



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

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W.P(MD)No.18858 of 2017
and
W.M.P(MD)No.15128 of 2017

Roja Matriculation School
rep. by its Correspondent,
R.Somasundaram,
Mookkaiyur Salai, Sayalkudi,
Ramanathapuram District - 623 120. .. Petitioner

Vs.

1.The Inspector of Matriculation Schools,
Pudukottai, Pudukottai District.

2.The Executive Officer,
Sayalkudi Panchayat, Sayalkudi,
Ramanathapuram District. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in respect of the impugned communication issued by the first respondent vide A.Thi.Mu 114/17, dated 06.09.2017 and quash the same as illegal and against the law laid down by this Court in KAVIYAN SCHOOL CASE reported in 2015 (2) LW 601 and consequently directing the first respondent to process the petitioner's application for upgradation of his matriculation school to Higher Secondary School based on the second respondent Panchayat Approved Building Plan for the Academic Year 2017-2018.

For Petitioner : Mr.E.Vijay Anand

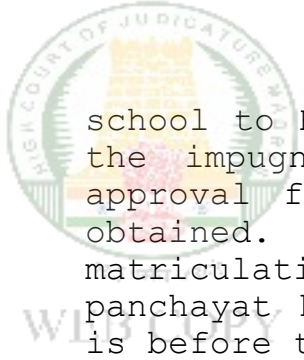
For Respondent No.1 : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader.

For Respondent No.2 : Mr.R.Karthikeyan

ORDER

This writ petition is filed seeking a writ of certiorarified mandamus to quash the impugned communication issued by the first respondent in A.Thi.Mu 114/17, dated 06.09.2017 and direct the first respondent to process the petitioner's application for upgradation of his matriculation school to Higher Secondary School for the Academic Year 2017-2018, based on the Approved Building Plan issued by the second respondent Panchayat.

3.The case of the petitioner is that the petitioner is running a matriculation school upto tenth standard and he preferred an application in the month of August 2017, seeking to upgrade the



school to Higher Secondary Level. But, the first respondent issued the impugned communication, dated 06.09.2017, pointing out that approval from the Director of Town and Country Planning was not obtained. According to the petitioner, the petitioner is running a matriculation school upto tenth standard and the second respondent panchayat had already granted approval. Therefore, the petitioner is before this Court with the aforesaid prayer.

4.The learned counsel appearing for the petitioner submitted that since the petitioner obtained planning permission from the local panchayat, approval from the Director of Town and Country Planning is not mandatory and this Court in the case in Director of Matriculation Schools, Directorate of Matriculation Schools, DPI Campus, Chennai - 600 005 v. Kaviyan School rep. by its Correspondent C.Deenathayalapandian, Indira Nagar, Malayakoundanpatti, Ammayanaickanur, Nilakottai, Dindigul District reported in 2015-5-L.W.101, has held that the authority shall consider the application of the school, after getting clarification from the concerned Panchayat with regard to building plan approval. The learned counsel appearing for the petitioner also submitted that as per Section 54 of the Tamil Nadu Town and Country Planning Act, 1971, the first respondent shall insist the petitioner for getting permission from the concerned Panchayat.

5.The learned Additional Government Pleader appearing for the respondents, on the other hand, submitted that approval from the Director of Town and Country Planning is essential for considering the application for upgradation of matriculation school.

6.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent as well as the learned counsel appearing for the second respondent.

7.The Division Bench of this Court in the case of Director of Matriculation Schools, Directorate of Matriculation Schools, DPI Campus, Chennai - 600 005 v. Kaviyan School rep. by its Correspondent C.Deenathayalapandian, Indira Nagar, Malayakoundanpatti, Ammayanaickanur, Nilakottai, Dindigul District reported in 2015-5-L.W.101, has held as follows:

"14.As has been pointed by Mr.B.Pugalendhi, learned Special Government Pleader appearing for the appellant, before grant of recognition, it is incumbent on the educational authorities to indicate what are all the requirements the law requires and the directions of the Hon'ble Supreme Court in Avinash Mehrotra, cited supra, have been complied with by the schools, while seeking recognition and what are the requirements/directions yet to be complied with by the schools. We expect the educational authorities that before granting recognition, they should be very clear whether all the requirements of law/defects pointed out have been complied with by the schools who seek approval and thereupon take a decision, in either way. We, therefore, modify the order of the learned Single Judge to the effect that the application of the respondent school for recognition should be considered in the parameters of the various guidelines issued by the



