

W.P.(MD)No.21278 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.21278 of 2025

and

W.M.P.(MD)Nos.16443 & 16445 of 2025

P.Mohan

... Petitioner

-Vs-

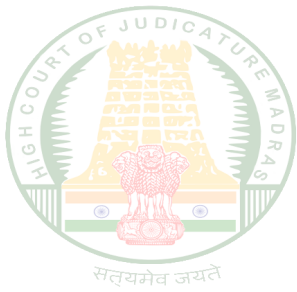
**1.The Assistant Director of Town Panchayats,
Dindigul Zone, Collectorate, Dindigul.**

**2.The Deputy Director of Town and Country Planning,
O/o. The District Town and Country Planning,
Vivekanandha Nagar, Dindigul-624 001.**

**3.The Executive Officer,
Palayam Town Panchayat,
Guziliamparai and Taluk,
Dindigul District.**

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 3rd respondent vide his proceedings in Na.Ka.No.187/2025/A2, dated 28.05.2025 and quash the same as illegal.



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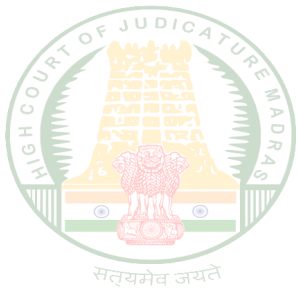
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For Petitioner : Mr.T.Aswin Raja Simman
For R1 & R2 : Mr.S.P.Maharajan,
Special Government Pleader
For R3 : Mr.M.Sarangan,
Additional Government Pleader

ORDER

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

Litigious maintenance of unauthorized construction or continuous of encroachment of public property at no circumstances be encouraged by the High Court. Legal brains attempting to thwart the legal proceedings initiated under law must be cautiously dealt with by the High Court. Multiple litigations have been instituted to thwart the enforcement action. This practice adopted by the litigants must be dealt with by iron hands in the interest of public. The Hon'ble Supreme Court of India also dealt with the unauthorized constructions, ill consequences and issued directives in rem in the case of ***Rajendra Kumar Barjatya and another Vs. U.P.Avasevam Vikas Parishad and others*** reported in ***2024 INSC 990***. In continuation of the said judgment, the Hon'ble Supreme Court again reiterated the principles in the case of ***Kaniz Ahmed Vs. Sabbudin and others*** reported in ***2025 INC 610***.

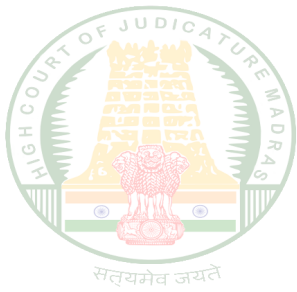


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2.Keeping in mind the directives issued by the Hon'ble Supreme Court of India, let us now consider the scope of the rules in the context of the order impugned passed in the Writ Petition vide proceedings dated 28.05.2025.

3.Admittedly, the writ petitioner constructed building without obtaining building plan permission under the provisions of the Act. After completion of the construction, he made an application, seeking building plan permission. The authorities competent have stated that such application, seeking post building plan approval is not maintainable. The authorities competent further stated that they have no jurisdiction to grant post building plan approval and therefore, passed the impugned order, stating that the petitioner may approach the Head of the Department, namely, Commissioner.

4.The learned counsel appearing for the petitioner would submit that the authorities competent are forcing the petitioner to run pillar to post without passing any final orders on the application submitted by him, seeking post building plan approval. Having no other remedy, the present Writ Petition came to be instituted. He relied on Section 135(3) of the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as 'the Local Bodies Act').



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5. Section 135(3) of the Local Bodies Act states that 'the Commissioner may, after scrutiny of such application in the prescribed form received together with any plan, and after satisfying himself that the construction work is in accordance with the rules, he may grant the permission after collecting necessary fee and the penalty prescribed'.

6. First of all, the petitioner is not entitled to contend that Section 135 of the Local Bodies Act is to be applicable in his case. The petitioner, on an earlier occasion, has given a written statement, admitting the fact that the building was constructed without obtaining building plan approval and himself will demolish the building and thereafter, submitted an application, seeking plan approval. Therefore, now, he cannot turn around and contend that the application submitted, seeking post building plan approval is to be considered either by the original authority or by the Commissioner.

7. Section 133 of the Local Bodies Act, more specifically, Sub Section 1 to Section 133 enumerates that 'any building constructed within the municipal area shall be in accordance with the building rules framed by the Government for this



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purpose. While framing such building rules, the Government shall have due regard to the land use, the density of population, development schemes to be carried out in such areas, environmental situation and such other factors as the Government may consider relevant'.

