



W.P(MD)No.7550 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)No.7550 of 2020
and
W.M.P(MD)Nos.7042 & 7043 of 2020**

1.B.Samundeeswari
2.M.Jeya

... Petitioners

vs.

1.The Commissioner,
Madurai Corporation,
Tallakulam,
Madurai – 625 010.

2.The Assistant Commissioner,
Madurai Corporation,
Zone 1,
Madurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order cum notice No.27 dated 10.03.2020 of the first respondent and quash the same as illegal and consequently directing the first respondent to declare their building plan approval No.26 of 2005 dated 23.12.2005 approved by the resolution of the Standing Committee as per the resolution No.6, dated 12.07.2005 which

1/7



W.P(MD)No.7550 of 2020

was duly signed by the first respondent dated 14.07.2005 and the same was approved by the Chairman, Town Planning and Development Standing Committee on 23.12.2005 as per agenda CW12/1133/2005 of the Council meeting of Madurai Corporation as valid one.

For Petitioners : Mr.C.M.Arumugam

For Respondents : Mr.K.Sivabalan

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

The petitioners have filed the present Writ Petition to quash the impugned order, dated 10.03.2020 issued by the first respondent and consequently to direct the first respondent to declare their building plan approval No.26 of 2005 dated 23.12.2005 approved by the resolution of the Standing Committee as per the resolution No.6, dated 12.07.2005 which was duly signed by the first respondent dated 14.07.2005 and the same was approved by the Chairman, Town Planning and Development Standing Committee on 23.12.2005 as per agenda CW12/1133/2005 of the Council meeting of Madurai Corporation as valid one.



W.P(MD)No.7550 of 2020

WEB COPY

2. When the matter was taken up for hearing today, the learned counsel appearing for the respondents Corporation would submit that since the petitioners have unauthorizedly constructed an additional construction in the building in question, the impugned notice has been issued to the petitioners. He would further submit that the petitioners have constructed 2nd floor to 5th floor unauthorizedly with complete violation and there is no open space in the building, more particularly, in frontage 7 metre has to be left as vacant space, but the building has no such vacant space.

3. 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



W.P(MD)No.7550 of 2020

WEB COPY

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 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.'

4.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.

4/7



W.P(MD)No.7550 of 2020

WEB COPY

5.Considering the facts and circumstances of the case and also considering the fact that the petitioners have unauthorizedly constructed second floor to fifth floor, we direct the respondents Corporation to take necessary action for removal of the additional construction made by the petitioners unauthorizedly in the building in question, namely second floor to fifth floor, in accordance with law, after giving notice to the parties concerned. The said exercise shall be completed within twelve weeks from the date of receipt of a copy of this order.

6.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
06.03.2024

NCC : Yes / No
Index : Yes / No
ps



WEB COPY



W.P(MD)No.7550 of 2020

To

- 1.The Commissioner,
Madurai Corporation,
Tallakulam,
Madurai – 625 010.
- 2.The Assistant Commissioner,
Madurai Corporation,
Zone 1,
Madurai.



WEB COPY



W.P(MD)No.7550 of 2020

D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)No.7550 of 2020

DATED : 06.03.2024