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W.P.(MD) No.5371 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2024

CORAM:

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

W.P.(MD) No.5371 of 2023

P.Sobana

... Petitioner

-vs-

The Commissioner
Kodaikanal Municipality
Kodaikanal
Dindigul District

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondent herein to desal the premises by name Hotel Murugan Inn situated at Old Convent Road, Survey Ward No.C, Block No.12, T.S.No.13, Kodaikanal, so as to enable the petitioner to bring the building within the planning para meters in respect of Multi-use Zone category as mentioned in Appendix-A of the Modified Master Plan for Kodaikanal, Local Planning Area on the basis of the petitioner's representation dated 20.02.2023 and for other reliefs.



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For Petitioner : Mr.J.Lawrance

For Respondent : Mr.T.S.Mohammed Mohideen

ORDER

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

Prayer in this writ petition is to direct the respondent to desal the premises by name Hotel Murugan Inn, situated at Old Convent Road, Survey Ward No.C, Block No.12, T.S.No.13, Kodaikanal, so as to enable the petitioner to bring the building within the planning parameters in respect of Multi-use Zone Category as mentioned in Appendix-A of the Modified Master Plan for Kodaikanal, Local Planning Area, on the basis of the petitioner's representation dated 20.02.2023 and for other reliefs.

2. According to the petitioner, she has purchased the land to an extent of 11.93 Cents, in T.S.No.13 Part, Block No.12, Ward No.C, of Kodaikanal, under a sale deed dated 10.10.1995. During 1996, she applied for planning permission and approval to the respondent – Municipality. Since no order was passed on her application, under the provisions of the District



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Municipalities Act, 1920, the approval was deemed to have been accorded for the construction of building in the said property. Subsequently, she constructed a building of ground+3 floors with a height of 11 Meters for a total extent of 482.92 sq.meters. The petitioner is running a Lodge in the name and style of Murugan Inn in the said building. The said property has been assessed and she she has been paying necessary taxes without fail. In such circumstances, on 07.07.2015, the respondent issued a notice under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, directing the petitioner to hand over vacant possession of the building for the purpose of demolishing the same as no approval was obtained for construction of the same. Though the petitioner filed a revision under Section 80 of the Tamil Nadu Town and Country Planning Act, 1971, before the Director, Town and Country Planning, Chennai, the respondent taken coercive steps to put lock and seal in the building. Challenging the same, she filed W.P.(MD) No.19075 of 2015. However, the same was dismissed by this Court. The revision filed by her also came to be dismissed by the Director of Town and Country Planning. In such circumstances, pursuant to the directions issued by this Court in W.P.(MD) No.914 of 2018, the District Administration took steps to seal all the unauthorized constructions in Kodaikanal. The Government also



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passed G.O.Ms.No.47, Housing and Urban Development, dated 06.03.2019, whereby a new Master Plan was introduced. Seeking to desal and regularize her property in accordance with the new Master Plan, the petitioner once again filed a review application on 07.03.2022 to the Director of Town and Country Planning, Chennai. In such circumstances, explaining all the above facts and seeking to de seal the premises, the petitioner submitted a representation dated 20.02.2023 to the respondent. However, no order has been passed based on the said representation. Hence, this writ petition.

3. Learned counsel appearing for the respondent, on instructions, submits that earlier permission was granted in respect of the petitioner's building only for residential purpose. Subsequently, she filed an application seeking permission for running a commercial business i.e., Hotel in the said building. However, the said application was returned by pointing out the following defects, which have not been rectified till date:

- “(a) The height of the building must be within 10 meters, as on date it is 11 meters.*
- (b) Only 50% of the total plot has to be used for construction but building has occupied the total plot area, therefore, 50% of constructed building has to be demolished. Front side, rear setbacks*



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must be minimum 3 meter each. There is no setback found. Therefore, the building without setbacks can't be allowed to function.

- (c) *Minimum plot frontage must be 15 meters. The building has no frontage. Therefore the total unauthorized construction has to be demolished and thereafter petitioner has to present new plan approval as per new maser plan.”*

4. Learned counsel appearing for the petitioner submits that the petitioner has rectified all the defects pointed out by the respondent – Municipality and she has satisfied the requirements made by the Municipality. Therefore, the learned counsel for the petitioner seeks for consideration of the petitioner's application to desal the premises and to run lodging business in the subject building.

5. Considering the facts and circumstances of the case, we are of the view that if the petitioner has complied with all the requirements as per the defects pointed out by the respondent – Municipality, then the petitioner's application has to be considered. Therefore, we direct the petitioner to resubmit the application along with all the required documents to the



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respondent – Municipality, within a period of one week from the date of receipt of a copy of this order. On receipt of the said application, it is open to the respondent to inspect the subject property and take appropriate decision in accordance with law for granting such permission to the petitioner, if the petitioner is found to have satisfied all the requirements for running commercial business in the subject building, within a period of twelve weeks thereafter.

6. At this juncture, it is to be noted that pursuant to the earlier directions issued by this Court, Mr.T.S.Mohammed Mohideen, learned counsel, enters appearance for the respondent – Municipality. We hereby make it clear that it is for the respondent – Municipality to engage some other counsels, if requires, based on the resolution passed by the Municipal Council. But, in the matters relating to unauthorized constructions insofar as Kodaikanal Municipality is concerned, Mr.T.S.Mohammed Mohideen, learned counsel, shall be an *amicus curiae* to assist the Court.



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7. With the above directions, this writ petition is disposed of. No costs.

[D.K.K., J.]

[R.V., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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