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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-01-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

WP No. 648 of 2026

R.Ashokan

..Petitioner(s)

Vs

1. The Block Development Officer
Udhagamandalam, Nilgiris District.
2. The Tahsildar
Kundha Taluk, Kundha Bridge Post,
Nilgiris District.
3. L.P.Rajasekar

..Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India issuing Certiorarified Mandamus, to call for the records of the order of the 1st respondent in notice No.26/2026-2026 dated 24.10.2025 and quash the same and consequently direct the 1st respondent to remove the lock and seal in the petitioner shop situated at Door No.3/217G in Survey No.OS. No.134/1, RS.No.344/1 at B.Manihatty Village, Balacola Panchayat (Balacola 1), Kundah Taluk.

For Petitioner(s):

Mr.J.Franklin

For Respondent(s):

Mr. T. Arun Kumar
Additional Government Pleader For R2
RR1 & 3- Not ready in notice.



ORDER
(Order of the Court was made by S.M.Subramaniam J.)

WEB COPY Notice dated 24.10.2025 issued under Section 56 (2A) of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as the “Act”), with regard to the unauthorised construction is under challenge in the present writ proceeding.

2. A complaint was given against the petitioner’s property that he has encroached upon the Government land. During the course of inspection, authorities found that there is no encroachment of land, but unauthorised constructions are found. Thus, Executive Authority of Panchayat initiated action against unauthorised construction under the provisions of the Act.

3. Scheme under the Act would contemplate that an application seeking permission is to be filed under Section 49 of the Act. Based on the application, competent authority, after scrutiny may grant permission for construction of a building, as per the approved planning permission. Section 56 of the Act provides **Power to require removal of unauthorised development**. Sub-Section (2-A) to Section 56 enumerates that,

“(2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under subsection (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 a court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises.”

4. Even at the stage of Section 56, there is a scope for the owner of the building to correct unauthorised portion or to seek revised permission as required under the Rules. Section 56(3) provides scope for seeking *permission under Section 49 for the retention of the land, or any buildings or works or for the continuance of any use of the land or building to which the notice relates*. However, such revised permission must be in accordance with the Rules. Therefore, Act paves way for developer or owner to secure a revised permission, which can be granted in accordance with the Rules. If no such permission was obtained even during the course of construction, and if any developer or owner continue to commit violation of the building plan permission, then authorities are empowered to invoke Section 57 and issue stop-work order for unauthorised developments. Section 57 of the Act provides power to stop unauthorised development. Once stop-work order has been issued under Section 57 of the Act, an aggrieved person may prefer a revision under Section 80(A) of the Act before the Government. Section 80(A) provides special powers to Government to conduct an enquiry and pass



appropriate orders on merits. Sub-section (3) to Section 80(A) empowers the Government to pass interim orders pending revision. When the scheme of the Act contemplates various procedures and enforcement action at various stages of the development of a building, then said procedure is to be followed scrupulously by the authorities. Persons seeking building plan permission under Section 49 of the Act, on such permission, is expected to put up construction strictly in accordance with building plan permission granted. Violation would result in initiation of enforcement action and demolition of unauthorised construction by following the procedures as contemplated under the Act and the Rules framed thereunder.

5. In the present case, subject building is under construction in hill station. Therefore, Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993 is also to be pressed into service for the purpose of considering grant of building plan permission and to deal with unauthorised construction. As far as Hill station Rules are concerned, Division Bench of this Court has elaborately considered the applicable Rules for Hill station in the case of ***The Commissioner, Udhagamandalam Municipality Vs. L.Loganathan***¹ and the relevant paragraphs are extracted hereinunder,

“11. Udhagamandalam is declared as a municipality and Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as the Act) would apply. In the said Act, Chapter X-A was inserted

¹ 2025 MHC 2698



by the Tamil Nadu District Municipalities (Amendment) Act, 1992 (Tamil Nadu Act 58 of 1992) with effect from 9th December 1992.

