



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

WP (MD) No.132 of 2016

and

WMP (MD) No.104 of 2016

Parusutham Institute of Technology & Science,
by its Chairman,
S.P.Anthonisamy,
Nanjikottai,
Thanjavur - 613 006.

.. Petitioner

Vs.

1. Member Secretary (in-charge),
Thanjavur Local Planning Authority,
No.33, 4th Street, Rajappa Nagar,
Medical College Road, Thanjavur - 613 007.

2. Village Panchayat President,
Innathukanpatty Panchayat,
Thanjavur Taluk & District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 08.06.2015 in Na.Ka.No.1221/2014-Tha.U.Thi.Ku and to quash the same and to further direct the 1st respondent to consider the petitioner's representation dated 11.07.2015.

For Petitioner : Mr.B.Ravi Raja

For Respondents : Mr.G.Muthukannan for R1

Government Advocate

Mr.S.Bharathy Kannan (for R2)

O R D E R

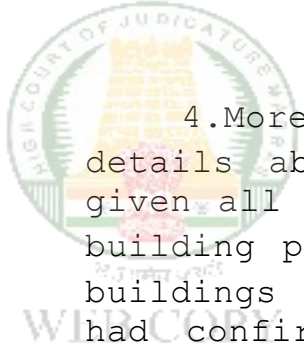
(Order of the Court was delivered by **M.V.MURALIDARAN, J.**)

The instant Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent dated 08.06.2015 in Na.Ka.No. 1221 of 2014-DHA.U.DHI.KU and to quash the same with a further direction to direct the 1st respondent to consider the representation of the petitioner dated 11.07.2015 in order to remove the lock and seal in a portion of the petitioners premises.



2.The briefs facts of the Writ Petition are that the petitioner namely Parisutham Institute of Technology and Science represented by its Chairman was approved by the All India Council for Technical Education under the All India Council for Technical Education Act. The Institution has been functioning since 2008 and Anna University has also recognized the petitioner and also has granted due affiliation. According to the petitioner, the institution is a reputed one in its kind. However, on 12.08.2014 the academic premises of the petitioner were suddenly sealed in the presence of Police personnels which causes the petitioner unable to run the Institution effectively.

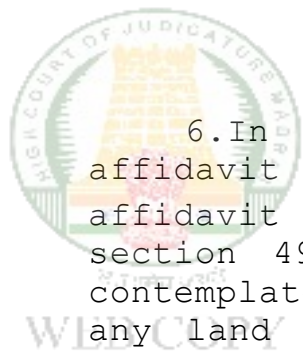
3.It is the case of the petitioner that the building plan of the Institution was duly approved by the 2nd respondent even prior to the commencement of the college. All the buildings are situated in the own Patta land and all the buildings are built with proper specifications. Further the building license fees and other fees have also been paid with the 2nd respondent to a total sum of Rs. 3,86,000/- with the Inathukanpatti Panchayat council. The annual building tax as assessed by the Block Development Officer is also paid. Moreover, the Revenue Divisional Officer has also granted the Land Usage Certificate. Further, the petitioner has possessed proper construction and establishment -soil test certificates and other things. As the facts are being so, according to the petitioner, on 09.05.2011 the 1st respondent issued the 1st notice. Thereafter the petitioner also received two additional notices in 2013. Though the petitioner sent representation, it was not properly responded, hence, the petitioner was under the impression as the said notice did not advert that the building plan of the petitioner was not approved and he waited. Thereafter without any notice to the petitioner as contemplated under section 56 and 57 of the Town and Country Planning Act, 1971, the 1st respondent on 12.08.2014 partially sealed the petitioner's premises. The further case of the petitioner is that no proper notice by giving 30 days time was served on the petitioner. Further, it is the specific case of the petitioner that notice was issued in the news paper alone and thereafter notice was pasted on the sealed portion of the premises. Further, under Rule 25 of the Tamil Nadu Panchayat Building Rules, 1979 the Village Panchayat President is the competent authority to approve the building plan. Apart from that the petitioner institution is only a technical institution and not as a commercial institution. So, according to the petitioner the action taken by the 1st respondent is vindictive. Further, in general 99% of the larger buildings located in the village Panchayat are functioning only with the approval of the local Panchayat Council.



4. Moreover, when the petitioner was directed to furnish details about the building plan by the 1st respondent, he had given all the relevant details in respect of the approval of the building plan. Subsequently, the 1st respondent had inspected the buildings and by his letter dated 08.10.2014, the 1st respondent had confirmed that the buildings were constructed as per the sanction of the plan. At the same time, the 1st respondent has noted that as per section 49 of the Town and Country Planning Act, 1971, the petitioner has to obtain permission from the Local Planning Authority and also get approval from the Government that the usage of the land is pertaining to educational activities. When the petitioner preferred an appeal before the Secretary, Government of Tamil Nadu, Housing and Urban Development Department, the same was disposed on 16.10.2015 as per the proceedings vide letter No.15150/UD4 (1)/2014-4 dated 16.10.2015. According to the order of the Secretary, the management was directed to move with the appropriate authority to get the land use conversion carried out and apply for regularization of their building plan. The order would further say that:

"since only the record room and room of the Principal have been sealed which will not create any problem in conducting the classes for the students, no case had been made out which necessitate passing of any interim or permanent order for de-seal the sealed buildings. However, local planning authority should not communicate with Anna University regarding the cancellation of application of the college since the same is beyond their scope for planning regulation."

