



W.P.(MD)No.11288 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.11288 of 2023

and

W.M.P.(MD)Nos.8813 to 8815 of 2021

S.A.Joy Raja

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its the Secretary,
Housing and Urban Development Department,
Chennai.
- 2.The State of Tamil Nadu,
Rep by its the Additional Secretary (Technical),
Housing and Urban Development Department,
Chennai.
- 3.The District Collector,
Nagercoil, Kanyakumari District.
- 4.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil, Kanyakumari District.



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5.The Director of Town and Country Planning,
Chennai-600 107.

6.The Member Secretary,
Local Planning Authority,
Nagercoil, Kanyakumari District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order made in Letter No.1200/UD-VII(1) /2021-2 dated 16.06.2021 passed by the 2nd respondent confirming the impugned Form-I notice made in Na.Ka.No. 1823/2019/F1 dated 04.03.2020 and impugned Form-II notice made in Na.Ka.No. 1823/2019/F1 dated 17.03.2020 passed by the 4th respondent and quash the same.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for Mr.P.R.Prithiviraj

For R1 to R3, R5 : Mr.Veerakathiravan
& R6 Additional Advocate General
assisted by Mr.M.Lingadurai
Special Government Pleader

For R4 : Mr.P.Athimoolapandian



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ORDER

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

The present writ petition challenges the order passed by the Additional Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai-9 in Letter No.1200/UD-VII(1)/2021-2, dated 16.06.2021.

2.By the impugned order, the appeal which had been preferred under Section 80(A) of the Tamil Nadu Town and Country Planning Act (hereinafter referred to as 'the T & CP Act' for the sake of brevity) came to be rejected.

3.The undisputed facts of the case are as follows:

(i)The writ petitioner had between 1981 to 1984 constructed two theaters under the name and style of 'Chakravarthi' and 'Sri Mini Chakravarthy'. The said two theaters complied with the provisions of the Tamil Nadu Cinemas (Regulation) Act, 1955 (hereinafter referred to as '1955 Act' for the sake of brevity). During the relevant time of construction, 1955 Act itself exempted the provisions of the T & CP Act for construction of said theaters. However, it was mandatory to get other clearances under the Act. It is stated that between 1981 to



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1984, the said theaters were constructed and license was also obtained under C-Form from the District Collector, Kanyakumari District.

(ii) It is also accepted by both sides that 1955 Act underwent an amendment in the year 1994 by the Tamil Nadu Act 11 of 1994 and Sub clause (vii), which exempted such construction of theaters from the provisions of the T & CP Act stood deleted. Therefore, the effect of the amendment would be that after coming into force of Tamil Nadu Act 11 of 1994, the cinema theaters too require permission from the Building Planning Authorities under the T & CP Act.

(iii) It is the case of the petitioner that in the year 2012, he started commercial project, a mall, taking advantage of Section 3(gg) of 1955 Act. It is an admitted case of the writ petitioner as well as the respondents that prior to construction of the Mall, namely Rajas Mall, no permission was obtained under the T & CP Act.

(iv) On account of the fact that there was a construction, the Nagercoil Municipality, now Corporation, issued a stop work notice, calling upon the petitioner not to proceed with the construction. However, on the plea that a



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theater had been constructed during the time when 1955 Act exempted the petitioner from the rigours of the T & CP Act, the petitioner proceeded with the construction and completed the same. On account of such construction, the original construction of 1035 sq.meter (approximately 10700 sq.ft) bloomed into a massive construction with the following dimensions:

Floor Details	Total area	Usage	Total Commercial Floor Area
Basement Floor	11,750 sq.ft	Car Parking	
Ground Floor	14,200 sq.ft.	Super Market -2332 sq.ft R-Mobile -325 sq.ft Titan watch shop -320 sq.ft.	2977 sq.ft
First Floor	14,200 sq.ft.	Lee Show Room -513 sq.ft. Liquor Shop -811 sq.ft. Toni & Cay Saloon -1581sq.ft. Gini.&Jony dress shop-475 sq.ft. Gift shop -1286 sq.ft. Tattoo -96 sq.ft. Ticket Counter -58 sq.ft. Empty shops 3nos. -5013 sq.ft	9733 sq.ft.



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Second Floor	12,920 sq.ft.	Food Court -3430sq.ft 1Kg. Biriyani -58sq.ft Chicken Chiconzza -143sq.ft Pizza Corner -143sq.ft Dosa Theery -143sq.ft Meri Brown -135 sq.ft Cake and Juice Shop -85sq.ft. Cake and Ice Cream -89sq.f Children's games -2350sq.ft Empty Shops 4 Nos. - 550sq.ft	7124sq.ft
Third Floor	12,920 sq.ft.	Scree 3 -2231 sq.ft 5D Theater -560 sq.ft. Canteen -527 sq.ft.	527 sq.ft. Commercial 8125 sq.ft. Theater
Mezzanine Floor	5334 sq.ft.	Screen-1 -2820 sq.ft. Screen-2 -2514 sq.ft.	
Total Area			7132 sq.ft.

