

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

C O R A M

THE HON'BLE MR.JUSTICE S.S.SUNDAR

Writ Petition No.21742 of 2018

Kalaimagal Nursery and Primary School
Represented by its Correspondent
Pudumanai Street, Ayapadi 609 303
Tharangampadi Taluk,
Nagapattinam District

... Petitioner

Vs

1.The Director of Matriculation Schools
DPI Campus, College Road
Chennai 600 006

2. The Chief Educational Officer
Nagapattinam District

... Respondents

Prayer: Petition filed under article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents herein to consider and pass orders on the application of the petitioner school seeking for upgradation from classes VI to VIII without insisting upon the DTCP approval by accepting the approval by the Panchayat and without insisting upon No Objection Certificate from any of the neighbouring schools within a time to be fixed by this Hon'ble Court.

For Petitioner

...

Mrs.Dakshayani Reddy

For Respondents 1 and 2

...

Mrs.V.Annalaskhmi
Government Advocate

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus directing the respondents to consider and pass orders on the application of the petitioner's school seeking upgradation from classes VI to VIII without insisting upon the DTCP approval by accepting the approval by the Panchayat and

without insisting upon No Objection Certificate from any of the neighbouring schools.

The brief facts leading to the filing of the present writ petition are as follows.

2. The petitioner school was established in the year 1997 and was granted recognition by the competent authority. The recognition was lastly extended by proceedings dated 04.05.2015 of the District Educational Officer, Nagapattinam. It is stated by the petitioner that the students strength of the school as on date is more than 250 and the petitioner school follows the matriculation system of education. The petitioner is a self-financing school and was desirous of upgrading the school upto 8th Standard i.e., to start additional classes from 6th standard - 8th standard.

3. A detailed proposal was sent to the competent authority on 28.02.2018. However, the proposal submitted by the petitioner was returned with certain clarifications requiring the petitioner's school to get building approval from the Director of Town and Country Planning and to get No Objection Certificate from the neighbouring school, which has filed a Writ Petition in W.P.No.15665 of 2018.

4. Challenging the legality of the communication whereby the proposal submitted by the petitioner was returned, the present writ petition has been filed for issuance of a Writ of Mandamus directing the respondents to consider the application of the petitioner's school regarding upgradation from classes VI to VIII without insisting upon the No Objection Certificate from any of the neighbouring schools and without insisting the approval from the Town and Country Planning Authorities.

5. The learned counsel for the petitioner states that the neighbouring school cannot raise an objection as it has no locus standi to question another school, being established or started in the nearby vicinity. In a similar case, in W.P.No.9879 of 2010 (Solomon Matriculation School Vs. The Chief Educational Officer, Tuticorin) and by Judgment dated 11.10.2011, learned Single Judge of this Court following the earlier Judgment of this Court in the case of Aided Elementary School rep. by M. Rajagopalm Mullichettipatti, Thinnapatti Post Vs. Government of Tamil Nadu, rep. by its Secretary, Education Department, Chennai and others reported in 1997 Writ LTR 862, dismissed the writ petition, which was filed by a neighbouring school for issuance of a direction to the official respondents to take necessary steps to close the school only on the ground that the school was started without getting No Objection Certificate from the neighbouring school within a radius of one kilometer.

6. This Court has already held that running of school should be considered not as a business and that therefore running of another school will not amount to competition. It was therefore anyone who is running a school already cannot have any grievance or challenge somebody else starting any institution in the nearby vicinity. Such person, who has got an existing school has no locus standi to question the recognition granted to any other institution.

7. The position was made clear later by yet another Judgment in the case of St. Arokia Annai School Vs. The Director of School Education dated 14.06.2012 wherein the learned Single Judge of this Court has held as follows:

"4. As to whether a neighbouring School has right to object for the starting of a School came to be considered by a learned judge of this Court in Aided Elementary School rep. by M.Rajagopal, Mullichetti vs. the Government of Tamil Nadu and others reported in 1997 Writ L.R.862. This Court held that in such matters, the neighbouring School has no locus standi to bring any Writ Petition to this Court. This Court held that running of another School will not amount to competition and the neighbouring School have no locus standi to challenge the policy of the Government, as it is not to offend their right and they have no legal right to be heard.

