



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.09.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P. (MD) No.17383 of 2015

and

M.P. (MD) .Nos.1 & 2 of 2015

M/S. PUSHPALATHA EDUCATIONAL CENTRE
REP. BY ITS DIRECTOR S. PUSHPALATHA
NO.11K, ST. THOMAS ROAD
PALAYAMKOTTAI
TIRUNELVELI.

... Petitioner

Vs.

- 1 THE STATE OF TAMIL NADU
REP. BY SECRETARY TO GOVERNMENT,
HOUSING AND URBAN DEVELOPMENT (UD4(3) DEPARTMENT,
FORT ST. GEORGE
SECRETARIAT,
CHENNI 600 009.
- 2 THE DIRECTOR
DEPARTMENT OF TOWN AND COUNTRY PLANNING
NO.807, ANNA SALAI
CHENNAI 600 002.
- 3 THE MEMBER SECRETARY (IN CHARGE)
TIRUNELVELI LOCAL PLANNING AUTHORITY
TIRUNELVELI.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 23.7.2015 in Na.Ka.No.2491/2012/PA1 of the 2nd respondent herein and quash the same and consequently direct the respondents 2 and 3 to forthwith grant permission to put up additional construction in Survey No.356 part V.M. Chatram village, Melapalayam, Tirunelveli without insisting for handing over of 10% OSR lands pursuant to application dated 16.3.2011 by the petitioner.

For Petitioner ... Mr.AR.L.Sundaresan, Senior Counsel for
Mrs.AL.Ganthimathi

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents ... Mr.G.Muthukannan
Government Advocate



ORDER

The writ petition has been filed praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 23.7.2015 in Na.Ka.No.2491/2012/PA1 of the 2nd respondent herein and quash the same and consequently direct the respondents 2 and 3 forthwith to grant permission to put up additional construction in Survey No.356 part V.M. Chatram village, Melapalayam, Tirunelveli without insisting for handing over of 10% OSR lands pursuant to application dated 16.3.2011 by the petitioner.

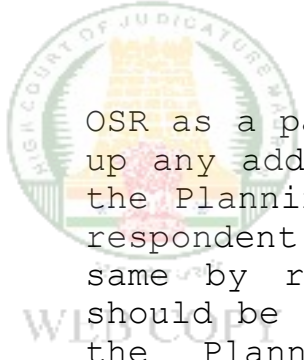
2. In the affidavit filed in support of this writ petition, it is averred that the petitioner herein is running a school under the name and style of M/s.Pushpalatha Educational Centre for the past 25 years in a total extent of 9.47 acres of land. The petitioner School is having open spaces and a playground for the students. The petitioner school has also allotted space for a bus-stand and a temple for the people of the local area. While the things stood thus, with an intention to put up some additional constructions for the purpose of class rooms, the petitioner applied for planning permission to the 3rd respondent herein on 17.03.2011 with all the required documents along with necessary fees. The said plan was received by the 3rd respondent herein and has also been forwarded for enquiry and approval to the Commissioner of Tirunelveli Corporation. Later on, they inspected the site and found that some constructions were going on in the site and the same were only at the starting level. Hence, the 3rd respondent requested the petitioner herein to give an undertaking that they should not proceed with the construction. Accordingly, the petitioner also gave an affidavit of undertaking on 12.04.2011 stating that they had stopped the construction activities and will not proceed with the same till the planning permission is granted. Subsequently, the third respondent again inspected the site and had found out that all other requirements, as per the plan were complied with and it was found that only the requirement of 10% OSR has not been given and the petitioner was requested to propose 10% OSR in the plan and re-submit the same. As such, the 2nd respondent herein, vide his proceedings dated 19.05.2011, requested the petitioner to re-submit the plan with 10% OSR since there is sufficient open space adjacent to the approach road to the school and after the same is received, the request for planning permission will be perused and approval will be granted. Accordingly, the third respondent, vide letter dated 03.06.2011, called upon the petitioner to propose 10% OSR in the plan and submit a corrected plan for the purpose of granting approval. Hence, the petitioner, by letter dated 28.06.2011, requested the 3rd respondent herein to grant 10 days time to re-submit the

3. It is further averred in the affidavit that the petitioner,



by her letter dated, 10.08.2011, requested the 3rd respondent herein stating the school is functioning for the past 25 years and the entire area of 9.47 acres is used for school purposes only and further assured that the existing playground area will be maintained as 'Open Space' and in future also, the petitioner undertook not to construct in the playground area and requested for grant of approval at the earliest. Again, she re-submitted the plan along with the said letter dated 29.08.2011. However, the 3rd respondent herein, by proceedings dated 09.09.2011, forwarded the said proposal of the petitioner to the 2nd respondent herein. The second respondent, vide his letter dated 07.12.2011, stated that they had perused the proposal and rejected the request of the petitioner to dispense with 10% OSR and returned the proposal submitted by the petitioner.

