



WEB COPY

W.P(MD)N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P (MD) No.23832 of 2022

and

WMP (MD) Nos.17912 to 17917 of 2022

Safi Mohamed

... Petitioner

vs.

1. The Assistant Director of Town and Country Planning,
District Town and Country Planning Office,
106J-37, Miller Puram,
2nd Street,
Thoothukudi.

2. The Commissioner,
Kovilpatti Municipality,
Kovilpatti,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the entire records connected with the impugned notice passed by the 2nd respondent in Na.Ka.No.1977/2022/F1 dated 15.09.2022 with enclosure of notice in F1/U.A.C.No.18/2022 dated 15.09.2022 and consequent impugned order passed by the 2nd respondent in Na.Ka.No.1977/2022/F1 dated 03.10.2022 with enclosure of order dated 03.10.2022 regarding the petitioner's building in Door No.5/1A, 5/1B, 5/1C and 5/1D, Pasuvanthanai Main Road, Kovilpatti, Thoothukudi District and quash the same.

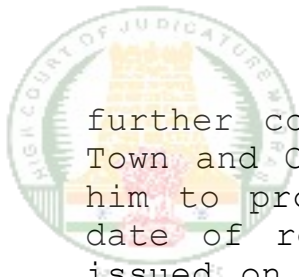
For Petitioner : Mr.K.K.Kannan
(*) For R1 & R2 : Mr.S.P.Maharajan
Special Government Pleader

ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

The petitioner is aggrieved by the notices issued under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, calling upon him to discontinue the usage of the unauthorised structures put up by him without planning permission. A notice was served on the petitioner accusing him of unauthorised development of the land in question and putting up

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further construction under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, on 15.09.2022, calling upon him to produce the sanctioned plan within fifteen days from the date of receipt of the notice. Thereafter, another notice was issued on 03.10.2022 purportedly under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, requiring the petitioner to remove the offending structures and bring the building in conformity with the sanctioned plan within fifteen days.

2. The learned counsel for the petitioner would contend that the impugned notices are not valid inasmuch as they do not grant a month's time which is a requirement under Section 56(1) of the Tamil Nadu Town and Country Planning Act, 1971. Section 56(1) reads as follows:-

'56. Power to require removal of unauthorised development- (1) Where any development of land or building has been carried out-

(a) without permission required under this Act; or
(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land or building has been duly revoked; or

(d) in contravention of any permission which has been duly modified,

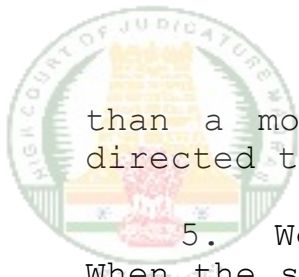
the appropriate planning authority may, serve on the owner, a notice requiring him within such period, **being not less than one month**, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice-

(i) in cases specified in clause (a) or (c) above, to restore the land to its condition before the said development took place;

(ii) in cases specified in clause (b) or (d) above, to secure compliance with the permission or with the conditions of the permission, as the case may be.'

3. Drawing our attention to the contents of the notices, learned counsel for the petitioner would submit that neither of the notices issued satisfy the requirements of Section 56(1), since they do not provide a month's time as is the requirement under law. The learned counsel would also submit that the petitioner needs some time to shift the business and bring the user of the premises in conformity with the sanctioned plan.

4. Mr.S.P.Maharajan, learned Special Government Pleader appearing for the 1st respondent would submit that the impugned notices had been issued in September and October 2022. Since more



than a month's time has expired now, the petitioner is directed to give his response to the said notices.

5. We do not think we could accept the said submission. When the statute requires a particular time should be given to the noticee, it is for the authorities to comply with the statute in its letter and spirit. We, therefore, do not think that these notices could be sustained. The impugned notices are, therefore, set aside. The writ petition will stand allowed. It will be open to the authorities to take action strictly in accordance with the provisions of the Tamil Nadu Town and Country Planning Act, 1971, and the recent rules issued under G.O(Ms)No.195, Housing and Urban Development [UD4(1)] Department, dated 05.11.2022. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

(*)Corrected as per the order of this court dated 05.06.2023 made in WP(MD). 23832/2022.

Sd/-

Assistant Registrar

// True Copy //

/06/2023

Sub Assistant Registrar(CO)

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To

To be substituted to the order which is already despatched on 03.05.2023

1. The Assistant Director of Town and Country Planning,
District Town and Country Planning Office,
106J-37, Miller Puram,
2nd Street, Thoothukudi.

2. The Commissioner,
Kovilpatti Municipality,
Kovilpatti,
Thoothukudi District.

+1 CC to M/s.K.K.KANNAN, Advocate (SR-18398[F] dated 29/03/2023)

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-18456[F] dated 30/03/2023)

+1 CC to M/s.SPL.GP (SR-19075[F] dated 31/03/2023)

W.P(MD)No.23832 of 2022

DATED : 29.03.2023

MGJ(28.04.2023) 3P 6C

MK(16.06.2023) 3P 6C

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