Total Area	Commercial Area	Theater Area
71324 Sq.ft.	63199 sq.ft. (88.61% under usage of commercial)	8125 sq.ft. (11.39% under usage of Theater)

In other words, 10,750 sq.ft. became around 71324 sq.ft..

(v) Taking note of this fact, the local body issued a notice under Sections 56 and 57 of the Act. Challenging the same, several writ petitions had been filed



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and finally it wound up with an order being passed by the authorities on 04.03.2020 and 17.03.2020. The effect of the order was locking and sealing of the premises, in which the theater was originally constructed, of which the mall is presently standing.

4. Aggrieved by the order of locking and sealing of the premises, the writ petitioner preferred special appeal under Section 80(A) of the Act. This appeal was presented on 22.01.2021. It was immediately followed up with a writ petition in W.P.(MD)No.2464 of 2021. The relief sought for in the said writ petition was not to take any coercive action pending disposal of the appeal filed under Section 80 (A) of the Act dated 22.01.2021.

5. Taking note of the fact that the statutory special revision had been preferred, this Court directed the first respondent, namely, the Government of Tamil Nadu to pass orders on the appeal petition within a period of eight weeks and further, directed to maintain *status quo* pending disposal of the appeal by an order dated 10.02.2021.

6. In obedience to the order of this Court in W.P.(MD)No.2464 of 2021, the appeal was taken up for hearing on 01.04.2021. Since the entire country was



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reeling under the effect of Corona Virus Pandemic, hearing was conducted by way of video conferencing on 01.04.2021.

7.The writ petitioner did not appear for hearing, though it was the writ petitioner, who had sought for early disposal of the appeal. Neither the appellant/petitioner herein was present in person or virtually, nor the learned counsel, who had filed the appeal before the first respondent as well as the writ petition appeared before the first respondent for the hearing. As there was a direction by this Court at the instance of the writ petitioner for early disposal of the appeal, the first respondent proceeded with the hearing of the matter.

8.The following persons appeared before the first respondent:

(a)The owner of the property, namely, Kottar Chettur Nainar Desiga Vinayagar Devasthanam Trust, represented by a trustee, namely, one Mr.Nagarajan,

(b)Commissioner of Nagercoil Corporation, Ms.Asha Ajith I.A.S.,

(c)Joint Director of Town and Country Planning, Mr.Sivaprakasam and

(d)Mr.Mariyappan, Assistant Director of Local Planning Authority,



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Nagercoil attended the hearing.

It is not in dispute that apart from the petitioner, all the other persons participated in the proceedings.

9.The writ petitioner, though was put on advance notice of hearing, did not appear. To reiterate it was the writ petitioner who wanted early disposal of his appeal. The petitioner claims to have sent an adjournment petition, seeking for an adjournment by 45 days, one day prior to the date of hearing.

SUBMISSIONS

10.Mr.Isaac Mohanlal, learned Senior Counsel made two submissions.

(i) His first submission was that the order is in violation of principles of natural justice and

(ii) since the building was exempted from obtaining permission under the T & CP Act by the 1955 Act, the same will enure in favour of the mall.

11. Insofar as the first submission of the learned Senior Counsel is concerned, the gist of the submission is that the first respondent should have taken note of the adjournment petition and he should have adjourned the hearing. He

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argued that since an adjournment was not granted to the petitioner, it would amount to violation of principles of natural justice.

12. We are unable to accept the contention of the learned counsel for more than one reason, which are as follows:

(a) It is not in dispute that the hearing notice was given to the petitioner to appear virtually or in person;

(b) It was the writ petitioner, who wanted early disposal of his appeal and had moved this Court and obtained an order on 10.02.2021;

(c) Since a learned counsel had been engaged for the purpose of conducting the appeal, no reasons have been given by the writ petitioner as to why the learned counsel through whom the writ petitioner had filed the appeal before the first respondent had not appeared for hearing;

(d) The personal hearing of the party was not necessary as it was only a video conference hearing; and

(e) Further, the plea of the writ petitioner was that for the purpose of running theater, he does not require permission under the Act as it was exempted under Section 5(a) (2)(vii) of 1955 Act. It was not a factual dispute and it was only a legal issue, hence, it could have been addressed by the lawyer himself and the presence of the writ petitioner was not absolutely essential. Therefore, when a

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person, who has been put on notice and who obtains an order for early disposal and an interim order, does not appear for hearing, he cannot state that there has been violation of the principles of natural justice.

(f) Natural justice is not a straight jacket formula and procrustean bed to be applied strictly in all cases. The opportunity, having been offered and the petitioner not having been availed the opportunity, he has no one to blame other than himself for the situation in which he placed himself.

13. The second point that was argued by Mr. Isaac Mohanlal is that the first respondent received a written report of the Commissioner on 05.04.2021, that is after the hearing and therefore, materials not given to the petitioner, had been relied upon by the first respondent. The fact that the oral submissions had been heard on 01.04.2021 is not in dispute. The oral submission had been followed with a written report on 05.04.2021. Oral submissions when followed up with a written submission cannot be treated as new materials, which affect the merits of the case or violate the principles of natural justice. It is not as if new materials had been placed by the Commissioner before the first respondent. Her oral submissions were followed up by a written report and therefore, we reject that plea also.



