

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. Nos.5128 and 5129 of 2015 and M.P. Nos.1 and 2 of 2015

Mahendra College of Education,
represented by its Authorised Signatory
Attayampatty (via)
Kalipatty (Post)
Namakkal District 637 501 ... Petitioner in W.P. No.5128
of 2015

vs.

1. The Commissioner of Town and Country Planning
Directorate of Town and Country Planning
807 Anna Salai
Chennai 600 002
2. The Deputy Director of Town & Country Planning
Salem Region
Salem District 636 005
3. Mallasamudram Town Panchayat (East)
represented by its Executive Officer
Mallasamudram
Tiruchengode Taluk
Namakkal District 637 205
4. Mallasamudram Town Panchayat (East)
represented by its President
Mallasamudram
Tiruchengode Taluk
Namakkal District 637 205

... Respondents in W.P. No.5128
of 2015

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Mahendra College of Education
represented by its Authorised Signatory
Kumaramangalam
Namakkal Road
Tiruchengode Taluk
Namakkal District 637 205

... Petitioner in WP No.5129/2015

vs.

1. The Commissioner of Town and Country Planning
Directorate of Town and Country Planning
807 Anna Salai
Chennai 600 002

2. The Deputy Director of Town & Country Planning
Salem Region
Salem District 636 005

3. Kavudampalayam Village Panchayat
represented by its President
Tiruchengode Taluk
Namakkal District 637 205

... Respondents in WP No.5129/2015

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records of the respondents, relating to the orders of the first respondent in D.O. Roc No.9263/2012-UAC dated 21.07.2014 and the order of the second respondent ending with ROC No.1537/2014 SR-3 dated 12.02.2015 and quash the same.

For petitioner in : Mr. K. Doraisamy, Sr. Counsel
both the WPs for M/s. Muthumani Doraisami

For RR 1 & 2 in : Mr. P.S. Sivashanmugasundaram
both the WPs Special Government Pleader

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

These writ petitions are filed challenging the order of the first respondent dated 21.07.2014 in D.O. Roc. No.9263/2012-UAC and the order of the second respondent dated 12.02.2015 in Roc. No.1537/2014 SR-3 stating that in spite of opportunity having been

given, the petitioner institutions have not submitted their approved plan and therefore, the buildings in question will be locked and sealed.

2. The learned Senior Counsel appearing for the petitioners submits that the petitioner institutions are having approved plan granted by the competent authority/local body and based on the approved plan only, the buildings were constructed prior to 2010. The learned Senior Counsel relied on a Division Bench judgment of this Court in *The District Collector and Others vs. Danial Thangaraj and another*¹ as well as the order of a learned Single Judge in *Apesh Construction Ltd. vs. The Corporation of Madurai* and an unreported judgment dated 15.06.2012 passed in W.P. No.11031 of 2011, in support of his contentions.

3. The impugned notices dated 12.02.2015 were passed based on D.O.Roc No.9263/2012-UAC dated 21.07.2014, which is also impugned in these writ petitions and the said proceedings reads as follows:

"D.O. from Commissioner

D.O. Roc.No.9263/2012-UAC dated 21.07.2014

Dear Thiru. . . .

Sub: Unauthorised educational institutions -
Enforcement action like locking and sealing of the premises to be taken without any delay - Regarding.

Ref: This office letters of even no.dated 28.08.2012 and 08.01.2013.

You are aware that a list of total colleges including engineering colleges, arts and science colleges, B.Ed. Colleges, ITI, medical colleges and para medical colleges functioning within your jurisdiction was sent to you vide reference cited above and you were requested to take action against those unauthorised colleges after verifying with the approval register of your office. It is learnt that unauthorised construction notice has been issued by your office to most of the unauthorised colleges and schools within your area but, enforcement action as envisaged in the sections 56 and 57 of the Tamil Nadu Town and country Planning Act, 1971 like locking and sealing of the premises have not been proceeded against those institutions.

Your are hereby instructed to issue notice to unauthorised educational institutions for which notice was not issued so far and to take enforcement action like

¹ 2013 WLR 925

locking and sealing of those institutions for which notice was already issued and sufficient time as required under sections 56 and 57 is over. It is hereby informed that it is your responsibility to take proper enforcement action against the unauthorised educational institutions in your area and any slackness in this regard will be viewed very seriously and the officials of the field office will be held fully responsible. You are also requested to get in touch with the District Collector concerned and appraise regarding this subject to proceed with the enforcement action smoothly and effectively. You are requested to send an action taken report in this regard early."

Yours sincerely
(R. Venkatesan)

To
Assistant Director/Member Secretary of all
Composite Local Planning Authorities
New Town Development authorities and
Regional Deputy Directors (incharge)"

4. Since the petitioners/educational institutions are contending that they have obtained the approval plan from the competent authority and the buildings were constructed as per the approved plan, it is open to the petitioners/educational institutions to submit their objections/representations about the impugned notices dated 12.02.2015. The impugned notices were issued based on the communication issued by the Commissioner/Director of Town and Country Planning, Chennai - 2. The Deputy Director of Town and Country Planning is directed to get a clarification from the Commissioner/Director of the Town and Country Planning, Chennai - 2, who is bound to clarify, to take further action in the matter, as the action initiated is based on the D.O. Roc.No.9263/2012-UAC issued by the Commissioner dated 21.07.2014. After receiving the said clarification, the Deputy Director of Town and Country Planning of Salem Region is directed to pass a speaking order in accordance with law, within a period of one week from the date of receipt of a copy of this order. Till fresh orders are passed by the Deputy Director of Salem Region as stated supra, status quo as obtained today in respect of the buildings of the petitioners/educational institutions, shall be maintained by both the parties.

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5. These writ petition are disposed of with the above direction. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

CAD

To

1. The Commissioner of Town and Country Planning,
Directorate of Town and Country Planning,
807 Anna Salai, Chennai 600 002
2. The Deputy Director of Town & Country Planning,
Salem Region,
Salem District 636 005.
3. The Executive Officer,
Mallasamudram Town Panchayat (East),
Mallasamudram, Tiruchengode Taluk,
Namakkal District 637 205.
4. The President,
Mallasamudram Town Panchayat (East),
Mallasamudram, Tiruchengode Taluk,
Namakkal District 637 205.
5. The President,
Kavudampalayam Village Panchayat,
Tiruchengode Taluk,
Namakkal District 637 205.

+2cc to M/s.Muthumano Doraisami, Advocate, S.R.No.10563,10564
+2cc to the Government Pleader, S.R.No.10789,10801

NM(CO)
CA(05/03/2015)

W.P. Nos.5128 and 5129 of 2015