IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.08.2017

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WA.No.787 of 2017 and CMP.No.10882 of 2017

Nethrodaya
No.47/1, Phase-II, Nolambur
Mogappair, Chennai, rep.by
its Managing Trustee
C.Govindakrishnan .. Appellant/Petitioner

Versus

1.The Secretary to Government,
Housing and Urban Development
Department, Secretariat,
Chennai-600 009.

2.The Member-Secretary
Chennai Metropolitan Development
Authority.Thalamuthu Natarajan
Building, No.1, Gandhi-Irwin Road,
Egmore, Chennai-600 008. .. Respondents/Respondents

PRAYER:- Writ Appeal filed under clause 15 of the Letter Patents prays this Court to set aside the impugned order dated 17.03.2017 made in W.M.P.No.1452 of 2017 in W.P.No.37908 of 2016.

For Appellant :Mr.R.Prabhakaran

For Respondents :Mr.A.N.Thambidurai, Spl GP for R1
Mr.N.Sampath for R2

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN,J.,]

By consent, the appeal is taken up for final disposal.

2 The Managing Trustee of Nethrodaya – writ petitioner/appellant herein has sworn to the affidavit in respect of the writ petition stating among other things that "**Nethrodaya is a Self-Help Institution exclusively run for the betterment of the differently abled and was established in the year 2002".** The said institution provided a host of career-enabling facilities to under-privileged boys and girls, most of them hailing from rural areas. It is further averred that in recognition of the outstanding services by the petitioner/Institution to the differently abled community, it was selected for Best Social service in the year 2010 by the Government of Tamil Nadu. The appellant/writ petitioner/Institution has also started a College / Educational Institution offering B.Ed Special Education (Visual Impairment) and the said course is

affiliated to Tamil Nadu Teachers Education University and also recognized by the Rehabilitation Council of India. As per G.O.No.56 issued by the Higher Education Department dated 24.04.2012, B.Ed (Special Education) (Visual Impairment) degree awarded by the petitioner/Institution is equivalent to B.Ed "General Education" and can be considered for employment in schools also. The appellant/writ petitioner/Institution also runs a free special Higher Secondary School, exclusively for the visually challenged and orthopedically challenged boys and girls and was also recognized by the Government of Tamil Nadu and it is also having user friendly facilities and admits students from 6th standard to 12th standard offering them free education with separate boarding and lodging facilities for girls and boys within the premises at complete free of cost. It is also stated by the appellant/writ petitioner/Institution that the Revenue Department of Tamil Nadu by G.O.No.748 dated 20.11.2006, had leased the land at Nolambur Village in S.No.47/1 admeasuring to an extent of 0.11.5 Hectare, for a period of thirty years on nominal lease amount of Rs.5000/- (Rupees Five Thousand Only) subject to certain conditions and though the lease has been granted, the control of the land is completely vested with the Revenue Department of Government of Tamil Nadu.

3 It is also further stated by the appellant/writ petitioner/Institution that after obtaining necessary planning permission/approval, it has put up superstructure consisting of Ground floor and First floor in the year 2009 and however, the 2nd respondent insisted the appellant/writ petitioner/Institution to pay the Infrastructure Amenities charges (I&A charges). The petitioner also took a stand that since it is running a school for special children [differently abled (physically Challenged and Visual impairment)] for girls and boys and further that the land is vested with the Government despite the lease, it can be exempted from payment of the said charges. The said request was rejected by the 1st respondent vide order dated 19.12.2011 and thereafter, as a consequence, the 2nd respondent vide communication dated 21.04.2014 requested the appellant/writ petitioner/Institution to remit the sum of Rs.5,62,500/- towards I&A charges along with interest at the rate of 6% per annum for the Ground Floor construction. The petitioner had also applied for permission to the 2nd respondent for construction of 2nd Floor measuring 6300 sq.ft for offering vocational training vide approval letter dated 31.08.2016. The 2nd respondent had accorded approval, subject to payment of certain I&A charges to the tune of Rs.2,30,000/- (Rupees Two Lakh and Thirty Thousand only).

