

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.31129 of 2013

and M.P.No.1 of 2013

V.Rayar

... Petitioner

vs.

- 1.The Director of Town Planning,
No.807, Anna Salai,
Chennai.
- 2.Joint Director of Town Planning,
Trichirapalli City Corporation,
10, Williams Road,
Cantonment Area,
Trichirapalli 620 001.
- 3.Commissioner,
Trichirapalli City Corporation,
Bharadhidasan Salai,
Trichirapalli 620 001.
- 4.Government of India,
Rep. by Ministry of Road Transport and Highways,
Regional Office,
CIA, Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st Respondent to grant approval to the plan pursuant to the application dated 07.02.2011 submitted by the Petitioner and grant approval to the plan for the building constructed in the building in T.S.No.18/14 and 14/2 (Old S.F.No.46/2E and 47/2), Ward Q Block II, Tharanallur Village, Ariyamangalam Division, Trichy Corporation.

For Petitioner : Mr.R.Subramaniam
For Respondent 1 : Mr.R.Venkatesh
Government Advocate
For Respondent 2 : Mr.P.Chinnadurai
For Respondent 3 : Mr.P.Srinivas
For Respondent 4 : Mr.R.Veludas
Central Government Standing
Counsel.

O R D E R

The petitioner has come forward with this Writ Petition praying for the issuance of a Writ of Mandamus to direct the first respondent to consider his application, dated 07.02.2011 and grant approval to the plan for the building constructed in T.S.No.18/14 and 14/2 (Old S.F.No.46/2E and 47/2), Ward Q Block II, Tharanallur Village, Ariyamangalam Division, Trichy Corporation.

2. The case of the petitioner is that he submitted a plan for approval, vide his application dated 07.02.2011 and sought permission to construct a building in Town Survey Nos.18/14 and 14/2 (Old S.F.No.46/2E and 47/2), Ward Q, Block II, Tharanallur Village, Ariyamangalam Division, Trichy Corporation and prayed that the first respondent may be directed to grant approval based on the said application. According to him, after submitting the application he was asked to produce certain documents based on various communications, dated 11.01.2012, 07.03.2012 and 19.06.2012 by the respective respondents 2 and 3. The petitioner produced all the documents sought by the second respondent. He submitted that whenever documents were produced, the second respondent, sought for new documents and ultimately, the petitioner produced all documents. According to him, there should be No Objection from the fourth respondent, as the land in question is likely to come within the purview of National Highway 45 (NH45).

3. According to the petitioner, the first respondent initially communicated to him, vide letter dated 28.06.2013 that the site in question comes under Mixed Residential Zone and unless the same is converted into a Commercial Zone, his request cannot be considered. The petitioner satisfied all the conditions stipulated by the second respondent. Thereafter, the National Highways Authority of India, Trichy, by communication dated 03.09.2013 to the National Highways Authority of India, Chennai, stated that the request of the petitioner may be approved. It has been pointed out in the said communication

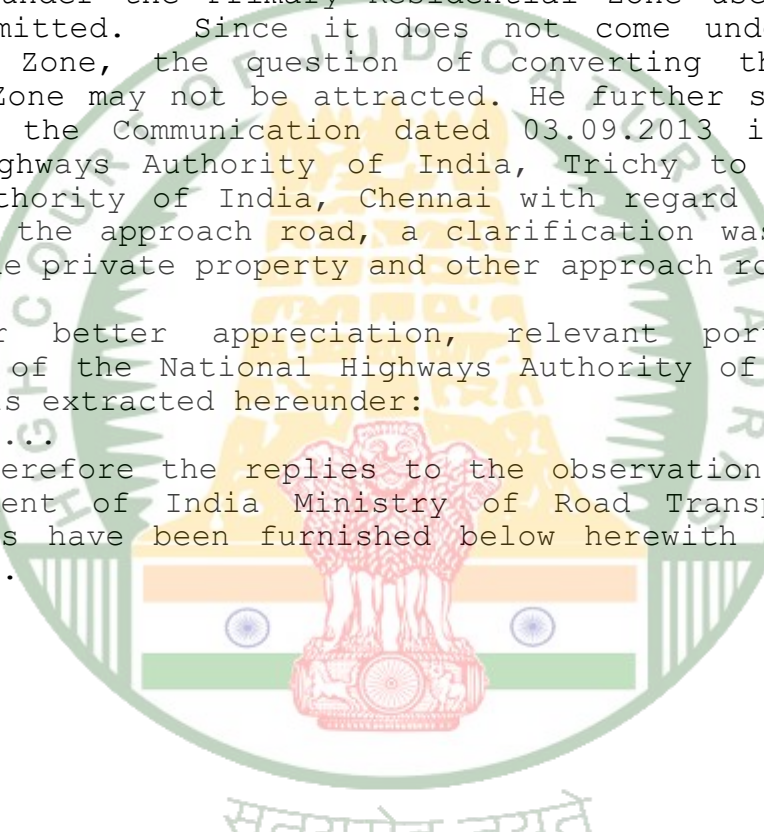
that there is an erroneous entry with regard to Survey Numbers and New Survey Numbers have been allotted in the place of old Survey numbers.