As per Section 217-A, this Chapter shall apply only to hill stations. The scheme of the Act under Chapter X-A would show that there is prohibition of construction or reconstruction of buildings etc., without licence under Section 217-B which reads as under:

'217-B. Prohibition of construction or reconstruction of buildings, etc., without licence

(1) No person other than the Central or State Government or local authority, shall —

- (a) construct or reconstruct a building on any land ; or
- (b) put to use any agricultural land to any non-agricultural purpose ; or
- (c) carry out any engineering, mining or other allied operations on any land, within the area of the hill station without a licence granted by the State Government and except in accordance with the terms and conditions specified in such licence.

Explanation.— For the purpose of the provisions of this Chapter, "agriculture" includes, horticulture, fruit growing, seed growing, animal husbandry (including breeding of livestock), apiculture, pisciculture and sericulture and "agriculture" shall be construed accordingly.'

12. Section 217-C speaks about application for licence and reads as under:-

'217-C. Application for licence .— (1) Every application for a licence under Section 217B shall



be in such form, contain such particulars and be accompanied by such plans and fee as may be prescribed and shall be submitted to the Executive Authority.

(2) On receipt of an application under sub-section (1), the Executive Authority shall, within such time as may be prescribed, examine the application with reference to such building rules as may be prescribed for the purpose of this Chapter and forward the same to the Committee.

(3) (a) For the purpose of this Chapter, the State Government may constitute a Committee called the Committee for Architectural and Aesthetic Aspects for all the hill stations in the State of Tamil Nadu, with such number of officials and non-officials and. having such qualifications as may be prescribed.

(b) The term of office of the non-official members of the Committee and other matters relating to the conduct of the meeting of the said Committee including the allowances payable to the non-official members shall be such as may be prescribed.

(4) The Committee shall examine every application received from the Executive Authority in all aspects and forward the same to the State Government with its remarks.

(5) The Committee shall, while examining the applications under sub-section (4), shall have



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regard to the following matters, namely :

(a) the application for grant of a licence complies with the provisions of this Chapter and rules made thereunder ;

(b) the proposed construction or reconstruction of the building or the purpose for which the land is proposed to be used will not be detrimental to the scenic beauty and natural environment of the hill station ; (c) the proposed construction or reconstruction of a building will aesthetically and architecturally harmonize with the landscape of the hill station ;

(d) the possibility of the construction or reconstruction of building, the nonagricultural purpose for which the land is to be used or the carrying out of any engineering, mining or other allied operations,—

(i) creating unfavourable conditions upon the scenic beauty and natural environment of the hill station ; or (ii) resulting in concentration of population in and around the hill station ;

(e) that the proposed use of land will not lead to deforestation and soil erosion ;

(f) that the proposed use of land will preserve the special characteristics of the hill station as regards landscape, vegetative cover and climate of the hill station;

(g) the free, passage or way to be left in front of the building as may be prescribed ;

(h) the open space to be left about the building to secure free circulation of air and the prevention



of fire and to facilitate scavenging ;

(i) the ventilation of the building, the minimum cubic area of the rooms and the number and height of the storeys of which the building may exists.

(j) the provision and position of drains, latrines, urinals and cesspools or other receptacles for rubbish or filth ;

(k) the level and width of the foundation, the level of the lowest floor and the stability, of the structure ; (1) the line of frontage, with neighbouring buildings if the building abuts on a street ;

(m) the means of egress from the building in case of fire ;

(n) the materials to be used for, and the method of construction of, external and partition walls, rooms, floors, fireplaces and chimneys;

(o) the height and slope of the roof above the upper-most floor on which human beings are to live or cooking is to be done;

(p) any other matter affecting the ventilation and sanitation of the building; and

(q) such other matters as may be prescribed.'

13. Section 217-D speaks about Grant of Licence as hereunder:-

'217-D. Grant of licence .— On receipt of an application from the Committee with its remarks, the State Government, if satisfied that the grant of



a licence will not result in the deterioration of scenic beauty or destruction of the environment and ecosystem of the hill station, may, grant a licence subject to such terms and conditions as they may think fit to impose, or refuse to grant a licence : Provided that a licence shall not be refused unless the applicant has been given an opportunity of making his representation.'