5. According to the petitioner that against the order of the Secretary, Government of Tamil Nadu, Housing and Urban Development Department, the petitioner filed a writ petition in W.P.No.14396 of 2015 before the Principal seat of this Court. Further, on 08.06.2015, the 1st respondent issued a check list and instructed to get a no objection certificate from the Air Force Station. Apart from that several other conditions were also imposed by the 1st respondent beyond his jurisdiction. So, the petitioner sent a reply letter dated 11.07.2015 and explained the facts and also quoted the judgment of this Court in respect of the competency of the Village Panchayat President to grant approval for construction according to Tamil Nadu Panchayat Buildings Rules, 1977. Subsequently, on advice, the petitioner had withdrawn the writ petition filed before the Hon'ble Principal Bench on 16.11.2015 by getting liberty to invoke any other proceeding in accordance with law. Even after passing of several months, the representation of the petitioner dated 11.07.2015 has not been considered which compelled the petitioner to file the instant writ petition.



6. In this regard the 1st respondent filed the counter affidavit and inter alia refuting the averments made in the affidavit of the writ petitioner. According to the 1st respondent, section 49 of Tamil Nadu Town and Country Planning Act, 1971 contemplates that any person indenting to carry out development on any land are building after the date on which the consent of master plan under section 26 of the aforesaid act was published in Tamil Nadu Government Gazette should submit application to the Local Planning Authority and get approval. Moreover, section 56, and 57 of the very same act envisage that where any development of land are building has been carried out without the permission required under the act but has not been completed, the planning authority may take appropriate action to demolish the unauthorized building by locking and sealing the same, so constructed without the permission. The further contention of the 1st respondent is that the petitioner institution constructed the buildings without getting approval of the building plan. So, notice was sent under section 56 of the aforesaid act, but the petitioner did not turn up even after one year. So, on 12.08.2014 the Office room and Principal room alone were locked and sealed. The further contention is that since the particular village where the petitioner institution is located comes within the jurisdiction of Thanjavur Local Planning area and hence the approval for the construction of college building is to be obtained from the Thanjavur Local Planning Authority, so, the respondents praying for the dismissal of the writ petition.

7. Heard Mr.B.Ravi Raja, learned counsel appearing for the petitioner, Mr.G.Muthukannan, learned Government Advocate appearing for the 1st respondent and Mr.S.Bharathy Kannan, learned counsel appearing for the 2nd respondent and perused the entire materials available on records.

8. It is the case of the petitioner that the college building was constructed by getting building plan approval from the concerned Village Panchayat President under the impression that he is the competent authority. Further, the counsel for the petitioner would submit that the institution has commenced its function in the year 2008 after getting all the necessary approval from the respective authorities concerned. Per contra, the respondent would content that the building plan approved by the Village Panchayat President for the petitioner institution is invalid as the particular village has come under the jurisdiction of Local Planning Authority. Further, the buildings are not constructed as per the norms as stipulated by the Local Planning Authority. So, this is not the case that the petitioner has constructed the buildings unauthorizedly on his own volition. But the crux of the case is that the building plan was approved by the



authority who is having no jurisdiction in the locality where the petitioner institution is located. When the impugned order of the 1st respondent in Na.Ka.No.1221/2014 dated 08.06.2015 is perused, it has given a check list and specifically instructed that the building plan is to be modified as per the check list. There is no dispute that the college is functioning since 2008. Whereas, the representation of the petitioner dated 11.07.2015 is pending before the 1st respondent. The specific case of the petitioner is that in the pendency of the said representation, the office room and the principal room may be de-sealed as the sealing and locking of the same would be a stigma upon the petitioner. Since the petitioner is an educational institution and the representation is also pending and the petitioner is to ready to comply with the norms as stipulated as per the letter of the 1st respondent in Na.Ka.No.1221/2014 dated 08.06.2015, the grievance of the petitioner may be considered in respect of the de-sealing of the Office room and Principal room. Accordingly the writ petition is disposed of with the following directions:

(a) the 1st respondent is hereby directed to de-seal the Office room and Principal room of the petitioner within the period of 2 weeks from the receipt of this copy of this order;

(b) the 1st respondent is further directed to consider the representation of the petitioner dated 11.07.2015 within a period of 4 week from the receipt of copy of this order, by giving fair opportunity to the petitioner;

(c) further, the petitioner is directed to comply with the norms strictly as stipulated by the 1st respondent under the provisions of Tamil Nadu Town and Country Planning Act, 1971 and to extend his fullest co-operation to the 1st respondent.

9. With the above observations the writ petition is disposed of. There is no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C)

/True Copy/



To

1. The Member Secretary (in-charge),
Thanjavur Local Planning Authority,
No.33, 4th Street, Rajappa Nagar,
Medical College Road,
Thanjavur - 613 007.

+1 cc to Special Government Pleader, SR No. 67910

+1 cc to MR.R.R.Kannan ADVOCATE, SR No. 67524

WP (MD) No.132 of 2016

and

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10.11.2016

vsa/skn

MKV-CM-MSA-SAR 3/21.3.2017/6P-4C