



W.P.(MD) No.23771 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P.(MD) No.23771 of 2023

and

W.M.P(MD)No.17834 of 2023

1.G.Somasekharan Nair
2.Sathiyabhama Amma

... Petitioners

-VS-

- 1.The District Collector of Kanyakumari
At Nagercoil,
Kanyakumari District.
- 2.The Panchayat Union Commissioner/Block
Development Officer,
Munchirai,
Puthukadai P.O.,
Kanyakumari District.
3. The Secretary,
Kanyakumari District Panchayat,
District Collectorate Campus,
Nagercoil – 629001.
- 4.The Choozhal Village Panchayat,
Represented by its Executive Authority / President,
Choozhal,
Adaikakuzhi P.O.,
Via Kaliakkavilai,
Kanyakumari District.



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5.The Executive Authority/President,
Choozhal Village Panchayat,
Choozhal,
Adaikalkuzhi P.O.,
Via Kaliakkavilai,
Kanyakumari District.

6.The Assistant Director of Panchayats,
Kanyakumari District,
District Collectorate Campus,
Nagercoil – 629001.

7.Thiruthuva Prasad

8.Sheela

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 6 to take actions, inter alia, under the Tamil Nadu Panchayats Act, 1994, and the Tamil Nadu Panchayats Buildings Rules, 1997, thereby preventing respondents 7 and 8 from constructing any building in Re-survey No.50/11 of Choozal Village, Killiyoor Taluk, Kanyakumari District, below the level of its adjoining road on its eastern side and getting restored the property to its original state as it exist prior to the commencement of work by respondents 7 and 8 for construction in the same.

For Petitioners : Mr.K.N.Thampi

For R-1, R-2, R-3
and R-6 : Mr.S.P.Maharajan,
Special Government Pleader

For R-4 & R-5 : Mr.F.Deepak

For R-7 & R-8 : Mr.S.Sivakumar



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ORDER

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It is the case of the petitioners that the construction put up by the 7th and 8th respondents is not in accordance with the approved plan. The petitioners would claim that there is a Cellar that has been constructed without planning permission. Since the existence of the Cellar itself was disputed stoutly by the respondents 7 and 8, we had required the second respondent, namely, the Block Development Officer, Munchirai, Puthukadai Post, Kanyakumari District, to inspect the property and file a report. He has filed a report stating that there is a cellar floor and a ground floor. Plan of the existing construction has also been produced. But, the plan of the existing construction shows that there is some construction beneath the ground level. While Mr.K.N.Thampi, learned counsel appearing for the petitioners would contend that it is Cellar, Mr.S.Sivakumar, learned counsel appearing for the respondents 7 and 8, would contend that the land in question is sloping from the road and therefore, it is the ground floor which looks like a Cellar, we do not think that we can go into the question as to whether it is a Cellar or a ground floor and pronounce upon it in this proceedings under Article 226 of the Constitution of India.



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2. Considering the fact that the property in question situate in Kanniyakumari District and the considering the landscape of the said District, we do not think that we can based on the photographs or plan, decide as to the actual lie of the land or the building in that area. We therefore, direct the fifth respondent to take into account the report submitted by the second respondent and if he is satisfied that the construction is not in tune with the approved plan, he is required to take steps to remove the offending construction. The fifth respondent is required to take future course of action within three months from the date of receipt of a copy of this order.

3. With the above direction, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.]

[L.V.G., J.]

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NCC : Yes/No

Index : Yes/No

PM



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