4. Mr.R.Subramaniam, learned counsel for the petitioner submitted that the question of conversion from Mixed Residential Zone to Commercial Zone may not be applicable to this case, in the light of G.O.Ms.No.1730, RD and LA Department, dated 24.07.1974 which deals with zoning regulations. In the said Government Order it has been stated that Primary Residential Use Zone permits professional consulting offices of the residents and other incidental use and therefore, the petitioner's request would come under the Primary Residential Zone use and that it can be permitted. Since it does not come under the Mixed Residential Zone, the question of converting the same into Commercial Zone may not be attracted. He further submitted that in view of the Communication dated 03.09.2013 issued by the National Highways Authority of India, Trichy to the National Highways Authority of India, Chennai with regard to permission for forming the approach road, a clarification was sought with regard to the private property and other approach roads.

5. For better appreciation, relevant portion of the proceedings of the National Highways Authority of India, dated 03.09.2013 is extracted hereunder:

".....

Therefore the replies to the observations of the Government of India Ministry of Road Transport and Highways have been furnished below herewith for kind perusal.



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Sl. No.	Observations	Reply furnished
1	It is observed from the land documents that the survey number of land are mentioned as 46/2E & 47/2. But as observed from the letter of RO, Chennai NHAI and private property owner of the plot numbers are 42/2E & 47/2.	*According to sale documents the correct survey nos. are 46/2E and 47/2 Tharanallur Village Trichy Taluk. *During Town survey, it has been renumbered as T.S.No.14/2 and 18/4 (ward Q Block - 2). In the proposal by mistake the survey numbers have been mentioned as 42/2E & 47/2 instead of 46/2E and 47/2. *Now the property owner submitted Affidavit in Stamp paper with a request to correct the survey no. as Town survey No. T.S.No.14/2 & 18/14 (Old S.F.No.46/2E & 47/2) of Tharanallur village, Trichy Taluk and Trichy District. The request of the individual is genuine and may be considered."

In view of the above the access (from service road) permission for M/s.V.R.Doctors Professional Consulting Offices Building in Km.321/283 RHS in T.S.No.18/14 & 14/2 (Old S.F.No.46/2E & 47/2) at Trichy Corporation Tharanallur Village Trichy Taluk and Trichy District Padalur to Trichy Section of NH 45 is recommended for according necessary approval."

6. The learned counsel appearing for respondents 1 to 3 submitted that respondents 1 to 3 sought certain details from the petitioner, which were produced by him, and as the No Objection Certificate was not issued by the fourth respondent, the petitioner cannot be granted planning permission. He submitted that if the petitioner is willing to comply with the

norms and abide by the planning permission that is granted, they have no objection to permit the petitioner to construct the building.

7. The learned counsel appearing for the fourth respondent submitted that a proposal was sent by respondents 1 and 2 to the fourth respondent, which was considered and as the professional consulting offices for which permission is sought is going to be a National Highway and that as they require place forming approach roads, the request of the petitioner was not considered. Learned counsel drew the attention of this Court to the counter affidavit of the fourth respondent, wherein it has been stated that the Ministry of Road Transport and Highways that in order to provide control of land within the National Highways, right of way and traffic moving on the National Highways and for removal of unauthorized occupation of the land within the National Highways, National Highways (Land and Traffic) Act, 2002 came into force with effect from 27.01.2005. Further, as per Section 3 of the said Act, the Central Government has already established Highway Administrations, vide Gazette Notification dated 20.01.2005 and the Highway Administrations have quasi-judicial powers to achieve the above objectives for safety of users and Highways. It is also stated by the learned counsel for the fourth respondent that the field officers are entitled to initiate actions with regard to encroachments and illegal occupants/tenements.

8. It is useful to extract paragraphs 10 and 11 of the counter affidavit of the fourth respondent, which reads as follows:

"10. Regarding the averments made by the petitioner in para-4 & 5 it is respectfully submitted that the CGM (Tech) & RO, Chennai, NHAI vide letter No.NHAI/11019/18/2012 Ro Chennai/275 dated 22.01.2013 had forwarded the application of the petitioner to the 4th respondent. As the proposal submitted by the petitioner through NHAI was not complying with the norms of the Ministry of Road Transport & Highways issued vide letter No.RW/NH-33023/19/99-DO.III dated 31.08.2000, the clarification on the observations as listed below was sought from the CGM (Tech) & RO, Chennai, NHAI by the 4th respondent vide letter No.RW-MD/TN/NH45/14/2012-13 dated 03.04.2013.