4 The 2nd respondent vide impugned letter dated 04.10.2016, had rejected the request made by the appellant/writ petitioner/Institution, by taking note of the earlier order passed by the 1st respondent dated 19.12.2011 and stated that no such exemption can be extended to any other institution excepting paying of I&A charges and therefore, the appellant/writ petitioner/Institution has to remit the I&A charges. The petitioner challenging the legality of the said communication of the 2nd respondent filed W.P.No.37908/2016. It was entertained and notice was ordered.

5 The 2nd respondent has filed the counter affidavit, and took a stand that so far no institutions have been exempted from paying I&A Charges and also if such relaxation is given to any institution, it will become a precedent for others to claim and since, the construction put up by the writ petitioner is coming under the category of Institutional Building exceeding 300 Sq.m., the I&A charges shall be under Special Building rate. Therefore, payment of Rs.5,62,500/- was called for towards I&A charges and also took a stand that adjacent to the said land, the writ petitioner/institution had also purchased a portion of land admeasuring to an extent of 44.83 Sq.m through Sale Deed from Housing Board and it was

amalgamated as one unit and sought for approval and hence prays for dismissal of the writ petition.

6 The learned Single Judge after perusal of materials and upon hearing the rival submissions had observed that the petitioner is running an educational institution meant for the physically challenged and it was not in dispute and taking into consideration the facts and circumstances, allowed the writ petition subject to the condition that the petitioner shall pay a sum of Rs.5,00,000/- to the 2nd respondent within a period of eight weeks from the date of receipt of a copy of that order without prejudice to the contentions in the writ petition. As and when such payment is made, the second respondent shall issue appropriate orders, approving the building plan subject to any other compliance, within a further period of four weeks thereafter. The petitioner challenging the legality of the impugned order passed in the writ petition by directing to pay a sum of Rs.5,00,000/- as pre-condition for approval of the building.

7 Mr.R.Prabhakaran, learned counsel appearing for the appellant/writ petitioner has invited the attention of this Court to the provisions of the Rights of Person with Disability Act, 2016 (Central Act 49

of 2016) (in short 'Disabilites Act') and would submit that the said Act has been enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. The said Act, mandates upon the Government and their authorities, to provide facilities, so that, despite the disability, they can lead the normal life, compete with persons having normal physical features. The nature of the provision and part of the Act have been completely overlooked by the respondents while rejecting the request made by the appellant/writ petitioner/Institution for waiving/exemption of I&A charges. It is further submission of the learned counsel appearing for the appellant/writ petitioner/Institution that the Central Act came into being on 28.12.2016 and the original Act came into being during the year 1996. Since, the said Act namely Tamil Nadu Town and Country Planning Act came into being only in the year 1971, the development aspects with regard to the persons with disabilities have not been accepted and appropriate direction also given to the State Government to amend the said Act in tune with the Disabilities Act, 2016 and prays for appropriate orders.

8 Per contra, A.N.Thambidurai, learned Special Government

Pleader appearing for the 1st respondent would submit that the appellant/writ petitioner, as a matter of right cannot direct the Government to enact the legislation in a particular manner. Admittedly, the request made by the petitioner in that regard was rejected by the Government as early as on 19.12.2011. The appellant/writ petitioner has failed to make a challenge to the said proceedings and as such, the claim made by the appellant/writ petitioner is wholly untenable and prays for dismissal of the writ appeal.

9 Learned Standing counsel appearing for the 2nd respondent has invited the attention of this Court to the counter affidavit filed in the main writ petition and would submit that if exemption is granted to the building run by the petitioner/Institution, it will create a precedent and also problem for the 2nd respondent and admittedly, the appellant/writ petitioner has purchased adjacent land and amalgamated the same and such claim of the petitioner cannot be considered for waiving of I&A charges and prays for dismissal of this writ petition.

