

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.4810 of 2018

Sri Venkateshwara Educational and
Charitable Trust,
No.4, First Cross Street,
Raja Annamalaipuram,
Chennai - 600 028.

... Petitioner

Vs

1. Government of Tamil Nadu,
represented by its Principal Secretary,
Higher Education Department,
Fort St. George,
Chennai - 600 009.

2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent culminating with his order bearing No.48496/R1/2016 dated 21.9.2017 and quash the same in so far as its insistence of the approval of the department of Town and Country Planning for the existing building of the petitioner and consequently direct the respondents to grant necessary approval/permission to the petitioner to start the Jaganath Arts and Science College at Thandalam Village, Kancheepuram District, Tiruporur Taluk for the academic year 2018-19 by accepting the planning permission of the building granted by the President, Thandalam Panchayat.

For Petitioner : Mr.M.Vaidyanathan
For Respondents : Mr.C.Munusamy, SGP (Edn)

ORDER

The prayer made in the writ petition is to issue a Certiorarified Mandamus to call for the records of the second respondent with regard to the order bearing No.48496/R1/2016 dated 21.9.2017 and quash the same in so far as it relates to insistence of the approval of the department of Town and Country

Planning for the existing building of the petitioner and consequently direct the respondents to grant necessary approval/permission to the petitioner to start Jaganath Arts and Science College at Thandalam Village, Kancheepuram District, Tiruporur Taluk for the academic year 2018-19 by accepting the planning permission of the building granted by the President, Thandalam Panchayat.

2.It is the case of the petitioner that the petitioner Trust was established in the year 2007 with the object of providing education to under privileged students. They proposed to start an Arts College at Thandalam Village, Kancheepuram District, Tiruporur Taluk and submitted an application dated 23.09.2008 for building approval to the President, Thandalam Panchayat, who inturn, granted approval. Pursuant to the same, the building was completed and has been assessed to property tax. Consequently, the petitioner submitted an application along with the necessary documents and fees, to the second respondent on 21.11.2016. Thereafter, by letter dated 21.09.2017, the petitioner was directed to produce the building approval obtained from the Director of Town and Country Planning, along with other documents. Hence, this writ petition.

3.The learned counsel 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 of Director of Matriculation Schools, Directorate of Matriculation Schools, DPI Campus, Chennai-5 v. Kaviyan School rep. by its Correspondent C.Deenathayalapandian, Indira Nagar, Malayakoundanpatti, Ammayanaickanur, Nilakottai, Dindigul District reported in 2015-5-LW.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.

4.The learned counsel for the petitioner also drew the attention of this Court to the Tamil Nadu Panchayats Buildings Rules, 1997 and the relevant provisions are extracted hereunder:

"2(e) "Executive authority" means the President of the Village Panchayat.

2(g) "Public building" means any building to which the public or any class or section of the public are granted access or any building which is open to the public or any class or section of the public and includes any building-

(a) used as a

(i) Educational institution including school or college...

25. Multi-storeyed and public buildings:-

Every person intending to construct, reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public Building Rules, 1973 issued under the Tamil Nadu District Municipalities Act, 1920.

Provided that the Executive Authority shall not grant approval for construction, reconstruction, addition or alteration of any such building without consulting the concerned Joint Director or Deputy Director of Town and Country Planning."

5. Relying on the provisions of section 114 of the Indian Evidence Act, the learned counsel for the petitioner contended that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Therefore, the competent authority in terms of the provisions stated supra, is the President of the Panchayat, who has duly granted approval in this case and the petitioner has not violated any of the laws of the land.

6. On the contrary, the learned Special Government Pleader appearing for the respondents submitted that the building plan approval from the Director of Town and Country Planning is essential for any institution to start a new college. The learned Special Government Pleader further submitted that in terms of Rule 25, which has been referred to above by the petitioner, the competent authority is only the Joint Director or Deputy Director of Town and Country Planning; even assuming that no approval is required from the Joint Director or Deputy Director of Town and Country Planning, at least there should be a consultation by the authority with the concerned Joint Director or Deputy Director of Town and Country Planning and therefore, the act of the petitioner, in absence of such consultation, is erroneous and the relief sought for by the petitioner should not be granted. The Special Government Pleader also drew the attention of this Court to G.O. (Ms) No. 270 School Education (X2) Department, dated 22.10.2012, which clearly states that the buildings for the educational purpose, should be constructed only after obtaining building plan approval from the 'competent authority' as defined in Rule 2(e) of the Tamil Nadu Panchayats Building Rules, 1997.

7. This Court paid its anxious consideration to the submissions made by the learned counsel for the respective parties and perused the materials available on record.

8.It is trite in law that the Executive Authority under the Tamil Nadu Panchayats Buildings Rules, 1997, is the Village President, who is competent to grant approval for construction. Apart from the disputed facts, what is required is only a consultation with the concerned Joint Director or Deputy Director of Town and Country Planning, in which the petitioner has no role to play, since it is an internal arrangement between the Panchayat President and the Joint Director or Deputy Director of Town and Country Planning.

9.Admittedly, no action has been initiated against the said Panchayat President, on account of his competency under the Rules to grant such approval. That apart, the petitioner college is running at Thandalam Village, Kancheepuram District, Tiruporur District and G.O.(Ms) No.270 School Education (X2) Department dated 22.10.2012 does not insist upon the building plan to be approved by the Joint Director or Deputy Director of Town and Country Planning. Since the Executive Authority, namely, Panchayat President has approved the building plan, the act of the petitioner cannot be faulted with in any manner, more particularly, it cannot be said that it is against the provisions of law.

10.In view of the above and following the decision referred to supra, the impugned communication, dated 21.09.2017 issued by the second respondent, is set aside, as far as the production of certificate from the Director of Town and Country Planning alone is concerned and the matter is remitted back to the respondents and the petitioner is directed to file a representation, seeking permission to start a college, to the respondents, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents, after getting clarification from the concerned Panchayats or from the Town and Country Planning Authorities, whether building plan approval has been granted to the petitioner college, as required under law, shall inform about the status to the petitioner by a letter, within a period of two weeks thereafter and the petitioner shall comply with the same within a period of four weeks thereafter. In case the respondents find any violation in the construction of the building, the same can be brought to the notice of the petitioner, either to modify or change the structure / superstructure of the college buildings. On receipt of the reply, the respondents shall consider the petitioner's representation seeking permission and pass appropriate orders in line with the order 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, as expeditiously as possible.

11.The Writ Petition is disposed of, as indicated above. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Principal Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai - 600 006.

+1 CC to Mr.M.Vaidyanathan, Advocate sr 17447.

+1 CC to The Govt. Pleader sr 17388.

W.P.No.4810 of 2018

NMI (CO)
RRK (23/03/2018)

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