Government and in the light of the decision of the Hon'ble Supreme Court in Avinash Mehrotra vs. Union of India, reported in (2007) 6 SCC 398 and after getting clarification from the concerned Panchayat or from the Town and Country Planning Authorities, whether building plan approval has been granted to the respondent school, as required under law. Therefore, the respondent school be informed about the status, so that they can workout their remedy. For compliance, the appellant is directed to clarify all these issues to the respondent school, by a letter, within two weeks from the date of receipt of a copy of this order and the respondent school shall comply the same within four weeks thereafter. On receipt of the reply, the appellant shall consider the same and pass appropriate orders, expeditiously".

8. The above case squarely applies to the present case in hand. For considering the application for upgradation of matriculation school, the educational authorities shall insist the petitioner for getting permission from the concerned Panchayat as per Section 54 of the Tamil Nadu Town and Country Planning Act, 1971. Section 54 of the said Act reads as follows:

"54. Power of revocation and modification of permission to development.- (1) If it appears to an appropriate planning authority that it is expedient, having regard to the development plan prepared, that permission for any development granted under this Act or any other law, should be revoked or modified, the said planning authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as may be necessary:

Provided that-

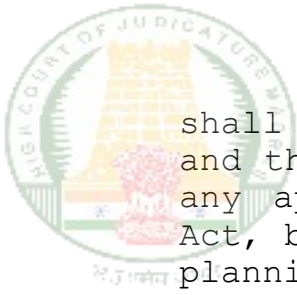
(a) where the permission relates to the carrying of building or other operation, no such order shall affect such of the operations as have been previously carried out, or be passed after those operations have been completed;

(b) where the permission relates to a change of use of land or building, no such order shall be passed at any time after the change has taken place.

(2) When permission is revoked or modified under subsection (1), and if the owner claims from the appropriate planning authority, within such time and in such manner, as may be prescribed, compensation for the expenditure incurred in carrying out the development after the grant of permission and in accordance with such permission, which has been rendered abortive by the revocation or modification, the said planning authority shall, after giving the owner reasonable opportunity of being heard, assess and

offer such compensation to the owner as it thinks fit.

(3) If the owner does not accept the compensation and gives notice, within such time as may be prescribed, of his refusal to accept, the appropriate planning authority



shall refer the matter for adjudication of the Tribunal, and the decision of the Tribunal thereon shall, subject to any appeal, revision or review as provided for in this Act, be final and binding on the owner and the appropriate planning authority".

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9. Following the same, the impugned communication, dated 06.09.2017, issued by the first respondent, is set aside and the matter is remitted back to the first respondent and the petitioner is directed to comply with the provisions of Section 54 of the Tamil Nadu Town and Country Planning Act, 1971 and file his representation seeking upgradation of school to the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent, after getting clarification from the concerned Panchayat or from the Town and Country Planning Authorities, whether building plan approval has been granted to the petitioner school, as required under law, shall inform about the status to the petitioner school by a letter, within a period of two weeks thereafter and the petitioner school shall comply with the same within a period of four weeks thereafter and on receipt of the reply, the first respondent shall consider the petitioner's representation seeking to upgrade the school to Higher Secondary Level and pass appropriate orders in line with the order of this Court in Director of Matriculation Schools, Directorate of Matriculation Schools, DPI Campus, Chennai - 600 005 v. Kaviyan School rep. by its Correspondent C. Deenathayalapandian, Indira Nagar, Malayakoundanpatti, Ammayanaickanur, Nilakottai, Dindigul District reported in 2015-5-L.W.101, as expeditiously as possible.

10. The Writ Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl. Side)

/True Copy/

Sub-Assistant Registrar

To

1. The Inspector of Matriculation Schools,
Pudukottai, Pudukottai District.

2. The Executive Officer,

Sayalkudi Panchayat, Sayalkudi, Ramanathapuram District.

+One cc to The Special Government Pleader, SR.No.85042

+One cc to Mr. E. Vijay Anand, Advocate, SR.No.85147

smn

RL/5C/4P/SV/MMS/SAR1/15/12/2017

ORDER MADE IN

W.P (MD) No.18858 of 2017

and

W.M.P (MD) No.15128 of 2017

01/11/2017 (2/2)