

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No. 38627 of 2016
& W.M.P.No.33083 of 2016

Vael's Educational Trust
rep. by Managing Trustee
Velan Nagar,
PV Vaithiyalingam Road,
Pallavaram,
Chennai - 600 117.

..Petitioner

Vs.

1. Superintendent Archaeologist
Govt. of India,
Archaeological Survey of India,
Chennai Circle, Fort St.George,
Chennai - 600 009.
2. Competent Authority,
Government of India,
Tamil Nadu, Fort St.George,
Chennai - 600 009.
3. The District Collector,
District of Kancheepuram,
4. Revenue Divisional Officer,
Tambaram, Chennai.
5. The Deputy Commissioner of Police,
Butt Road, St.Thomas Mount,
Chennai - 600 016.

R3 to R5 are impleaded as per order
dated 06.12.2016 in

WMP.No.36033/2016 in WP.No.38627/2016 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of mandamus directing the respondents to process the Form I application submitted by the Petitioner Trust, dated 06.05.2011 and grant appropriate No Objection certificate / Permission to the Petitioner Trust for construction of School in the lands bearing S.No.41/1 Part, at Zamin Pallavaram Village, The Pallavaram Municipality, belonging to the Petitioner Trust.

For Petitioner : Mr.Abishek Jenasenan

For Respondents: Mr.C.Manishankar,
Addl.Advocate General
assisted by
Mr.S.Rajeswaran,
Special Govt.Pleader for R2 to R5
Mr.Su.Sriunivasan,
Asst.Solicitor General
for R1

O R D E R

By consent, the Writ Petition is taken up and disposed of at the stage of admission itself.

2. The Writ Petition has been filed to issue Writ of Mandamus, to direct respondents to process the Form-I application submitted by the Petitioner Trust, dated 06.05.2011 and grant appropriate No Objection certificate / Permission to the Petitioner Trust for construction of School in the lands bearing S.No.41/1 Part, at Zamin Pallavaram Village, Pallavaram Municipality, belonging to the Petitioner Trust.

3. The grievance of the petitioner is that some of the lands owned by the petitioner Trust fell within the prohibited area as demarcated by the respondent ASI and others fell within the regulated area. Though construction is prohibited in the former, it is allowed in the latter subject to obtaining the appropriate No Objection Certificate from the ASI. In such circumstance, the petitioner Trust had approached the ASI with an application dated 06.05.2011 for grant of appropriate No Objection Certificate to construct a school building in the regulated area. Since the ASI had remained silent on the application made by the petitioner Trust, the writ petition has been filed.

4. Learned counsel for the petitioner would submit that the petitioner Trust intended to construct a School. The petitioner Trust purchased the land in S.No.41/1, Patta No.309, Pallavaram Municipality Town Field REGISTER Extract RPT 9238/07 measuring an extent of 3.47 Acres at Zamin Pallavaram Village. The petitioner Trust also applied for necessary changes in the record in their favour. Apart from the land purchased by the Trust, there are other lands belonging to the Trust and the Companies associated with the Trust. While the process of development was going on, it was brought to the attention of the petitioner that some of the area nearby and including a portion in the petitioner properties were falling within the scope of

the Archaeological Survey of India. Therefore, the petitioner sent a letter dated 28.03.2011 to the respondent and brought to their attention that some of the lands belonging to the Petitioner Trust and Associated Companies lies in the prohibited area and other properties in the regulated area. Therefore, the Petitioner Trust sought permission for putting up a School in the regulated area. The respondent also advised the petitioner to apply for No Objection Certification for construction in the regulated area in accordance with the provisions of the Ancient Monuments and Archaeological Site and Remains Act (Amendment & Validation) Act, 2010. Therefore, the petitioner addressed another letter dated 25.04.2011 under the prescribed format, viz., Form-I in accordance with the provisions of the Act. Further, on 02.05.2011, the petitioner applied for No Objection Certificate in their favour in relation to the construction in the regulated Zone. Though it was received by the authorities on 06.05.2011, there was no reply. Thereafter, on 25.06.2014, the respondent stated that only after the joint survey with the revenue authorities, No Objection Certificate will be issued. Even thereafter, till date neither the Archaeological Department or anyone has taken steps for joint survey of the properties. Learned counsel would further submit that according to Section 20-C(2), a person who owns or possesses any building or structure or land in any regulated area and desirous to carry out any construction or reconstruction of such building or structure on such land, may make an application to the competent authority for carrying out the construction or even for repair work. On such application being received under Section 20-D, the competent authority shall forward the same under Section 20-C to the authority and an order has to be passed within a period of two months from the date of receipt of the application. Right from 2011, till date, no order has been passed. If a School is constructed in that area, it will be beneficial to the public and according to the petitioner, the School is nowhere near the prohibited zone or in the site of Archaeological Department. Therefore, there is no adverse impact due to the construction of the School. Even for the joint survey, no steps have been taken. Hence, the petitioner Trust has come forward with this writ petition.