14. Section 217-O speaks about Chapter to override other laws, reads as under:-

'217-O. Chapter to override other laws .—

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law, custom, usage or contract. (2) Save as otherwise provided in sub-section (1), the provisions of this Chapter shall, be in addition to, and not in derogation of, any other provisions of this Act.'

15. Non-obstante clause provides that it is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment (**South India Corporation (P) Ltd. Vs. Secy., Board of Revenue, Trivandrum²**). Thus a non obstante clause may be used as a legislative device to modify the ambit of the provision of law mentioned in the non obstante clause to override it in specified circumstances (**Pannalal Bansilal Patil Vs. State of**

²AIR 1964 SC 207



Andhra Pradesh³. Section 217-O employs non obstante clause. Hence non obstante clause is significant as has been found by Hon' ble Supreme Court and this Court consistently.

16. In exercise of powers conferred by Section 217-C read with sub- Section (1) of Section 303 of Act, Rules are framed viz., Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993. Rule 1(2) states that they shall apply to all Hill Stations specified in Schedule II to the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) and to all other local bodies in hill areas to which Chapters IX, X and X-A of the said Act are extended.

17. Rule 7 provides location of building and reads as under:

'7. Location of Building.- (1) Every person who constructs, reconstructs or alters or adds to the building, shall wherever the site is within 15 metres of any tank, reservoir, water course, river, fresh water channel or well, carryout such measures as may be necessary or as the Government may direct for the purpose of preventing any contamination of or any risk of the drainage of the building passing into such tank, reservoir, water-course, river fresh –water channel, or well.

(2) No assignment of land shall be made for agricultural purpose or only other purpose including residential purpose within 150 metres from the boundaries of reserve forest and wooded lands or areas of special interest as may be declared by the Government from time to time.'

³1996 (1) Scale 405



18. *Holistic reading of the provisions of Chapter X-A of Act and the Rules framed thereunder viz., Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993, this Court is of the considered view that the said Chapter, Act and the Rules framed thereunder alone would apply for the purpose of grant of building plan permission/licence in hill stations.”*

6. Therefore, as far as the grant of building plan permission in hill station are concerned, Chapter X-A of the Tamil Nadu District Municipalities Act, 1920 as well as the corresponding Rules framed in exercise of the powers conferred under Section 217-C r/w Sub-Section (1) of Section 303 of the Tamil Nadu District Municipalities Act is to be scrupulously adopted by the competent authority.

7. In the present case, the order impugned is a notice issued under Section 56 (2A) of the Act. If at all, petitioner is aggrieved from and out of the said notice, he has to submit his building planning permission obtained, if any, to the competent authority or by submitting necessary application under the provisions of the Act. At present Tamil Nadu Urban Local Bodies Act, more specifically, Combined Building Regulation under Chapter 8 of the Act is also to be looked into before considering the application for grant of building plan permission. Unified application of the statutes for granting building plan permission is just and necessary, in order to ensure that development of buildings are undertaken in accordance with law.



8. However, at this stage, learned counsel for the petitioner would submit that building has already been sealed by the competent authority by invoking the powers under Section 57 of the Act.

9. If the petitioner is aggrieved, he has to prefer a revision petition before the Government under Section 80A of the Act. Petitioner is permitted to prefer a revision within a period of 10 days from today. In the event of filing a Revision under Section 80A of the Act, the same may be entertained without reference to the delay and Government shall decide the revision on merits and in accordance with law.

10. With the above observations, the present writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions, if any, are closed.

(S.M.S.,J.) (C.K.,J.)
20-01-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Block Development Officer
Udhagamandalam, Nilgiris District.
2. The TahsildarKundha Taluk,
Kundha Bridge Post, Nilgiris District.



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**S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN, J.**

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