



W.P.No.28573 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2025

CORAM

THE HON'BLE MR. JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Petition No.28573 of 2024

and

Writ Miscellaneous Petition No.31151 of 2024

Srinivas Rao

... Petitioner

Vs.

The President,
Masinagudi Panchayat,
Udhagamandalam,
The Nilgiris – 643 223.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the impugned de-occupation cum lock and seal Notice/Order dated 03.09.2024, passed by the respondent in Na.Ka.Ma.U.No.90/2015 and to quash the same as illegal.

For Petitioner : Mr.N.L.Rajah, Senior Advocate
For Mr.Rajagopal Vasudevan

For Respondent : Mr.E.Veda Bagath Singh
Special Government Pleader



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ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The lock and seal notice dated 03.09.2024 is sought to be assailed in the present writ proceedings.

2. Based on the field inspection conducted by the competent authorities, actions are initiated to remove the alleged unauthorized constructions/deviations in the premises belongs to the petitioner. Notice was issued initially in proceeding dated 31.08.2024 stating that the petitioner shall stop using the subject building and vacate the same within a period of three days.

3. Impugned notice thereafter was issued in proceeding dated 03.09.2024 stating that the petitioner should stop usage and vacate the subject premises. Two notices issued on 31.08.2024 and 03.09.2024 are similar in nature and more specifically, issued under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, both the notices are to be treated as one under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971.



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4. Mr.N.L.Rajah, learned senior counsel appearing on behalf of the petitioner would mainly contend that the procedures as contemplated in Tamil Nadu Town and Country Planning (Removal of Unauthorized Development) Rules, 2022 has not been followed in the case of the petitioner by issuing notices as per the procedures contemplated. Therefore, the said impugned notice is to be set aside. It is contended that the petitioner has obtained building plan permission. Change of user alone is the allegation raised against the petitioner. Thus the entire action by the respondents are not in consonance with the provisions of the Act and the Rules framed thereunder.

5. The learned Additional Government Pleader appearing on behalf of the respondent would submit that two notices were issued under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971. Contentions in both the notices are similar. Pertinently, no lock and seal has been effected admittedly. Therefore, further procedures are to be followed in accordance with the Rules and in the event of any such unauthorized constructions/deviations the authorities are empowered to remove the same. Thus, the writ petition at this stage is to be rejected.



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6. Section 56 of the Tamil Nadu Town and Country Planning Act, provides power for removal of unauthorized development. If any unauthorized constructions/deviations are identified under Sub Section (1) to Section 56, the authorities competent are empowered to issue notice for the purpose of removal of unauthorized development under Sub Section (2) to Section 56.

7. Section 56(2-A) of the Tamil Nadu Town and Country Planning Act, contemplates that if the owner or occupier as the case may be of the land or building has not discontinued the use of such land or building as required in the notice served under sub Section (1) within the time specified therein, the appropriate planning authority, if *prima facie* satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed, irrespective of pendency of any application under Section 49 or Appeal under Section 79 or any litigation before the Court. The owner or the occupier, as the case may be, of such land or building shall provide security for such sealed premises. Therefore, Section 2-A of Section 56 provides ample power to the competent authorities to discontinue the use of land/building by locking and sealing the premises.



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8. Irrespective of pendency of any application under Section 49 or Appeal under Section 79 or any litigation before the Court,. Section 57 denotes power to stop unauthorized development. Sub Section (4) to 57 stipulates that “where the development as described in clauses (a) to (d) of Sub Section (1) of Section 56 is being carried out, the planning authority may also take action to discontinue the development by locking and sealing the premises, in such manner as may be prescribed, till the production of the planning permission from the appropriate planning authority as required under the Town and Country Planning Act. Therefore, the planning authority under Sub Section (4) to Section 57 is empowered to stop unauthorized development on identification of *prima facie* case for exercise of such powers.

9. Section 80-A reads as under:

“80-A. Special powers of Government._ (1) Notwithstanding anything contained in Section 80, the Government may, on application, call for and examine the records of the appropriate planning authority in respect of sealing of the premises under sub-section (2-A) of section 56 or under sub-section (4) of section 57 and if, in any case, it appears to the Government that any such action or decision, should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:



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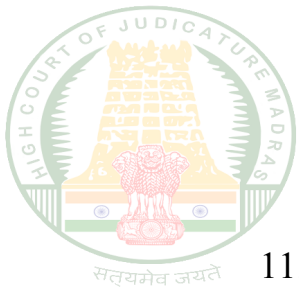
Provided that every application to the Government for the exercise of the powers under this section shall be preferred within thirty days from the date of sealing:

Provided further that such application for revision shall be disposed of by the Government within ninety days from the date of receipt of the application.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

(3) The Government may pass such interim order, as they may deem fit, pending the exercise of the powers under subsection (1) in respect thereof.”

