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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.08.2017

Pronounced on : 22.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.15379 of 2017
and
W.M.P. (MD) Nos.12183 and 12184 of 2017

Bhaktavatsalam Educational Trust,
Brindavan Public School,
rep. By its
Principal, Gymkana Road, Keelbhoomi,
Kodaikanal, Dindigul District.

.... Petitioner

vs.

1.The Government of Tamil Nadu,
rep. By its Joint Secretary,
Municipal Administration and Water
Supply Department,
Secretariat,
Fort St. George, Chennai.

2.The Member Secretary,
Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order of the 1st respondent in government Letter P.No.159/Na.Nil/2017 dated 12.04.2017 and quash the same as illegal and consequentially to direct the first respondent to consider and pass orders on the appeal preferred by the petitioner dated 17.03.2016, after affording due opportunity of hearing to the petitioner.

For Petitioner : Mr.M.Ajmal Khan, senior counsel for
M/s.Ajmal Associates

<https://hcservices.ecourts.gov.in/hcservices/> For Respondents : Mr.T.S.Md.Mohideen, AGP

O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J)

The writ petitioner challenges the Government Letter P.No.159/Na.Nil/2017 dated 12.04.2017 issued by the first respondent herein rejecting the review petition.

2.The writ petitioner is an Educational Institution. They put up a school in the year 1984, after obtaining due permission from the planning authorities. Later in the year 1993, Kodaikanal Master Plan came to be framed and implemented. In the said Master Plan, the petitioner's school premises was brought within the prohibited zone. Aggrieved by the said zoning classification, the petitioner submitted an application on 19.02.1997 to the first respondent to declare the school property area as a school zone. But, till date, the zone has not been reclassified as sought for by the writ petitioner.

3.But the writ petitioner went ahead and constructed a hostel building and dining hall. The second respondent thereafter issued a notice dated 07.07.2015 under Sections 56 and 57 of Tamil Nadu Town and Country Planning Act, 1971. The said notice called upon the writ petitioner to submit a copy of approval obtained by the Trust. If such an approval was not obtained, the writ petitioner was directed to restore the status-quo ante. The said notice came to be challenged in W.P.(MD) No.14007 of 2015. This Court, by order dated 17.10.2015 disposed of the said writ petition along with a batch of other cases, relegating the parties to move the Government for appropriate relief. Thereupon, the writ petitioner herein filed an appeal before the first respondent. The first respondent issued notice dated 04.07.2016, calling upon the writ petitioner to appear in person for attending the personal hearing to be held on 06.07.2016. Since the enquiry notice was received only on the date of hearing, the writ petitioner requested adjournment, which was granted. Thereafter the writ petitioner was called upon to appear for an enquiry to be held on 30.03.2017. Even though the writ petitioner received the said notice on 28.03.2017, again the writ petitioner sought adjournment. This request was negatived by the first respondent. The first respondent went through the review petition filed by the writ petitioner along with the connected records. The first respondent specifically found that the construction put up by the writ petitioner is a 100% violation of the zoning regulation as per Master Plan and land use. Even though the land in question has been classified as Primary Vegetative Zone and construction activities stood prohibited, the writ petitioner chose to put up a hostel and dining hall. That apart, the percentage of violation in other aspects is also 100%. Therefore, the review petition filed by the writ petitioner was dismissed by order dated 12.04.2017.

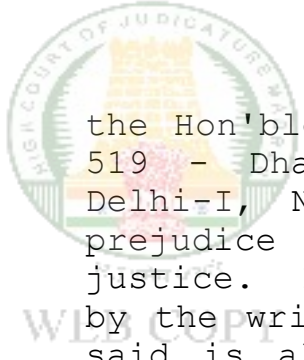


4. Impugning the same, in this writ petition, the learned senior counsel for the petitioner contended that the first respondent has committed a gross violation of the principles of natural justice. According to the learned senior counsel, the enquiry notice was received on 28.03.2017, calling upon the writ petitioner to appear on 30.03.2017. Thus sufficient time was not given to attend the enquiry in person. This Court posed a specific question to the learned senior counsel as to whether the writ petitioner would be able to controvert the factual correctness of the findings in the impugned order if the matter is remitted to the file of the first respondent for fresh enquiry. The learned senior counsel fairly submitted that the zoning classification as set out in the Master Plan continues to remain as such and that there has been no re-classification of the zone as an Educational zone. He also admitted that no planning approval was obtained before putting up the hostel and dining hall. In short, the learned senior counsel was not in a position to urge even a single ground so as to remit the matter for fresh consideration on merits.