(i) As observed from the Topo Plan enclosed with the application, there exists a 5.5m wide BT road at Km 321/411.50 which is at a distance of 128.50m from the proposed approach road. Also there exists a 3.5m wide BT road at Km 320/875m which is at a distance of 408 m from the proposed

approach road. The location of the private property of petitioner to which access permission was sought is located in urban area. As per Ministry's guidelines dated 31.08.2000, the spacing of access to National Highways should wherever possible be restricted to 500m interval. As such, the proposal was not in conformity with the Ministry's guidelines; however, no relaxation was sought for the above shortcoming.

(ii) Further, a grade separator which is nearer to the proposed approach road was shown in the Topo Plan. However, the details of the aforesaid grade separator were not indicated.

(iii) The name and address of the applicant was not mentioned in the License Deed."

11. It is submitted that CGM (Tech) & RO, Chennai NHAI vide letter No.NHAI/11019/18/2011/RO Chennai/2210 dated 08.06.2013 furnished the clarifications on the above observations to 4th respondent. Considering the aforesaid clarifications, the proposal was forwarded to Ministry of Road Transport & Highways, New Delhi by the 4th respondent vide Letter No.RW-MD/TN/NH 45/AR/14/2012-13 dated 19.06.2013 for consideration & approval. The Ministry of Road Transport & Highways, New Delhi examined the application and observed that the survey number of land mentioned in application and that in the land documents were different. As such, Ministry of Road Transport & Highways, New Delhi sought clarification from 4th respondent vide letter No.RW/NH-12017/490/2013/TN/P7 dated /07/2013. The 4th respondent vide letter No.RW-MD/TN/NH/45/AR/14/2012-13 dated 13.08.2013 had sought clarification on the discrepancy in the survey number of land from CGM (Tech) & RO, Chennai, NHAI which is still awaited. As the stretch of NH-45 on which the access to the private property from NH is sought by the petitioner is entrusted with NHAI the clarification is to be furnished by NHAI."

9. It is further stated in the counter of the fourth respondent that the proposal was returned by the Ministry of Road Transport and Highways, vide letter dated 06.09.2013, directing to re-submit the proposal in conformity with the new guidelines. Accordingly, the fourth respondent, while returning the proposal, has directed the CGM(Tech) and RO, Chennai, NHAI, vide letter dated 20.09.2013 to re-submit the proposal in

conformity with the new guidelines. It is further stated that the modified proposal has not been received till date from National Highways Authority of India. However, it is stated that on receipt of the modified proposal, the same will be considered, if it is in conformity with the Ministry's guidelines dated 24.07.2013.

10. In reply, learned counsel for the petitioner submitted that the petitioner has not received any communication either from the fourth respondent or from respondents 1 and 2 and that there is a communication from the National Highways Authority of India, Trichy to their Chennai Office on 03.09.2013, which has not been taken note of by the fourth respondent. Learned counsel for the petitioner further submitted that the petitioner has produced all the documents and that he has sought proposal for construction of professional consulting offices and that the National Highways Authority of India has submitted recommendation for construction of the said Office, vide letter dated 03.09.2013, as could be seen from the recommendation extracted supra.

11. Learned counsel for the petitioner further submitted that unless a communication is received pointing out the defects, the petitioner will not be in a position to rectify the defects, if any and he will rectify the same in accordance with law, if so required. Without any communication either from the fourth respondent or from the second respondent and that based on the communication dated 03.09.2013 and in the light of the said G.O of the year 1974, the petitioner is entitled to have a consultancy office and as the petitioner being a law abiding citizen, he is willing to re-submit the modified proposal, if so required and he cannot be driven from pillar to post, and as he is a law abiding citizen, he does not want to face any other problem for violation or any other problem in the future date.

12. It is seen that the second respondent has raised two issues, firstly that the petitioner has not furnished the No Objection Certificate obtained from the authority concerned and secondly there must be prior permission for conversion of Mixed Residential Zone to Commercial Zone. A reading of the said G.O. of the year 1974 makes it clear that conversion will not be applicable to the site in question, and the G.O does not bar the petitioner from having professional consulting offices of the residents and other incidental use therefor. Only in cases of Mixed residential use zone, the question of conversion arises and as rightly pointed out by the learned counsel for the petitioner, the petitioner's request falls under the Primary Residential Use Zone. With regard to the No Objection Certificate, the National Highways Authority has made it very clear by the said communication dated 03.09.2013 that the permission sought for having professional consulting offices is

recommended for necessary approval.