10. Sub Section (1) to Section 80-A in unequivocal terms clarifies that in any case, it appears to the Government that any such action or decision should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly. Therefore, the power of revision under Section 80-A of the Town and Country Planning Act, is wider enough to deal with the lock and seal notice/order issued by the competent authority. The language employed under Section 80-A is “in any case, it appears to the Government that any such action/decision”. The Government has got powers to modify annul, reverse or remit the matter back for reconsideration.

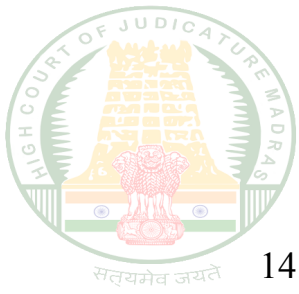


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11. Construction of provision and language employed would be abundantly clear that the Government has got wider power to entertain applications challenging the lock and seal notice / order and by calling for the records decide the issues on merits and in accordance with law by affording opportunity to the parties.

12. Sub Section (3) to Section 80-A enumerates that the Government may pass such interim order, as they may deem fit, pending exercise of the powers under Sub Section (1) in respect thereof. Therefore, the Government, at its discretion, may pass an interim order during the pendency of the revision petition under Section 80-A of the Tamil Nadu Town and Country Planning Act.

13. The Tamil Nadu Town and Country Planning (Removal of Unauthorized Development) Rules, 2022 was notified in exercise of the powers conferred by Sub Section (1) of Section 122 read with Sections 56, 57 and 80-A of the Town and Country Planning Act, 1971. Rule 4 contemplates inspection of unauthorized development. Rule 5 is for removal of unauthorized development already carried out. Rule 6 is about removal of ongoing unauthorized development. Rule 7 speaks about lock and seal of unauthorized development. Rule 9 is about mode of service of notice.

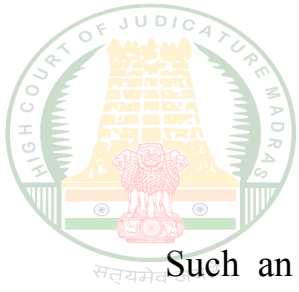


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14. Procedure for disposal of application under Section 80-A is contemplated under Rule 12. Appendix provide forms of issuance of notice, etc. Therefore, comprehensive procedures are contemplated under the Rules which are to be followed by the competent authority for initiation of action against unauthorized constructions/deviations etc. The complaint raised by the petitioner is that the procedures as contemplated are not followed. Therefore, the impugned notice for lock and seal is to be set aside.

15. Question arises whether High Court in exercise of the powers of judicial review under Article 226 of the Constitution of India has to call for the records relating to lock and seal notice and set aside the same, when power of revision contemplated under Section 80-A of the Act provides wider scope to deal with such notices or the decisions taken by the competent authority for lock and seal of the premises unauthorizedly constructed or deviations are identified.

16. Exhausting the alternate remedy contemplated under the statute is of paramount importance, High Court in exercise of the powers of judicial review, need not adjudicate the disputed facts. Verification of building plan permission, documents in original are imminent for the purpose of forming final opinion.



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Such an exercise cannot be done by the High Court. Mere pleadings in the affidavit would be insufficient to form a final opinion, whether the building is wholly unauthorized, partly unauthorized or deviations are identified, etc. Such matters require scrutiny of documents and reports from the field level authorities.

17. Therefore, adjudication of factual aspects from the hands of the original authority and the revisional authority would be of greater assistance to the High Court for the purpose of exercise of the powers of judicial reviews in an effective manner. In the absence of any concrete factual findings, there is a possibility of miscarriage of justice and therefore, this Court is of the considered opinion that the persons aggrieved must at the first instance shall exhaust the alternate remedy contemplated under the Act, which is efficacious.

18. In the present case, the complaint made by the petitioner is that the time line of 7 days prescribed under the rules has not been provided to the petitioner. The forms are not in consonance with the procedures under the Rules. Assuming such procedures are not strictly followed the Government is empowered to initiate appropriate action to rectify such errors and proceed with



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the allegations of unauthorized constructions/deviations if any identified.

However, it is made clear that unauthorized constructions, deviations cannot be spared. Such unauthorized constructions are causing environmental damages and posing danger to the public in general and road users.

19. Therefore, this Court is of the considered opinion that the petitioner has to exhaust the revisional remedy contemplated under Section 80-A of the Tamil Nadu Town and Country Planning Act. Granting liberty to the petitioner to prefer a revision before the Government, the present writ petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition also stands dismissed.

(S.M.S., J.) (K.R.S., J.)
05.03.2025

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Index: Yes

Speaking Order: Yes/No

Neutral Citation Case : Yes/No



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