



W.P(MD)No.17209 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)No.17209 of 2024
and
W.M.P(MD)No.14830 of 2024**

K.Seenivasan

... Petitioner

vs.

- 1.The Member Secretary,
Dindigul Local Planning Authority,
Dindigul – 624 003.
- 2.The Commissioner/Monitoring Committee,
Corporation of Dindigul,
Dindigul.
- 3.The Chairperson,
Tamil Nadu Real Estate Regulatory Authority (TNRERA),
1st Floor, Gandhi Irwin Bridge Road,
Egmore,
Chennai – 600 008.

4.K.Kannan

... 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 of the second respondent in Na.Ka.No.8014/2021/F3 dated 04.07.2024 and quash the same as illegal and consequently direct the first



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respondent to regularize the additional construction as per the regularization application filed in online application No.2019030020018142, dated 03.07.2019.

For Petitioner	: Mr.Arul Vadivel @ Sekar Senior Counsel for Mr.R.R.Kannan
For Respondents	: Mr.N.Satheesh Kumar Additional Government Pleader for R.1
	: Mr.J.Lawrence Standing Counsel for R.2
	: Mr.R.Satheesh Standing Counsel for R.3

ORDER

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

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to quash the order of the second respondent in Na.Ka.No. 8014/2021/F3 dated 04.07.2024 and consequently direct the first respondent to regularize the additional construction as per the regularization application filed in online application No.2019030020018142, dated 03.07.2019.



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2.The petitioner already secured plan permission and building permission to construct 15 units of dwelling houses (flats), which is an admitted fact. However, in deviation of the plan approval, the petitioner has admittedly constructed 20 units ie., 5 units excess. In order to regularize the additional 5 units constructed on the third floor, the petitioner had already made an application to the first respondent, who is the competent authority, to consider such an application and to pass orders.

3.That application having been scrutinized, the first respondent inspected the property in question and has given a detailed report called the eDCR-Scrutiny Report, where it has been noticed that 20 units totally have been built.

4.Therefore, a decision has to be taken by the first respondent to regularize such unauthorized construction of an additional 5 flats or 5 units, as per law. However, so far, according to the learned counsel appearing for the petitioner, no orders have been passed.



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5. When that being the position, the fourth respondent approached this Court by filing an earlier Writ Petition in W.P(MD)No.20186 of 2021 taking action against the petitioner for removal of such unauthorized constructions, a Division Bench of this Court, by order, dated 25.03.2024, has directed the respondents therein including the second respondent herein to take action for removal of such unauthorized constructions.

6. Pursuant to the said order passed by the Division Bench, now the second respondent/Municipality has issued the present impugned order, dated 04.07.2024, for the removal of such additional constructions in deviation of the original building plan granted in this regard.

7. Heard Mr.Arul Vadivel @ Sekar, learned senior counsel appearing for the petitioner, Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the first respondent, Mr.J.Lawrence, learned standing counsel appearing for the second respondent and Mr.R.Satheesh, learned standing counsel appearing for the third respondent. In view of the order that is going to be passed in this Writ Petition, notice to the fourth respondent is hereby dispensed with.



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8. Insofar as the additional constructions made by the petitioner, ie., 5 additional units are concerned, in order to regularize the same, the petitioner since had given an application in the year 2019 to the first respondent, who is the competent authority and that application having been scrutinized, a scrutiny report also has been filed, however, subsequently, it seems that no action has been taken by the first respondent and according to the learned counsel appearing for the petitioner, the application is still pending with the first respondent.

9. However, these factors have not been brought to the notice of the Division Bench, when the Writ Petition filed by the fourth respondent was dealt with.

10. In view of the pendency of the application before the first respondent since in the year 2019, where after inspection, the scrutiny report though had been submitted, since no action so far has been taken and no orders have been passed regularizing the additional constructions or otherwise under law, at this juncture, whether such a drastic action proposed to be taken by the second respondent, of course, on the basis of the orders passed by the earlier Division Bench can be permitted is a question before us.

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11.Insofar as the drastic action which is proposed now by the second respondent is concerned because the 2019 application though had been filed for seeking regularization of the additional construction has not been further persuaded by the petitioner.

12.In this context, we find that the application had been in fact persuaded, where the inspection had been conducted by the first respondent, thereafter, the scrutiny report also had been filed, however, no final orders have been passed so far.

13.When that being the position, unless the final order is passed by the first respondent, the unauthorized construction or additional construction of 5 units made by the petitioner cannot be said to be an unauthorized construction finally for the purpose of removal of the same as has been proposed now by the second respondent through the impugned order.



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14.In that view of the matter, we are inclined to dispose of this

Writ Petition with the following orders:

'(i) That there shall be a direction to the first respondent to pass orders on the application of the petitioner, dated 03.07.2019, with regard to the plea for regularization of the additional construction made by the petitioner on the basis of the inspection already been made and the scrutiny report submitted by the inspection team, within a period of two months from the date of receipt of a copy of this order, if already orders have not been passed.

(ii) If already orders have been passed, the same shall be communicated by the first respondent to the petitioner.

(iii) Till such time, no coercive steps shall be taken pursuant to the impugned order passed by the second respondent.'



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15. With these directions and observations, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
26.07.2024

NCC : Yes / No
Index : Yes / No

Note: Issue Order Copy on 11.08.2024.
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To

- 1.The Member Secretary,
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Dindigul – 624 003.
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- 3.The Chairperson,
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R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
W.P(MD)No.17209 of 2024

DATED : 26.07.2024

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