5. The Archaeological Department has filed a detailed counter, in which, they have categorically stated that ASI office had requested the State Revenue authorities for joint survey to demarcate the ASI protected site but the joint survey could not be undertaken by the ASI and the Revenue authorities due to public protest. It is brought to the notice of this Court on earlier occasion by filing a writ petition in W.P.No.9074 to 9077 of 2015 and by order dated 30.03.2015, this Court directed the District Collector to make arrangements for joint survey of the site within three months. As per the direction of this Court, by order dated 30.03.2015, a date was fixed for joint survey on 21.07.2015 and the officials from ASI

met the Revenue Divisional officer concerned on the date of joint survey, but the Revenue divisional Officer cancelled it on the ground that there was law and order problem. Subsequently, a peace meeting was conducted on 22.07.2015, wherein the ASI, Revenue officials and the Police officials attended. There also the local people protested. Therefore, the officials temporarily suspended the inspection. Once again, the joint survey, could not be conducted due to the objection of the local people and roughing of ASI officials. In other writ petitions in W.P.No.25450 of 2016 and 12753 of 2013, this Court, again ordered for conduct of joint survey on 05.11.2016. In fact, there was a direction at that point of time. Even the Superintendent of Police, Kancheepuram, was directed to be present along with the sufficient police force to handle any situation. On that day also, unfortunately, the Revenue Divisional Officer cancelled it only on the ground of law and order problem inspite of a specific direction of this Honourable Court. Therefore, the petitioner would only contend that the authorities are not cooperating and they only seek the permission of this Court.

6. Learned Additional Advocate General appearing on behalf of the State Government would contend that they will give all protection to maintain law and order problem and they will see that proper inspection is conducted and necessary cooperation will be given by both Revenue officials as well as Police officials.

7. The said statement of the learned Additional Advocate General is recorded.

8. This Court, by order dated 30.03.2015 in W.P.No.9074 to 9077 of 2015 has directed the District Collector to make arrangements for the joint survey of the site within three months and subsequently in W.P.Nos.25450 of 2016 has ordered as follows:

"Since the earlier joint survey/inspection could not be conducted due to mass agitation and man-handling of officials, the Archaeological Department has sought police protection for the joint inspection/ survey to be conducted on 05.11.2016.

In view of that, the Superintendent of Police, Kanchipuram District is directed to be present along with sufficient police force to handle any situation, taking into consideration, the past unpleasant incidents, so that joint survey/ inspection could smoothly conducted on 05.11.2016."

9. Therefore, this Court feels it proper that there should be proper appraisal of the joint survey by all the authorities, namely, the Archaeological Survey of India, the Revenue Officials of the State and the Police officials. This Court

directs the District Collector, Kancheepuram District, to fix a date for joint survey and ensure that proper demarcation is taken place in the entire area in respect of Archaeological site area, prohibited area and regulated area so that the Archaeological Department can take necessary steps to safeguard the heritage area. The concerned Deputy Commissioner of Police is directed to be present along with sufficient police force to handle any untoward situation during joint survey. The entire exercise shall be completed on or before 15.02.2017. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Post the writ petition for reporting compliance on 16.02.2017.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. Superintendent Archaeologist
Govt. of India, Archaeological Survey of India,
Chennai Circle, Fort St.George,
Chennai - 600 009.
2. Competent Authority,
Government of India,
Tamil Nadu, Fort St.George,
Chennai - 600 009.
3. The District Collector,
District of Kancheepuram,
4. Revenue Divisional Officer,
Tambaram, Chennai.
5. The Deputy Commissioner of Police,
Butt Road, St.Thomas Mount,
Chennai - 600 016.

+1 cc to Mr.A.jenasenan,advocate,sr.73451

+1 cc to Su.Srinivasan,advocate,sr.72877.

krd 19/12

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