5. We are, therefore, of the view that no purpose would be served by remitting the matter to the file of the first respondent for fresh enquiry.

6. The impugned order passed by the first respondent rejecting the review petition filed by the petitioner rests on two grounds viz., there is no planning approval for putting up the construction in question and there is 100% violation of the Master Plan. In view of the uncontroverted findings found in the impugned order, we are of the view that the writ petitioner is not entitled to any relief.

7. This is not a case as if the first respondent straightaway passed the impugned order of rejection. Notices were issued. On the first occasion, the writ petitioner sought adjournment on the ground that sufficient time was not given. This request was accepted by the first respondent and the enquiry was adjourned. On the second occasion, the writ petitioner had a clear two days to make arrangements to attend the personal hearing. The writ petitioner chose to adopt dilatory tactics by seeking adjournment for the second time. Even if an adjournment had been granted, the writ petitioner would not have anything to show by way of defence. All that the writ petitioner can plead is that he had submitted a request seeking reclassification of the zone from "prohibited zone" to "Educational zone" and that the request has not yet been disposed of. But this cannot be a ground for putting up a construction in violation of the zoning requirements and without a planning approval. Therefore, principle of useless formality can very well be applied in this case. As pointed by



the Hon'ble Supreme Court in the decision reported in 2015(8) SCC 519 - Dharampal Satyapal Vs. Commissioner of Central Excise, Delhi-I, New Delhi, the writ petitioner must be able to show prejudice on account of violation of the principles of natural justice. In the present case, such a prejudice could not be shown by the writ petitioner. Whatever the writ petitioner could have said is already there on record. Since no prejudice has been shown, we are not inclined to interfere with the impugned order.

8. When a hotel by name 'Pleasant Stay' was constructed by putting up extra floors over and above what was permitted, the same was the subject matter of a litigation before a Division Bench of this Court. This Court in the judgment reported in 1995 (2) WLR 737 (Palani Hills Conservation Council etc. Vs. The State of Tamil Nadu etc.) issued a direction for demolishing the building to the extent which is contrary to the plan sanctioned by the authority. Para 36 of the said decision reads as under.

It is too well known that the purpose of preparing and publishing Master plan for a locality and particularly a Hill Station is to maintain an environmental balance. It is the duty of courts to uphold environmental laws and prevent the State and the citizens from upsetting the same by any means. The Rules are framed with the object of preserving the nature's gifts to the living beings such as air, earth, water and atmosphere and protecting them against pollution and if lost those gifts cannot be replaced or replenished. Failure to protect the same causes irreparable harm not only to the present generation but also the Posterity. That is why Articles 48-A and 51-A (g) were introduced. It has been held that the right to life embodied in Article 21 of the Constitution contemplates environment of quality. There is no ground whatever in this case for relaxing the provisions in the Master Plan particularly with reference to F.S.I. Large scale violation of F.S.I in this country came to be noticed by the Supreme Court in Pratibha Co-operative Housing Society Ltd. V. State of Maharashtra (AIR 1991 SC 1453) and condemned in the following words :-

"We are also of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings."



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In that case, the F.S.I violation was found to be of more than 24,000 sq.ft. And the Court upheld the demolition of the eight floors of the building. In the present case the violation is 182% as sated earlier. It is needless to say that any Government that ignores the sanctity of a Master plan and relaxes the Rules without proper reasons is only laying the road to the deterioration of environment and thus acts against public interest."

9. Since the use of the land in question is completely at variance with what is in the Master Plan, the first respondent rightly passed the impugned order of rejection. We see no ground to interfere with the impugned order.

10. There are no merits in this writ petition. It stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Secretary,
Municipal Administration and Water
Supply Department,
Government of Tamil Nadu, Secretariat,
Fort St. George, Chennai.

2. The Member Secretary,
Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.

+1cc to M/S.AJMAL ASSOCIATES, Advocate SR.No. 80435
+1cc to M/S.T.S.Mohamed Mohideen, Advocate SR.No. 80787
+1cc to Special Government Pleader, SR.No. 81119

W.P(MD)No.15379 of 2017
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