10 This Court paid it's anxious consideration and best attention to

the rival submissions and also perused the materials placed before it.

11 It is an admitted fact the Revenue Department of Government of Tamil Nadu vide G.O [Ms] No.748 dated 20.11.2006, has leased out the land admeasuring to an extent of 0.11.5 Hectare in S.No.47/1 Nolambur Village, Ambattur Taluk, Tiruvallur District in favour of the writ petitioner/Institution for a period of thirty years at the nominal rate of Rs.5,000/-(Rupees Five Thousand Only). On a perusal of the said Government Order would disclose that the Revenue Department of Government of Tamil Nadu was satisfied that the Institution is running without any profit motive and the Income Tax Department has also granted exemption under the category of "Public Charitable Trust". In Paragraph No.6 of the said Government Order, the inspection report and the recommendations of the Special Commissioner and Commissioner for Land Administration have also been taken into account and thought fit to exempt the institution from payment of Development charges as it is not in a position to pay the same. This court has also questioned the learned counsel as to whether, subsequent to the grant by the Revenue Department of the Government, any complaint has been received against the petitioner/Institution? It is replied by submitting that so far, no

complaint has been received, with regard to the functioning of the Institution. The Revenue Department of Government of Tamil Nadu has taken note of all the relevant facts and circumstances and thought fit to grant exemption from payment of Development Charges, as the petitioner/Institution is unable to pay the same.

12 It is brought to the knowledge of this Court by the learned counsel appearing for the petitioner that the petitioner has not received any Contribution or Donation under Foreign Contribution Regulations. It is run by receiving donations from donors within the country. The writ petitioner/appellant in paragraphs No.2 and 3 of the affidavit filed in support of the writ petition has also highlighted the institution's performance and the said fact has not been denied by the 2nd respondent. The only reason waived in the minds of 2nd respondent is that so far no exemption is granted to the petitioner/Institution, and in the event of granting exemption, it is likely to be cited as precedent. In the considered opinion of this Court, the said stand of the 2nd respondent cannot be cited as a tenable reason.

13 It is also relevant to extract Section 113 of the Tamil Nadu

Town and Country Planning Act, 1971:

"113. Exemptions.- Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made thereunder".

14 In the considered opinion of this Court, in the light of the welfare acts being performed by the writ petitioner/Institution, as pointed out, it is entitled to apply for the exemption of payment of I&A charges under the above said provision. As and when any representation is received in that regard from the writ petitioner / appellant, the 1st respondent, shall positively consider the same within a stipulated time.

15 It is also that the 2nd respondent being the statutory authority, shall also bear in mind, the objects of the Disabilities Act, 2016. The Government of Tamil Nadu shall also take into consideration the benevolent reason for the above said Act and may suitably amend the Section 63(B) of the Tamil Nadu Town and Country Planning Act, 1971, in respect of similar kind of institutions.

16 In the result, the writ appeal is partly allowed and the impugned letter of the 2nd respondent dated 04.10.2016 as well as the order dated 17.03.2017 in WMP.No.1452 of 2017 in W.P.No.37908 of 2016 are set aside and the petitioner is at liberty to submit a representation seeking exemption for payment of I&A charges, within a period of two weeks from the date of receipt of a copy of this order to the 1st respondent, who upon receipt of the same, is directed to consider the said representation on merits and in accordance with law and in the light of the observations made in this judgment and pass appropriate orders within further period of twelve weeks thereafter and communicate the decision taken to the writ petitioner/appellant. No costs. Consequently, the connected miscellaneous petition is closed.

[M.S.N.,J] [N.S.S., J]
10.08.2017

Index : No
Internet : Yes
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To
1.The Secretary to Government,
Housing and Urban Development
Department, Secretariat,
Chennai-600 009.
2.The Member-Secretary
Chennai Metropolitan Development
Authority.Thalamuthu Natarajan
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M.SATHYANARAYANAN.,J,
and
N.SESHASAYEE.,J,

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