petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

7. It is needless to state that the first respondent shall consider the application submitted for approval or for retention of the building in the



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manner known to law and in accordance with law after giving adequate opportunity to the petitioner to carry out any modification if necessary. Till such time the application or the plan submitted by the petitioner is considered by the first respondent on merits, no coercive action shall be taken against the petitioner. Since the first respondent has reported that the second respondent has now constructed a building in violation of building plan, it is open to the first respondent to immediately take against the second respondent to bring the building constructed by the second respondent in accordance with approved plan, after an inspection and as per law.

**[S.S.S.R., J.]      [D.B.C., J.]**  
**14.09.2023**

Index : Yes / No  
NCC : Yes/No

pm

To:

The Commissioner,  
Tenkasi Municipality,  
Tenkasi District.



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**S.S.SUNDAR, J.**

and

**D.BHARATHA CHAKRAVARTHY, J.**

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