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14. Reading of the order impugned before us shows that Ms. Asha Ajith I.A.S., Commissioner of Nagercoil Corporation had appeared and had made her submissions. On 05.04.2021 that oral submission was received in the form of written arguments. Therefore, the written arguments that were relied upon does not vitiate the order.

15. The sheet anchor of the argument of Mr. Isaac Mohanlal is that in the year 1984, when the theaters were constructed, the building was exempted by virtue of 1955 Act. The said exemption which prevailed in 1984 continues to remain in force even when the cinema theaters were pulled down and multiplex was constructed in the year 2012.

16. This is vehemently objected by the learned Additional Advocate General, who appeared for the official respondents and the learned counsel appearing for the fourth respondent. According to them, the building exemption that was granted in the year 1984 would subsist only till the repealing of the provision to Act 11 of 1994 and thereafter, any construction that is made by the writ petitioner would require permission. Apart from that they would point out

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that the entire theater complex was pulled down and new multiplex was constructed in terms of Section 3(gg) of 1955 Act. They would state that since it is a new construction, permission would necessarily have to be obtained from the planning authority.

17. We can usefully refer to Section 2 (13) of the T & CP Act. Under the said provision, the word 'development' has been defined as follows:

“(13) ‘development’ means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land.”

As per this definition, making any material change in the house or any building or land would come within the scope of development. Section 47 of the Act prevents any person from developing any property without permission of the local body. The fact that there was only a construction to the extent of 10,700 sq.ft. as cinema theater is not denied. The further fact that as on today, there is a building for about 71,324 sq.ft. is also not denied. The perusal of the construction details from



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the tabular column supra would show that mall consists of the following:

- 1)basement floor together with three floors
- 2)Mezzaine Floor

18.Apart from that when the theater was completed in the year 1984, 100% usage was towards the theater alone. As on 2012, which the position that exists as on today, this 100% usage has been changed to 11.39% as usage as theaters and the remaining 88.61% is being used as commercial property. This implies that there has been fundamental change in the usage of the building, which necessarily would require permission under the Act.

19.Apart from that exemption that had been granted to cinema theaters under the Act had been repealed by virtue of the Tamil Nadu Act 11 of 1994. If the petitioner did not demolish the theater, he would have been benefited under the repealed Act. However, the petitioner demolished the entire construction that was put up when he obtained license on 30.06.1984 and ventured to put up a fresh construction in 2012 without even building plan. The effect of such construction is that on the date when the construction had been put in 2012, there was no exemption for cinema theaters by virtue of 1955 Act since the Tamil Nadu Act 11

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of 1994 had come into force.

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20. In fine, with regard to both the arguments namely, the petitioner's right of hearing was violated as well as the building was exempted by virtue of 1955 Act, we have no other option but to reject the same and dismiss the writ petition upholding the impugned order passed by the first respondent.

21. At this juncture, we have to point out that though the fourth respondent municipality wanted to take action, in terms of the interim orders of this Court, the building continued to stand. It is our duty to put the position back, which has continued, by virtue of the orders of the Court. No person can claim equity by virtue of any order of status quo that had been granted pending the Writ Petition. The order of status quo was granted restraining the Town and Country Planning Authorities from initiating action pending the disposal of the special revision filed under Section 80 of the T & CP Act. The order having been upheld, we cannot permit a person to continue to enjoy the benefits of the said order. Therefore, we direct the respondents to take immediate action to lock and seal the premises and take further action that are necessary for the purpose of ensuring that the unauthorized construction is demolished.



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22.We are passing this order taking note of the fact that the public are using the property. The building has been constructed without a semblance of permission. The entire building is an unauthorized construction. Such unauthorized construction is contrary to the rule of law and should not be permitted to continue to be used. It will be against public interest, rule of law and would result in endangering the life of the persons who are utilizing the premises. If the said usage is permitted, it will begin degradation of rule of law. Persons, putting up unauthorized constructions, must be informed that they cannot ignore the law and construct building as they please.

23.In light of the above, we give a direction to the respondent Corporation to put the land to its condition before the development that had been taken place. This is in line with Section 56(1) of the T & CP Act. Such exercise should be completed within a period of eight weeks from the date of receipt of a copy of this order. The costs incurred for restoration of land shall be borne out initially by the corporation and thereafter recovered from the petitioner.



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24. With the above observations, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)
30.11.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1. The Secretary,
Housing and Urban Development Department,
Chennai.

2. The Additional Secretary (Technical),
Housing and Urban Development Department,
Chennai.

3. The District Collector,
Nagercoil, Kanyakumari District.

4. The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil, Kanyakumari District.

5. The Director of Town and Country Planning,
Chennai-600 107.

6. The Member Secretary,

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Local Planning Authority, Nagercoil, Kanyakumari District.

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S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

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