

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.18031 of 2016
and WMP.No.15823 of 2016

Don Bosco Matriculation School
Rep. By its Correspondent
Mr.K.Saramma
No.8, 3rd Cross Street
M.K.B.Nagar, Chennai-600 039 ...Petitioner

Vs.

- 1.Government of Tamil Nadu
Rep. By its Secretary
Housing and Urban Development Department
Secretariat, Chennai-9
- 2.The Member Secretary
Chennai Metropolitan Development Authority
Chennai-600 008
- 3.The Commissioner
Corporation of Chennai
Chennai-600 003
- 4.The Executive Engineer
New Zone VI, Old Zone IV
Corporation of Chennai
No.28, T.H.Road
Tondiarpet, Chennai-600 081

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records ending with the order of 1st respondent made in G.O.(3D).No.88, Housing & Urban Development (UD-V) Department dated 5.5.2016 and to quash the same and to direct the 1st respondent to consider the regularization application dated 08.03.2013 in the light of the order of the Division Bench reported in 2006(4) CTC 483.

For Petitioner : Mr.Doraisami, Senior Counsel
for Mr.Muthumani Doraisami

For Respondents : Mr.P.S.Sivashanmugan sundaram,
Spl.G.P., for R1
Mr.C.Johnson,
Standing Counsel for R2
Mr.R.Arunmozhi, Standing counsel
for R3 and R4.

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader takes notice for the 1st respondent, Mr.C.Johnson, learned Standing counsel takes notice for the 2nd Respondent and Mr.R.Arunmozhi, learned Standing counsel takes notice for 3rd and 4th respondents.

2. We have heard the learned counsel appearing on either side.

3. This Writ Petition is filed praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent made in G.O.(3D).No.88, Housing & Urban Development (UD-V) Department dated 5.5.2016, seeking to quash the same and to direct the 1st respondent to consider the regularization application dated 08.03.2013 in the light of the order of the Division Bench reported in 2006(4) CTC 483.

4. It appears that the Correspondent of the Petitioner School viz., Tmt.K.Saramma, preferred an appeal under Section 79 of Tamil Nadu Town and Country Planning Act, 1971 (hereinafter called as "Act") against refusal orders of the 2nd respondent for Planning Permission for Regularization of existing School Building at S.No.755/40, 41 and 756/22 of Perambur Village. The Government examined the appeal along with the connected original records of CMDA and rejected the appeal under Section 79 of the Act stating that there is violation in respect of Plot Frontage, Set Back, Floor Space Index, Coverage, Parking etc., are huge in nature and the Petitioner was unwilling to rectify the deviations.

5. The learned Senior Counsel appearing for the Petitioner submits that as against the rejection of appeal under Section 79 of the Act, there is a provision under Section 113-C of the Act and as such, the Writ Petitioner filed an application under Section 113-C of the Act before the Government and now the Writ Petitioner is before this Court seeking a direction to the

respondents not to take any coercive action against the School, in pursuant to rejection of appeal under Section 79 of the Act.

6. We have heard Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader on the above submission of the learned Senior Counsel appearing for the Writ Petitioner.

7. On a perusal of the Typed set of Papers filed in the Writ Petition, we find that the Petitioner-School was established in order to impart good education facilities to the poor section of the society and they are collecting fees as determined by the School Committee and having good pass percentage. However, as regards Structural standard, pending W.P.No.4747 of 2013 before this court, the 4th respondent issued "Lock and Seal" demolition notice under Section 56 r/w.85 of the Act on 12.02.2011. Thereafter, as per G.O.Ms.No.235 dated 30.10.2012, the Petitioner-School applied for regularization on 08.03.2013 along with Plan and other documents. However, the 2nd respondent by order dated 13.09.2013 refused the Planning Permission, aggrieved by which, the petitioner preferred a statutory appeal to the 1st respondent on 05.12.2013. The petitioner had threat from the 4th respondent to seal the school building and the 1st respondent on 01.06.2015, passed order de-sealing the premises. By letter dated 18.06.2015, the 1st respondent communicated to the petitioner school to submit demolition plan to rectify the violation in the said school building. According to the Petitioner School, they are trying to purchase the property in and around the school area so that they can rectify the deficiency.

8. The learned Senior counsel appearing for the Petitioner further submitted that the Petitioner-School sent a representation on 25.08.2015 enclosing a copy of order of this Court dated 06.08.2015 and copy of judgment of Division Bench of this court reported in 2006(4) CTC 483 and documentary proof to show that the school building was constructed prior to February 1999 with a request to consider the Appeal dated 05.12.2013 as per the regularization scheme in the light of direction issued by this Court.

9. Considering all the above facts and circumstances of the case, we are of the considered view that it is for the 1st respondent/Government to consider the case of the petitioner under Section 113-C of the Act, if need be, after giving a personal opportunity of hearing to the petitioner and do the needful in accordance with law within two months from the date of receipt of a copy of this order. Till such time, the respondents shall not take any coercive steps against the Petitioner-School. It is open to the Writ Petitioner to give a detailed representation to the 1st respondent in respect of the regularization scheme of the school building which is stated to

be constructed prior to February 1999 and seek appropriate orders.

10. The Writ Petition is disposed of with the above direction. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri
To

- 1.The Secretary,
Government of Tamil Nadu
Housing and Urban Development Department,
Secretariat, Chennai-9.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority
Chennai-600 008.
- 3.The Commissioner,
Corporation of Chennai,
Chennai-600 003.
- 4.The Executive Engineer,
New Zone VI, Old Zone IV
Corporation of Chennai, No.28, T.H.Road
Tondiarpet, Chennai-600 081.

+1cc to Mr.C.Johnson, Advocate, S.R.No.37383
+1cc to the Government Pleader, S.R.No.37536
+1cc to M/S.Muthumani, Advocate, S.R.No.36842

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W.P.No.18031 of 2016

ug(CO)
srg(27/07/2016)