



W.P.(MD) No.8461 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.8461 of 2013

and

M.P.(MD)No.1 to 3 of 2013

Manthoppu Desa Kavara Baliya Ejoor,
Chettiars Mahajana Sabai,
Rep.by its Secretary,
Door No.4, West Chithirai Street,
Madurai.

... Petitioner

-Vs-

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Commissioner,
The Corporation of Madurai,
Madurai.
- 3.The Member Secretary,
Local Planning Authority,
Corporation Office,
Madurai.

...Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating the impugned proceedings issued by the 2nd respondent in his Proceedings in Ma.Po. 3/2985/12 dated 15.03.2012 and the consequential impugned order passed by the 2nd respondent by his proceedings No.Ma.4.Po.3/2985/12 dated 30.05.2012 and quash the same as illegal and consequently direct the respondents to unlock and unseal the buildings belonging to the petitioner society in Door no.4, Ward No. 83, West Chithirai Street, Madurai.

For Petitioner	: Mr.Mohammed Raffic for M/s.Ajmal Associates s
For R1	: Mr.V.Nirmal Kumar Government Advocate
For R2	: Mr.S.Vinayak Standing Counsel

ORDER

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

This writ petition is filed challenging the notice issued under Section 296(3) of the Madurai City Municipal Corporation Act, 1971.

2.The petitioner Society is the registered society under the Tamil Nadu Societies Registration Act, 1975. The Society obtained building plan approval from the second respondent and constructed a building in Ward No.6, Town



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Survey No.1102, West Chithirai Street, Madurai. While that being so, the second respondent issued a notice dated 15.03.2012 stating that the petitioner's Society has constructed the building beyond the level of the approved plan. Thereafter, the second respondent passed an order dated 30.05.2012 directing the petitioner to remove the unauthorized construction and consequently, sealed the premises. Hence, the petitioner has filed this petition.

3.The learned counsel for the petitioner submits that the petitioner has constructed the building after obtaining necessary permission and approval from the respondent Corporation. He further submits that no prior notice was given to the petitioner before passing the order impugned in this writ petition.

4.The learned counsel for the respondent Corporation submits the approval was granted to the petitioner only for construction of two floors. But the petitioner constructed the third floor without obtaining necessary permission. Hence, the respondent Corporation has initiated the proceedings under the provisions of Madurai City Municipal Corporation Act and issued notice to the petitioner. After considering the explanation, the order of removal of unauthorized construction was passed.



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5. At this juncture, it would be beneficial to refer the Judgment of the Division Bench of this Court in **M.Rahamathunisha and others Vs. Commissioner, Greater Chennai Corporation, Chennai and another** reported in [2022 (6) CTC 145], wherein the Division Bench of this Court has held as follows:

'19. Applying the parameters laid down by this Court as well as the Hon'ble Supreme Court in the decisions mentioned supra to the present case, wherein, the petitioners sought an interim order forbearing the respondent authorities from taking coercive steps, so as to enable them to rectify and restore the subject building in consonance with the permissible planning rules and regulations, within a period of six months, this court is of the opinion that the practice of putting up an illegal construction and subsequently seek for regularisation or rectification should not be encouraged as it would give a wrong impression that a building can be unauthorisedly constructed and later, defects could be rectified. In such cases, the plea for regularisation or rectification should not be entertained either as a matter of course or routine and it should be considered sparingly and reasonably. If it is shown that an unauthorised construction has been put up, it should be ordered to be demolished, thereby indicating a strong warning signal to the perpetrators of such offences. It is trite law that the respondent authorities should take action for the services



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rendered to the public, whereas in the instant case, after so many litigations, at the instance of the complainant, who is the neighbour of the subject building, the officials have taken action in accordance with law. In many cases, they failed to do so promptly and appropriately; and the completion certificate issued by the authorities is, without proper verification of the actual status of the building, whether there is deviation / unauthorised construction.'

6.Further, in order to curb the unauthorized constructions, the Government has constituted a High Level Monitoring Committee and issued G.O(2D)No.15, Municipal Administration and Water Supply (MA.1) Department, dated 01.03.2024. As per the said Government Order, the Committee shall monitor the inspection of the unauthorized buildings.

7.Perusal of the records shows that the petitioner has obtained permission for constructing two floors only in the subject premises. Even though there is a bar for constructing a building beyond the approved level, the petitioner had constructed the third floor without obtaining proper permission from the authorities concerned. There is a clear violation of approval granted by the respondent Corporation as well as the Government Order dated 01.03.2024.



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Hence, the order of removal of unauthorized construction was passed by respondent Corporation by following the due process of law.

8.For the reasons stated above, this Court is not inclined to interfere with the decision taken by the respondent Corporation and entertain this writ petition. Accordingly, this writ petition is dismissed. The respondent Corporation is directed to take action for removal of the unauthorized construction in the building in question, in accordance with law, after giving notice to the parties concerned. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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

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