4. The said returned plan was also forwarded to the 3rd respondent and the third respondent, vide its letter dated 19.12.2011, returned the application of the petitioner for planning permission with a condition that 10% OSR should be handed over to the Local Planning Authority. Again, the petitioner, by letter dated 10.01.2012, applied to the 2nd respondent, herein, requesting for dispensing with the said 10% OSR reservation by citing the aforesaid reason. However, the 3rd respondent requested the petitioner to make an appeal to the 2nd respondent, by his letter dated 14.02.2012. Hence, the petitioner again requested the 2nd respondent herein to consider the proposal. Again, the 2nd respondent, by proceedings dated 13.03.2012, returned the planning permission proposal of the petitioner stating that the petitioner had not reserved 10% OSR, as required under the Development Control Rules and as required under G.O.Ms.No.130 dated 14.06.2010. Whiles, the Government of Tamil Nadu, under G.O.Ms.No.161, dated 26.06.2013, by considering all the aspects and the request of the self-financing Professional Arts and Science Colleges, in the State, directed that in respect of the Educational Institutions for whom Open Space Reservation is applicable, the Open Space Reservation shall be earmarked and kept open to sky without any construction with the condition that the Open Space Reservation area should be utilized only as a park and not as a place of the concerned institution. Hence, the petitioner, by letter, dated 03.09.2013, submitted a representation to the second respondent, by referring to the aforesaid Government Order in G.O.Ms.No.161, dated 26.06.2013 and further undertook that they will retain the 10% OSR in the Planning Permission as a park and they will not use it as a playground and they will not put up any additional constructions. However, there was no response. In the mean while, the 2nd respondent by letter dated 16.10.2013, informed the petitioner that the said application of the petitioner should be submitted to the Local Planning Authority. Hence, the petitioner, again, on 14.08.2014, submitted an application to the Local Planning Authority with an undertaking that they will retain 10%



OSR as a park and will not use it as a playground and will not put up any additional construction in future and earmarked 10% OSR in the Planning Permission and submitted the same. However, the 3rd respondent herein, by letter dated 10.09.2014, again returned the same by reiterating that 10% OSR should be earmarked and OSR should be handed over to the Local Panchayat and only after that, the Planning Permission will be considered. Hence, the petitioner, on 14.03.2015, again submitted all the aforesaid facts and requested the 2nd respondent to sanction the planning permission. Since there was no response, the petitioner re-submitted the representation on 06.05.2015 by explaining all the aforesaid facts, stating that the planning permission for additional construction was proposed along with 10% OSR and the same will be retained as a park and they will not put up any construction in future in the said OSR area. However, even after the said undertaking, the 2nd respondent herein, by letter dated 23.07.2015, rejected the petitioner's application for planning permission of additional construction stating that the petitioner had not handed over 10% OSR to the Corporation and thereby the petitioner was directed to hand over 10% OSR to the Tirunelveli Corporation. Aggrieved over the said order, dated 23.07.2015, the present writ petition has been filed.

5. The learned senior counsel appearing for the petitioner by inviting the attention of the Court to the clause No.7 of G.O.Ms.No.161, Housing and Urban Development (UD4(3) Department, dated 26.06.2013, submitted that the Open Space Reservation shall be earmarked and kept open to sky without any construction with the condition that the Open Space Reservation area should be utilized only as a park and not as a playground by the concerned institutions. The learned senior counsel further submitted that when that being so, now, the second respondent, without considering the said G.O.Ms.No.161, passed the impugned order, directing the petitioner to hand over 10% of OSR to the Tirunelveli Corporation and then apply for planning permission through the Local Planning Authority and submitted that the impugned order is against the clause of the G.O.Ms.No.161, dated 26.06.2013 and the same is liable to be set aside.

6. Considering the submissions made by the learned senior counsel appearing for the petitioner, I find some force in the submissions made by the learned senior counsel for the petitioner. In the said circumstances, it will be appropriate to extract relevant clause from G.O.Ms.No.161, Housing and Urban Development (UD4(3) Department, dated 26.06.2013.

"In respect of educational institutions for whom the Open Space Reservation Regulation is applicable, the Open Space Reservation shall be earmarked and kept open to sky without any construction with the condition that the Open Space Reservation area should be utilized only as a park and not as a playground by the concerned institutions.



The guideline value should not be collected in lieu of area in such cases."

Therefore, I find that sofar as the educational institutions are concerned, Open Space Reservation shall be earmarked and kept open to sky without any construction with the condition that the Open Space Reservation area should be utilized only as a park and not as a playground by the concerned institutions.

7. The learned senior counsel appearing for the petitioner also submitted that the petitioner is also prepared to file an affidavit of undertaking before the respondent that she shall keep the Open Space Reservation open to the sky without any construction and the said Open Space Reservation shall be utilized only as a park, not as a playground.

8. In view of the above submission made by the learned senior counsel appearing for the petitioner, this Court is constrained to pass the following order.

The impugned order is set aside and the matter is remitted back to the second respondent for fresh consideration. The petitioner is directed to file an affidavit of undertaking before the second respondent that she shall keep the Open Space Reservation open to the sky without any construction and the said Open Space Reservation shall be utilized only as a park, not as a playground. On filing of such affidavit of undertaking, the second respondent is directed to consider the application of the petitioner for planning permission, in the light of the G.O.Ms.No.161, Housing and Urban Development (UD4(3) Department, dated 26.06.2013 and pass an appropriate order, within a period of four weeks from the date of receipt of a copy of this order.

9. This writ petition is allowed to the above extent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Per.Admn)

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Sub Assistant Registrar

vs

To

1 THE SECRETARY TO GOVERNMENT,
STATE OF TAMIL NADU
HOUSING AND URBAN DEVELOPMENT (UD4(3) DEPARTMENT,
FORT ST. GEORGE
SECRETARIAT, CHENNAI 600 009.



2 THE DIRECTOR
DEPARTMENT OF TOWN AND COUNTRY PLANNING
NO.807, ANNA SALAI
CHENNAI 600 002.

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3 THE MEMBER SECRETARY (IN CHARGE)
TIRUNELVELI LOCAL PLANNING AUTHORITY
TIRUNELVELI.

+1 cc to M/S. A.L.GANDHIMATHI , ADVOCATE, SR NO: 56493

JAM/ KBM /09.10.2015/ 6P-5C

W.P. (MD) No.17383 of 2015

25.09.2015