



W.P.(MD)No.6716 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.6716 of 2025

and

W.M.P.(MD)No.4965 of 2025

K.Mohamed Haroon

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the Principal Secretary to the Government,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Government of Tamil Nadu,
Represented by the Additional Chief Secretary to the Government,
Housing and Urban Development (UDV(1)) Department,
Fort St. George,
Chennai - 60
3. The Director of Town and Country Planning,
3rd Floor, CMDA Campus,
E and C Market Road,
Koyembedu,
Chennai - 600 107.



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4. The Municipal Commissioner,
City Municipal Corporation,
2979/1, Gandhiji Road,
Thanjavur - 613 001.

5. The Assistant Director,
Thanjavur District Town and Country Planning Office,
NGK Complex,
Nanjikottai Road,
St. Marry Road,
Near St. Anthony Higher Secondary School,
Thanjavur – 613 000.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated on 07.03.2025 and pass order to provide opportunity by giving breathing time to set right the building setback and car parking nearby building which is very much available the petitioner's property in Town Survey No.1/3, Block No.37, Ward No.8, Neelagiri Therku Thottam Village, Thanjavur District.

For Petitioner : Mr.A.Senthilkumar

For Respondents : Mr.S.P.Maharajan (R1 to R3 & R5)

Special Government Pleader

Mr.N.Dilipkumar (R4)

Standing Counsel



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ORDER

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

The present writ petition is fictitious and the petitioner made an attempt to escape from the clutches of enforcement action by filing writ petition after writ petition in respect of unauthorized constructions made by him.

2. The relief sought for in the present writ petition is to direct the respondents to consider the representation dated 07.03.2025. The representation itself is not maintainable, since the Government has decided the issue and passed final orders, after affording opportunity to all the parties in G.O.(3D).No.5, Housing and Urban Development (UDV(1)) Department, dated 24.01.2025. When the matter reached finality at the Government level, further representation to the authorities are not entertainable at all. The fact reveals that the petitioner has constructed building unauthorizedly.

3. The learned Standing Counsel appearing for the Municipality would submit that the petitioner has constructed three floors unauthorizedly. Thus, enforcement action was initiated.



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4. The petitioner filed WP(MD)No.22599 of 2024 to forbear the respondents from taking coercive action. This Court passed an order on 20.09.2024 directing the appellate authority to dispose of the appeal within a period of twelve weeks. The petitioner participated in the appeal proceedings and the Government elaborately considered the issues and rejected the appeal filed by the petitioners in G.O.(3D).No.5, Housing and Urban Development (UDV(1)) Department, dated 24.01.2025. Thus, the authorities have to continue the enforcement action and demolish the unauthorized building. The Government order issued in G.O.(3D).No.5, Housing and Urban Development (UDV(1)) Department, dated 24.01.2025 became final and remains unchallenged. The Government Order is a speaking order, wherein the facts regarding the unauthorized constructions are considered in detail. That being the factum, the present writ petition seeking a direction to consider the representation would do no service to cause of justice. Very idea to prolong and protract the enforcement action, at no circumstances, be encouraged by the High Court.

5. The Supreme Court, in the case of ***Rajendra Kumar Barjatya and Another vs. U.P.Avas Evam Vikas Parishad & Others*** reported in ***2024 INSC***



990 issued directions in rem in para 20 and 21, which read as under:-

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"20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like



electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.

21. Therefore, in the larger public interest, we are inclined to issue the following directions, in addition to the directives issued by this Court in Re: Directions in the matter of demolition of structures (supra):

(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.

(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that



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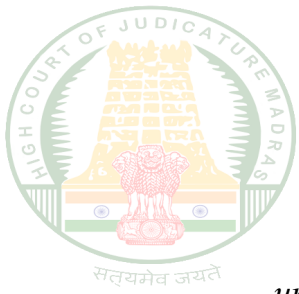
the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible for issuance of wrongful completion /occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission /licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.



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(viii) *Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.*

(ix) *In the event of any application / appeal / revision being filed by the owner or builder against the non-issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.*

(x) *If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal / Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.*

(xi) *Banks / financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.*



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(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws."

6. The learned Government Pleader and the learned Standing Counsel for the Municipality would submit that consequent to the order of the Government rejecting the representation, authorities have issued notice to vacate the premises and hand over the possession to the authorities enabling them to demolish the unauthorized constructions.

7. That being so, this Court is not inclined to entertain this writ petition. The respondents are bound to implement the orders of the Government in its letter and spirit by demolishing the unauthorized constructions. The said exercise is directed to be completed as expeditiously as possible. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (A.D.M.C., J.)

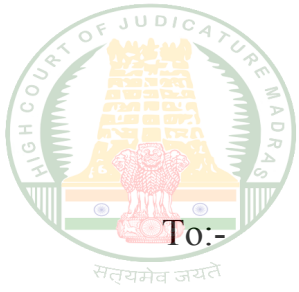
10.06.2025

NCC : Yes / No

Index : Yes / No

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