



W.P.(MD) No.13739 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.13739 of 2013

and

M.P.(MD)No.1 of 2013

A.Sayed Ali Fathima

... Petitioner

-Vs-

The Executive Officer,
Boothapandy Town Panchayat,
Boothapandy, Kanyakumari District.

...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the impugned order in Na.Ka.No.153/2013/A1 dated 02.08.2013 dated 02.08.2013 on the file of the respondent and quash the same.

For Petitioner	: Mr.G.Prabhu Rajadurai
For R1	: Mr.S.P.Maharajan
	Special Government Pleader



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ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This writ petition is filed challenging the proceedings of the respondent dated 02.08.2013 directing the petitioner to demolish the unauthorized construction.

2.The grievance of the petitioner is that the petitioner has constructed a house in Door No.9/37, North Marthal, Esanthimangalam Village after obtaining necessary approval from the authorities concerned. There was an enmity between the petitioner and the adjacent land owner namely, Sheik Mohammed Gani. At the instigation of the said adjacent land owner, the second respondent issued the proceedings impugned in this writ petition stating that the petitioner has constructed the building in violation of the approved building plan and directing the petitioner to demolish the said unauthorized construction.

3.The learned counsel for the petitioner submits that without providing an opportunity of hearing to the petitioner, the respondent has passed the impugned order in violation of principles of natural justice. He further states that though



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the petitioner has submitted his explanation on 16.07.2013, the respondent without considering the same, had passed the impugned order stating that the petitioner has not filed his explanation.

4.Per contra, the learned Special Government Pleader for the respondent submits that sufficient opportunity was granted to the petitioner to submit his explanation. However, the petitioner has not come forward to offer his explanation. Hence, the order impugned in this writ petition was passed.

5.Heard the submissions made on either side and perused the materials available on record.

6.The only grievance expressed by the petitioner is that sufficient opportunity was not granted by the respondent before passing the impugned order. In view of the same, this Court is of the view that no prejudice would be caused to the respondent if an opportunity is granted to the petitioner to submit her explanation/objection, if any. Accordingly, the order impugned in this writ petition is set aside and the matter is remitted back to the respondent for fresh consideration. The petitioner is directed to submit her explanation along with all



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necessary documents before the respondent within a period of eight weeks from the date of receipt of a copy of this order. On filing such explanation, the respondent shall consider the same and pass appropriate orders on its own merits and in accordance with law within a period of eight weeks therefrom. It is made clear that if no objection/explanation is filed by the petitioner within the said period, the respondent shall proceed further for removal of unauthorized construction in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [R.V., J.]
28.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Executive Officer,
Boothapandy Town Panchayat,
Boothapandy, Kanyakumari District.



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