

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Writ Petition Nos.682 & 683 of 2018
and WMP Nos.854 & 855 of 2018

Periyanayaki Amman Matriculation School,
Rep. by its Correspondent, N.Chellappan,
Vellanaipatti,
Coimbatore District - 48 ... Petitioner in WP No.682/2018

N.M.Matriculation School,
Rep. by its Correspondent M.Palanisamy,
No.63 N.K.G.Nagar, Neelikonampalayam,
Coimbatore District 641 033 ... Petitioner in WP No.683/2018

..vs..

1. The Director of Matriculation Schools,
College Road, Chennai 600 006
2. The Inspector of Matriculation Schools,
Coimbatore, Coimbatore District ... Respondents in both WPs.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order issued by the first respondent, vide Na.Ka.Nos.1617/A1/2015, dated 18.07.2017; 5583/Aa1/2017, dated 24.10.2017, respectively quash the same and consequently, to direct the respondents to process the Applications, dated 18.02.2015 and 01.09.2017, for upgradation of the Petitioners' Matriculation Schools to Higher Secondary Schools, without insisting upon approval from the Directorate of Town and Country Planning (DTCP) Department, in view of the settled proposition of law in the case in Kaaviyan School's case reported in 2015 (2) L.W. 601.

For Petitioner in both W.Ps. : Mr. E.Vijay Anand
For Respondents in both W.Ps.: Mr. C.Munusamy,
Spl. G.P., (Edu.),

O R D E R

Seeking process of the Applications, dated 18.02.2015 and 01.09.2017, for upgradation of the Petitioners' Matriculation Schools to Higher Secondary Schools, without insisting upon

approval from the Directorate of Town and Country Planning (DTCP) Department, these writ petitions have been filed by the petitioners.

2. Heard both sides.

3. The case of the petitioners is that the petitioners are running matriculation schools upto tenth standard and they preferred applications on 18.02.2015 and 01.09.2017, seeking to upgrade their schools to Higher Secondary Level. But, the first respondent issued impugned communications, dated 18.07.2017 and 24.10.2017, by pointing out that the approval from the Director of Town and Country Planning was not obtained, thereby rejecting the request of the petitioners.

4. According to the petitioners, the petitioners are running matriculation schools upto tenth standard and the schools are having building plan approvals from the Village Panchayats. Therefore, the petitioners are before this Court with the aforesaid prayer.

5. The learned counsel appearing for the petitioners submitted that since the petitioner obtained planning permissions from the local panchayats, 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 - 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.

6. The learned counsel for the petitioners 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."

7. The learned counsel for the petitioners also drew the attention of this Court to the provisions of section 114 of the Indian Evidence Act and 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, it is the contention of the learned counsel for the petitioners that since the competent authority in terms of the provisions stated supra, is the President of the Panchayat, who has duly granted approvals in these cases, the petitioners school have not violated any of the laws of the land.

8. The learned Special 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 applications for upgradation of Matriculation Schools. The learned Special Government Pleader further submitted that in terms of the 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 petitioners, 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 school buildings 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.

9. This Court has considered the submissions made by the learned counsel appearing for both sides and perused the materials available on record.

10. 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 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 petitioners schools have 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.

11. Admittedly, no action has been initiated against the said Panchayat Presidents, on account of their competency under the Rules to grant such approvals. That apart, the petitioners are Matriculation schools, being run within the Neelikonampalayam and Vellanaipatti Districts 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 Presidents have approved the building the plans, the act of the petitioners cannot be faulted with in any manner, more particularly, it cannot be said that it is against the provisions of law.

12. Further, the petitioners have fulfilled all the requirements and the only issue raised by the respondents that prior approval of the Joint Director or Deputy Director of Town and Country Planning is mandatory, cannot be accepted, in view of the Rules envisaged in Tamil Nadu Panchayats Buildings Rules, 1997.

13. In view of the above and following the decisions referred to supra, the impugned communications, dated 18.07.2017 and 24.10.2017, issued by the first respondent, are set aside and the matters are remitted back to the first respondent and the petitioners are directed to file their representations, 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 Panchayats or from the Town and Country Planning Authorities, whether building plan approval has been granted to the petitioners school, as required under law, shall inform about the status to the petitioners school by a letter, within a period of two weeks thereafter and the petitioners school shall comply with the same within a period of four weeks thereafter. In case the respondents find any violation in the construction of the school buildings, the same can be brought to the notice of the petitioners, either to modify or change the structure / superstructure of the school buildings.

14. On receipt of the reply, the first respondent shall

consider the petitioners' representation seeking to upgrade the schools to Higher Secondary Level 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.

15. The Writ Petitions are allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

srk

To

1. The Director of Matriculation Schools,
College Road, Chennai 600 006
2. The Inspector of Matriculation Schools,
Coimbatore, Coimbatore District

+1cc to The Government Pleader, SR No.4858

W.P.Nos.682 & 683 of 2018
and WMP Nos.854 & 855 of 2018

KJI (CO)
rsi (03/02/2018)

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