



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2016

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THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P(MD) .No.4818 of 2016

S.Gurushankar

... Petitioner

Vs

1.The Government of Tamilnadu,
represented by the Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai - 600 009.

2.The Director of Town and Country Planning,
Directorate of Town and Country Planning,
Opp. LIC, Chengalvarayan Building,
4th Floor, 807, Anna Salai,
Chennai - 600 002.

3.The Member Secretary (I/C),
Thanjavur Local Planning Authority,
No.33, 4th Street, Rajappa Nagar,
Medical College Road,
Thanjavur - 613 007.

4.The President,
Nilagiri Panchayat,
Nilagiri Therkku Thottam,
Thanjavur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus, directing the respondents to consider the representation dated 08.06.2015 given by the petitioner for the change of land use/reclassification of the land situate in S.F.No.244/6, 244/7, 244/9, 244/9A1, 244/9C, 244/9D1 in the Village Nilagiri Therkku Thottam, Thanjavur.

For petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.K.Guru
Addl. Govt.Pleader for RR 1 to 3

ORDER

This writ petition has been filed for issuance of writ of Mandamus, directing the respondents to consider the representation dated 08.06.2015 given by the petitioner for the change of land use/reclassification of the land situate in S.F.No.244/6, 244/7, 244/9, 244/9A1, 244/9C, 244/9D1 in the Village Nilagiri Therkku Thottam, Thanjavur.

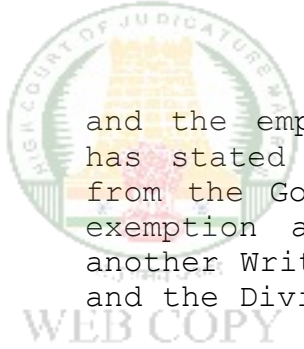
2.Mr.K.Guru and Mr.T.Vadivelan, learned Additional Government Pleaders have taken notice for the respondents.

3.According to the petitioner, the hospital was constructed after getting approval from the Directorate of Town Country Planning. Further, he already made request on re-classification of 3443.60 sq. metres in Survey No.244/2 in Nilagiri Therkku Thottam Village, Thanjavur Local Planning Area from mixed Residential use Zone into Public and Semi Public use Zone in the approval Master Plan for the Thanjavur Local Planning Area, which was granted by the first respondent, the Government in G.O.(2D).No.427, dated 02.8.2010 for change of use.

4. The petitioner also sought exemption under Section 113 of the Tamilnadu Town and Country Planning Act. Earlier he` filed W.P.No.17855 of 2014, before this Court, for a direction to the first respondent to pass orders, in accordance with law on the application of the petitioner dated 15.10.2014, for exemption under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971. By an order, dated 06.11.2014, a Division Bench of this Court in M.P.(MD).No.1 of 2014 in W.P.(MD).No.17855 of 2014, directing the third respondent not to take any coercive action against the petitioner and the Division Bench has passed final orders in the said W.P.(MD).No.17855 of 2014 is as follows;

"26.Considering the facts and circumstances of the case and also taking into account the fact that the petitioner Hospital is providing valuable medical assistance to the inmates of the Hospital and the public at large and also catering the social needs of the rural people in and around the historical District of Thanjavur, we feel it appropriate to direct the first respondent to consider and pass appropriate orders on the application for exemption under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971, sent by the petitioner on 15.10.2014, on merits, and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Till such time the third respondent shall not take any coercive action as against the petitioner Hospital as indicated in the interim order passed by this Court on 06.11.2014. However, it is made clear that depending upon the outcome of the application filed by the petitioner under Section 113 of the Act, the authority concerned shall act in accordance with provisions of the Act".

5. As per the above direction, the application for exemption, under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971, is still pending. Thereafter, the empowered committee meeting was held



and the empowered committee also by its proceedings, dated 21.05.2015, has stated that "the applicant should first obtain change of land use from the Government", then only the first respondent would consider the exemption application of the petitioner, dated 15.10.2014. Thereafter another Writ Petition was filed by the petitioner in W.P.No.15391 of 2015 and the Division Bench also passed an order as follows:

"10. In the light of the above stated position, as it is informed by the learned counsel for the parties that the matter was placed before the committee and the committee has instructed the applicant to go for change of land use and as it is also informed that the petitioner has already moved the concerned authority for consideration, we are of the considered opinion that pending decision by the first respondent, there cannot be any action coercive in nature, which may cause serious prejudice to the petitioner Hospital and to the service of the common people.

11. Therefore, we direct the first respondent to take a decision on the petitioner's exemption application dated 15.10.2014 filed under Section 113 of the Act and pass appropriate orders within a period of six months from the date of receipt of a copy of this order. Keeping in mind there cannot be any disturbance in running the Hospital and in the facts and circumstances of the case, we consider it necessary to pass an appropriate interim order and accordingly, we direct the respondents to maintain status quo as on date".

6. The petitioner has also applied for change of land use on 08.06.2015 to the first respondent through the fourth respondent and on 12.06.2015, the fourth respondent acknowledged the receipt of the representation. Later the first respondent, Government vide its communication dated 25.06.2015 informed the petitioner that till the land use is changed, the application for exemption would be kept pending and processed further only on the receipt of the same. Thereafter in the meeting held on 09.02.2016, by the empowered committee also it has been reiterated that the reclassification order has to be obtained from the Government. Therefore, the present Writ Petition has been filed for a Mandamus, seeking direction to the Government to consider the same.

7. As the relief sought for is in tune of the earlier order of this Court passed by the Division Bench. Unless the reclassification application is considered and appropriate orders are passed, the exemption application under Section 113 of the Town and Country Planning Act, 1971, cannot be proceeded further, even as per the empowered committee order dated 09.02.2016. Hence the authority will first consider the reclassification, as per the representation of the petitioner, dated 08.06.2015, after giving opportunity to the petitioner and pass appropriate orders in accordance with law, as otherwise the exemption application can not at all be considered. It is therefore ordered that the first respondent will first consider the reclassification application as per the representation dated 08.06.2015 and pass appropriate orders in accordance with law as expeditiously as possible, so as to enable the empowered Committee to process the exemption application.



8. With the above direction, this Writ Petition is disposed of.

No Costs.

Sd/
Assistant Registrar(CS-II)

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Sub Assistant Registrar.

To

- 1.The Secretary to Government,
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- 4.The President,
Nilagiri Panchayat,
Nilagiri Therkku Thottam,Thanjavur.

+1CC to M/S.H.Lakshmi Shankar, Advocate, SR.No. 13317

+1CC to the Special Government Pleader, SR.No. 13543

W.P(MD) .No.4818 of 2016

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AM/AAL.MPA/SAR-I/31.03.2016/4P/7C