8.Sub Section 5 to Section 133 of the Local Bodies Act stipulates that 'the construction, reconstruction or demolition of a building shall not **begun** unless and until the Commissioner has granted permission for the execution of the work.

9.Section 135 of the Local Bodies Act cannot be read in isolation. The Act as a whole is an object and the purpose has to be considered by the Courts, while interpreting a particular provision. Purposive interpretation, which requires objectives of the Act needs to be considered. Therefore, in view of the statement given by the petitioner that he himself will demolish the unauthorized construction, he cannot claim that his application is to be considered. Statement amounts to admission that the unauthorized construction cannot be retained.

10.The Power of regularization of unauthorized construction cannot be a routine affair. The provision is to be used sparing in exceptional cases, where



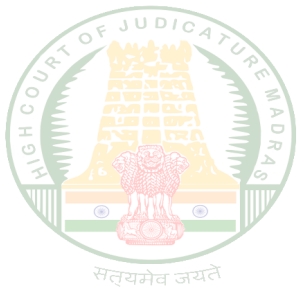
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there are justification and reasonings. In this context, it is relevant to consider

Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, (hereinafter referred to as 'the Act'), which deals with the power to require removal of unauthorized development. Under Section 56 of the Act, unauthorized constructions are to be demolished and the land is to be restored in its original position. The proceedings are also contemplated.

11. Similarly, Tamil Nadu Combined Development and Building Rules, 2019 (hereinafter referred to as 'the Rules') in an unambiguous terms stipulates that written permission for development is mandatory. Sub Rule 1 to Rule 4 stipulates that 'no person shall carry out any development or construction of building or structure, subdivision, layout, reconstitution or amalgamation of land or change of use of land or building without the written permission of the competent authority.'

12. Rule 22 of the Rules denotes illegal developments. If any construction or development is carried out illegally or in deviation to the plan approved, the competent authority shall take action against the constructions or developments as provided in the Act and in these rules.



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13.Holistic reading of the provisions of the Tamil Nadu Urban Local Bodies Act, Tamil Nadu Town and Country Planning Act and the Tamil Nadu Combined Development and Building Rules, 2019 clarifies that any development of the building is to be made, only after obtaining prior building plan approval from the competent authority. Post building plan approval is unknown to this statistics and the authorities competent have no jurisdiction to grant any such post building plan approval and such powers are not contemplated.

14.Beyond these provisions considered in the aforementioned paragraphs, the directives in rem framed by the Hon'ble Supreme Court are to be borne in mind. In the case of **Rajendra Kumar** cited supra, paragraph Nos.20 and 21 are relevant, which are extracted hereunder:-

“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



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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,



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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 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.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation



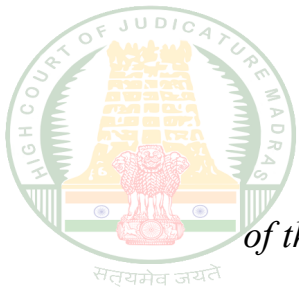
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from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against 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



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of the same by the parties concerned.

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

15.In the case of **Kaniz Ahmed** cited supra, paragraph No.7 is relevant, which is extracted hereunder:-

“7.Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.”

16.Therefore, this Court is of the considered view that post building plan approval is not contemplated under the statutes. That apart, the Hon'ble Supreme Court also in unequivocal terms reiterated that the unauthorized constructions



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cannot be retained and to be demolished by following the procedures as contemplated under the relevant statutes and rules in force.

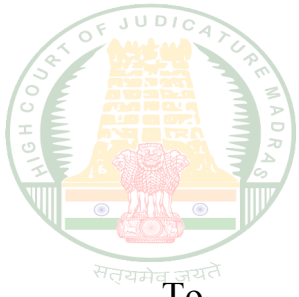
17.Practice of filing Writ Petition after Writ Petition, citing one or two grounds, which are untenable, cannot be the basis for stalling the enforcement action initiated by the competent authorities under the provisions of the law. Thus, High Courts are expected to restrain in exercising the power of judicial review, while dealing unauthorized constructions, encroachment, which are all causing greater prejudice to the public interest and infringing the Constitutional rights of the citizen to utilize the public lands for public purposes and to implement the public welfare schemes by the Government.

18.For all these reasons, this Writ Petition is untenable and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (A.D.M.C., J.)
04.08.2025

NCC : Yes / No
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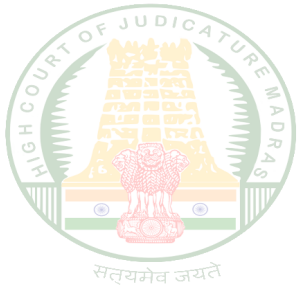


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