

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2017

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THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.29950 of 2016
& W.M.P.Nos.25906 & 28592 of 2016

V.Palaniappan

.. Petitioner

Vs.

- 1 The Secretary to Government
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
 - 2 The Director of School Education,
DPI Campus, Nungambakkam,
Chennai-600 034.
 - 3 The Commissioner
Corporation of Chennai,
Rippon Building
Chennai-600 003.
 - 4 The Gandhinagar Education Society,
Rep by its Secretary Mr. AR.Ramaswamy,
No.4 Crescent Avenue Road, Gandhi Nagar,
Adyar, Chennai-600 020.
 - 5 MAC Spin Foundation,
Rep by Director Dr.AC.Muthiah,
Having its Registered office at
"South India House",
73 (36-40), Armenian Street,
Chennai-600 001.
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to direct the respondents 1 to 3 to inspect the school play ground admeasuring 5 Acres at Cresent park, 1st Street, Gandhinagar, Adyar, Chennai-20, and decide upon the nature of utility of the playground by the 5th Respondent and consequently, direct the 3rd respondent to remove the structure put up by the 5th respondent in the school play ground admeasuring 5 Acres at Crescent park, 1st Street, Gandhinagar, Adyar, Chennai-20.

For Petitioner .. Mr.T.Mohan for
Mr.P.Srinivas

For Respondents .. Mr.Venkataramani,
Additional Advocate General for
Mr.R.A.S.Senthilvel,
Additional Government Pleader
for R1 & R2

Mr.P.V.Selvakumar for R3

Mr.AR.L.Sundaresan, S.C., for
Mrs.AL.Gandhimathi for R4

Mrs.Chitra Sampath for
Mr.S.Sithirai Anandan for R5

ORDER

By consent, the main writ petition itself is taken up for hearing.

2. The petitioner, who is said to be an office bearer of the respondent No.4-Society, has come forward to file this present writ petition seeking a direction to respondents 1 and 2 to take appropriate action on the alleged violation of the Building Rules as well as Rule 9(ii)(jj) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

3. Mr.T.Mohan, learned counsel appearing for the petitioner, submits that the building has been put up unauthorisedly without a planning permission and contrary to the C.R.Z., Regulation. As per Rule 9(ii)(jj) of the Tamil Nadu Recognized Private School(Regulation) Rules, 1974, a play ground meant to be used for the school can never be used for any other purpose, especially, for a third party, which is being done in the present case. Thus, notwithstanding the alleged permission said to have been given by the Secretary, the fourth respondent-Society, without due authority of law had granted permission in favour of the fifth respondent. Insofar as the suit in O.S.No.3472 of 2016 said to have been filed and pending, the learned counsel submits that considering the subsequent events and taking into consideration that the official respondents are not parties coupled with further fact that the petitioner is also not a party, the findings rendered in the interlocutory application would not bar the relief sought for.

4. The learned Senior Counsel appearing for respondents 4 and 5 would submit that in view of the suit having been filed already by the Treasurer of the fourth respondent-Society and

that too, after failing to get an interim order, the relief sought for in the present petition is not maintainable. Reliance has also been made on the correspondence between the Secretary of the fourth respondent and the fifth respondent. The learned Senior Counsel appearing for the fifth respondent submits that a reply has also been given to the action taken by the third respondent.

5. The learned Additional Advocate General appearing for respondents 1 to 3 would submit that insofar as the alleged violation of Rule 9(ii)(jj) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, would be looked into, if such a violation is brought to the knowledge of the authorities concerned. The third respondent has already initiated action by issuing notices under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972 as amended by Act 61 of 2008), Section 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 and Section 56 sub section 2(A) and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 on 22.08.2016, 07.09.2016 and 20.10.2016 respectively.

6. The learned Additional Advocate General further submits that appropriate action would be taken if sufficient time is granted by this Court, as the proposed further action, pursuant to the aforesaid notices issues has been kept in abeyance, in view of the order passed by this Court on 29.08.2016.

7. Considering the submissions made, this Court is not willing to go into the merits of the case.

8. Primarily, two different sets of violations are alleged. One is qua the Rule 9(ii)(jj) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. This is a matter which can be looked into by the second respondent, before whom no such complaint is lodged, except by way of the present writ petition. Thus, the petitioner is at liberty to approach the second respondent for the aforesaid purpose. As and when any such complaint is received, the second respondent shall act as per law within a period of eight weeks from the date of receipt of a copy of this order, after due notice to the petitioner as well as to respondents 4 and 5. While doing so, the second respondent shall not take into consideration the pendency of the civil suit in O.S.No.3472 of 2016 and the findings rendered in the interlocutory application as he is the statutory authority to take a decision as per law coupled with the further fact that the said respondent is not a party to the pending proceedings. Therefore, all the issues on the alleged violation are left open to be decided by the second respondent.

9. On the other issues pertaining to the action taken by the third respondent, the counter affidavit filed by the said authority states as follows:

"5. I respectfully submit that after inspection a notice calling for approved plan under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 to the fourth respondent on 22.08.2016.

6. I respectfully submit that since the petitioner failed to comply with the above said notice a further notice of locking and sealing and demolition under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 to the fourth respondent on 07.09.2016.

7. I respectfully submit that pursuant to the above said notice a De-occupation notice under Section 56 sub section 2(A) and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 has been issued to the fourth respondent on 20.10.2016.

8. I respectfully submit that further action against the unauthorised construction will be taken as per the provision of Tamil Nadu Town and Country Planning Act, 1971."

10. As action has already been initiated by the third respondent on the complaint made by the petitioner, it is just and proper to permit the authority to conclude the above said proceeding. It is stated by the learned Senior Counsel appearing for the fourth respondent that a reply has already been given in pursuant to the action taken by the third respondent. The fourth respondent is given a further period of four weeks to give a further reply. Thereafter, the third respondent shall conclude the proceedings on the complaint made by the petitioner based on the reply already given by the fourth respondent and to be given, within a period of six weeks. In the meanwhile, the orders passed by the third respondent on 22.08.2016, 07.09.2016 and 20.10.2016 would come into operation.

The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Secretary to Government
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
- 2 The Director of School Education,
DPI Campus, Nungambakkam,
Chennai-600 034.
- 3 The Commissioner
Corporation of Chennai, Rippon Building
Chennai-600 003.

- + 1 cc to Mr.P. Srinivas, Advocate Sr.15089
- + 1 cc to Government Pleader Sr.15019
- + 1 cc to Mr.P.N.Selva Kumar, Advocate SR.14909
- + 1 cc to Mr.A.L. Ganthimathi, Advocate Sr.14817
- + 1 cc to Mr.S. Sithirai Anandan, Advocate Sr.14955

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AD(CO)
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