



W.P(MD)No.25337 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2024

CORAM:

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

W.P(MD)No.25337 of 2022

S.Lenin

... Petitioner

VS.

- 1.The District Collector,
District Collectorate Campus,
Thanjavur.
- 2.The Commissioner,
Thanjavur Municipal Corporation,
Thanjavur.
- 3.The Local Planning Authority,
Represented by its Member Secretary,
Ganapathy Nagar,
Thanjavur – 613 007.

4.Mohammed Rafiq

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the second and third respondents to cause a site inspection at Gandhiji Road of Thanjavur District and consequently direct the second and third respondents to remove the unauthorized construction made by the fourth respondent in Ward-5,



W.P(MD)No.25337 of 2022

WEB Block-7, T.S.No.74, Gandhiji Road, Thanjavur, within the time stipulated by this Court.

For Petitioner	: Mr.CM.Arumugam
For Respondent Nos.1 & 3	: Mr.S.P.Maharajan Special Government Pleader
For Respondent No.2	: Mr.N.Dilip Kumar
For Respondent No.4	: Ms.AL.Gandhimathi for Mr.C.Mahadevan

ORDER

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

Prayer in this Writ Petition is to direct the second and third respondents to cause a site inspection at Gandhiji Road of Thanjavur District and consequently direct the second and third respondents to remove the unauthorized construction made by the fourth respondent in Ward-5, Block-7, T.S.No.74, Gandhiji Road, Thanjavur, within the time stipulated by this Court.

2.According to the petitioner, the fourth respondent constructed the building in question in violation of the norms as contemplated under the provisions of the Tamil Nadu Town and Country Planning Act, 1971. With regard to the same, the petitioner sent a representation dated 20.09.2018



W.P(MD)No.25337 of 2022

WEB COPY

to the third respondent to take appropriate action against the fourth respondent. However, the same has not been considered. Hence, the petitioner submitted an application before the third respondent under the Right to Information Act, wherein, the third respondent has stated that the fourth respondent's building plan approval was rejected and challenging the same, the fourth respondent has preferred an appeal and the same is pending. Since the authority concerned has not taken action against the fourth respondent for unauthorized construction, the petitioner has filed the present Writ Petition.

3.The learned counsel appearing for the fourth respondent vehemently opposed the contention of the petitioner stating that the fourth respondent is not a owner of the building and he is a tenant. Without verifying the factual aspects, the petitioner has simply filed the present Writ Petition as against the fourth respondent and accordingly seeks for dismissal of the fourth respondent concerned.

4.At this juncture, learned counsel appearing for the second respondent Corporation, on instructions, submitted that the building in question has been constructed without getting any approval from the



W.P(MD)No.25337 of 2022

authority concerned and therefore, the said building is illegal and the same is an unauthorized construction. The second respondent issued notice to the fourth respondent on 21.02.2024 to produce the plan approval. Since the fourth respondent being the occupant, the said notice has been issued to the aforesaid occupier of the building.

5.Further it is brought to the notice of this Court that the Division Bench of this Court in ***W.P.No.20783 of 2021, dated 30.11.2023 [A.Rajavel and others Vs. The Thoothukudi Municipal Corporation, Represented by its Commissioner, No.113, Palai Road, Thoothukudi – 628 002 and others]*** has considered the scope of entertaining the application under Section 49 of the Town and Country Planning Act, 1971 and also under Section 56(3) of the Act and held that there is no scope to entertain such applications of completion of the unauthorized constructions of the buildings in the said properties. The relevant paragraphs are as follows:

'20.If relief is granted to persons, who have in violation of the Act and Rule put up a superstructure, it would be the beginning of anarchy. Law does not permit any person to take law into his own hands, thereafter, pleads for mercy from the very authorities, whose permission had not been



W.P(MD)No.25337 of 2022

WEB COPY

taken. Had the building been put up with some semblance of permission and there had been violation within permissible limits, we would have agreed with Mr.Saravanan, learned Senior Counsel.

21. In fact, very recently a Division Bench of this Court in N.Sankar v. The Principal Secretary (Town and Country Planning) [CDJ 2023 MHC 5337] , after analysing the entire law, held as follows:- "No application for approval after completion of the building can be entertained, as it would amount to putting a cart before a horse." The position of law being clear, all we have to do is to apply the same to the facts of the case.

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23. We have to state that an application, which is not maintainable under the Act, cannot be maintained by an authority or entertainable by virtue of an order in a petition seeking Writ of Mandamus. There cannot be a Mandamus contrary to the Statute. A Mandamus can lie for performance of a statutory duty or when a right is established. Here is a case, where the respondents 5 and 6 are entirely in the wrong and if we were to follow the orders, which are but mere "dispose of representation or application", we would literally be directing the authority to act contrary to the Statue. Therefore, the order directing "disposal" of the applications filed under Section 56(3) would not come to the rescue of the respondents 5 and 6. This is because the application under Section 56(3) as we have interpreted above, does not permit an entirely unauthorized structure to be regularized.



W.P(MD)No.25337 of 2022

WEB COPY

24. Regularisation is an exception and cannot be the Rule. The Town and Country Planning Authority viz., the fourth respondent has filed a counter that the powers vested to initiate action against unauthorized occupants has been delegated to the first respondent the Thoothukudi Municipality. Having noticed that the entire structure is illegal, all that remains is to issue a Mandamus as sought for.'

6.While that being so, in the present case, the owner of the property has constructed the entire building in the aforesaid property without getting approval from the authority concerned and therefore, there is no further legal impediment for taking action for removal of unauthorized constructions by following the procedure as contemplated under the rules.

7.In such circumstances, we are of the view that the second respondent Corporation has not served notice to the owner of the building. Hence, the second respondent Corporation is directed to issue notice to the owner as well as occupier of the building in question for taking necessary action for removal of unauthorized construction, after affording due opportunity to the parties concerned, in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.



W.P(MD)No.25337 of 2022

WEB COPY

8.With the above direction, this Writ Petition is disposed of. No costs.

[D.K.K.,J.] [R.V.,J.]
27.03.2024

NCC : Yes / No
Index : Yes / No
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To

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W.P(MD)No.25337 of 2022

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and
R.VIJAYAKUMAR,J.

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ORDER MADE IN
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