13. In view of the above, as the proposal vide Communication dated 03.09.2013 is in favour of the petitioner and that the second respondent is willing to grant permission for construction of the building subject to the satisfaction of the conditions laid down by the fourth respondent, this Court directs the respondents/authorities to consider the proposal made by the petitioner and if any defects are pointed out by the authorities, the same shall be rectified and re-submitted by the petitioner and the second and fourth respondents shall complete the process of according permission for construction of the professional consultancy office and thereafter, the petitioner shall construct the building in accordance with the sanctioned plan.

14. If there are any violations, it is open to the authorities concerned to take appropriate action in accordance with law. The returns made by the fourth respondent to the second respondent shall be forwarded to the petitioner within two weeks from the date of receipt of a copy of this order in order to enable the petitioner to comply with the defects and returns and re-submit the plan within a period of two weeks thereafter, and on such application being re-presented, the second and fourth respondents shall take a decision on merits and communicate the same to the petitioner within a period of four weeks from the date of re-submission of the application by the petitioner.

With the above observations, the writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

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सत्यमेव जयते

Sub Assistant Registrar

To

- 1.The Director of Town Planning,
No.807, Anna Salai,
Chennai.
- 2.Joint Director of Town Planning,
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10, Williams Road,
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3. Commissioner,
Trichirapalli City Corporation,
Bharadhidasan Salai,
Trichirapalli 620 001.

4. Ministry of Road Transport and Highways,
Regional Office,
CIA, Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.

+2cc to Mrs.R.Meenal, Advocate SR.No.63824

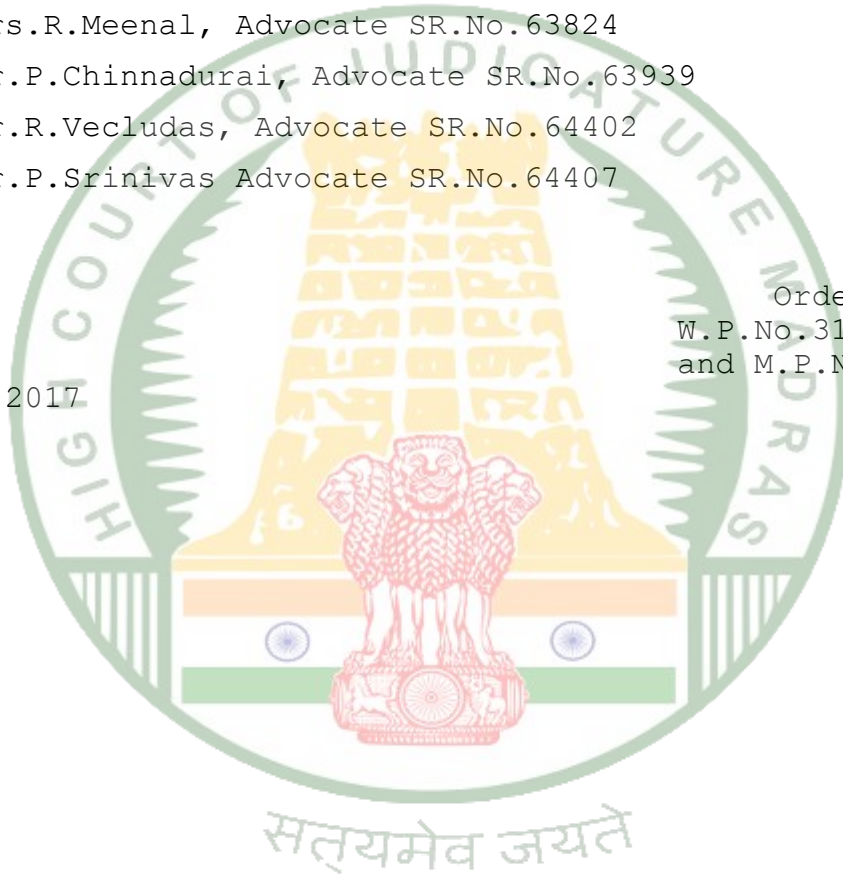
+1cc to Mr.P.Chinnadurai, Advocate SR.No.63939

+1cc to Mr.R.Vecludas, Advocate SR.No.64402

+1cc to mr.P.Srinivas Advocate SR.No.64407

Order in
W.P.No.31129 of 2013
and M.P.No.1 of 2013

SDR 11.10.2017



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