



W.P(MD)No.25472 of 2022

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.25472 of 2022
and
W.M.P(MD)No.19554 of 2022**

Prabhakaran

... Petitioner

VS.

1.The Commissioner,
Corporation of Madurai,
Aringar Anna Maligai,
Madurai – 625 002.

2.The Assistant Commissioner of Corporation,
Madurai Corporation Central Office,
North Marret Street,
Madurai – 625 001.

3.The Assistant Engineer,
Ward 51, Madurai Corporation,
Madurai City,
Madurai.

4.D.Kavitha

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents 1 to 3 to consider the representation of the petitioner, dated 18.10.2022 given for

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WEB COPY initiating action against the fourth respondent for the illegal construction being proceeded with, without obtaining the requisite building plan approval.

For Petitioner : Mr.Henri Tiphagne

For Respondent Nos.1 to 3 : Ms.S.Devasena

ORDER

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

The petitioner has filed the present Writ Petition for issuance of a Writ of Mandamus, to direct the respondents 1 to 3 to consider the representation of the petitioner, dated 18.10.2022 for initiating action against the fourth respondent for making illegal construction without obtaining any planning permission.

2.When the matter was taken up for hearing today, the learned counsel appearing for the respondents 1 to 3 Corporation would submit that the building plan approval has been granted by the authority concerned for two grounds, namely ground floor and first floor, but the fourth respondent unauthorizedly constructed additional floor and the said building is above 9

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meters and the authority concerned will take necessary action for removal of the same within the time stipulated by this Court.

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 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

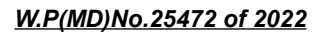


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perpetrators of such offences. It is trite law that the respondent authorities should take action for the services rendered to the public, whereas in the instant case, after so many litigations, at the instance of the complainant, who is the neighbour 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.Considering the facts and circumstances of the case and also considering the fact that the fourth respondent has unauthorizedly constructed additional floor in the building in question, we direct the first respondent Corporation to take necessary action for removal of the additional floor which was unauthorizedly constructed by the fourth respondent in the building in question, in accordance with law, after providing due opportunity 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 Petition is closed.

<https://www.mhc.tn.gov.in/judis>



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

ps

ORDER MADE IN
W.P(MD)No.25472 of 2022

DATED : 06.03.2024