5. Under the circumstances, this Court is not inclined to entertain the Writ Petition. It is always open to the authorities to consider the application of the 3rd respondent in accordance with law. But, that does not mean that the petitioner can file the Writ Petition and seek for a direction to consider the application of the 3rd respondent. The Writ Petition is thoroughly misconceived and bereft of legal reasons. Accordingly the writ petition stand dismissed. No costs."

8. In view of the above precedents referred to, this Court is of the view that the respondents cannot insist the petitioner to get No Objection Certificate from anyone or a neighbouring school merely because such school has filed a writ petition. It is for the respondents to cite the precedents referred to above and see to it, that the writ petition filed by neighbouring school is dismissed on merits.

9. As regards, the requirement of DTCP approval, it is brought to the notice of this Court the recent judgment of Hon'ble Division Bench of this Court in the case of The Tamil Nadu Unaided Polytechnic Management Association Vs. The State of Tamil Nadu reported in 2018-2-Writ L.R.293, wherein it has been categorically held that there is no need for obtaining approval for the construction from the Town and Country Planning Authorities under Section 49 of the Town and Country Planning Act, once the planning approval has been obtained from the Executive Authority of local body. It is further held that in terms of Rule 25 of Panchayat Building Rules, every building constructed in the non planning area should have the approval from the Executive Authority issued after the concurrence of the Town and Country Planning Authorities.

10. With reference to a case when the construction was put up long back with the approval of Executive Authority of local body but without the concurrence of DTCP, the procedure that has to be followed is also indicated in para 46 of the said judgment, which reads as follows.

"46. In cases, which may include the petitioners herein, where the Executive Authority of the Panchayat might not have consulted either the Joint Director or the Deputy director of Town and Country Planning before granting permission for construction of public buildings, this Court declares:

(a) In all such cases, the Executive Authority is directed to forward the papers to the Town Planning Authority, who may now consider them, and if required visit the premises in question, and offer his advice if the constructions have complied with all necessary statutory Rules and Regulations, and the latter shall forward his views or opinions to the Executive Authority. If opinions offered are positive, in that if the constructions are found to have complied with the Rules and Regulations and such other legal requirements, then the Executive Authority shall issue an order ratifying his earlier order granting his permission. This will apply only to those public buildings in the Panchayat area constructed after the coming into force of the Tamil Nadu Panchayat Building Rules, 1997 till today, the date of this Order, and not to any future application for constructions.

(b) Where any permission has been granted by the Executive Authority of the Panchayat

without consulting the joint or Deputy Director of Panchayat in terms of Proviso to Rule 25, but no construction has yet commenced, it shall not be commenced, till opinion of the Town Planning Authority is obtained. If the opinion is not negative, then the earlier permission granted shall, subject to other provisions of law, remain in force. If the opinion of the Town Planning Authority is negative, the Executive Authority of the Panchayat shall forthwith cancel the permission earlier granted after followed the due process of law.

(c) In cases of partially constructed buildings, no completion certificate of other amenities be provided unless a favourable opinion is given by the Town Planning Authority.

(d) In all cases falling under (a) and (c), if the opinion of the Town Planning Authority is negative, then such authorities as are empowered to initiate action for illegal constructions shall initiate appropriate actions as per law. The power to grant sanction for construction by the Panchayat is no answer to a builder or a developer violating Rules and Regulations pertaining to construction activities."

11. Since the Government or the authority under Town and Country Planning Act, has not taken a decision or passed any order as to how the concurrence should be obtained in respect of buildings, which were put up long back. The petitioner shall do the needful to get concurrence as per the judgment of Division Bench above referred to.

12. The petitioner cannot be compelled to get approval for the purpose of getting permission for the upgradation of the school, since it is made clear by the Hon'ble Division Bench that no approval from DTCP is required for buildings, which are constructed earlier. Considering the facts and circumstances indicated above, this Court is inclined to pass the following direction:

(i) The writ petition is allowed and the first respondent is directed to consider the application of the petitioner for upgradation of the petitioner's school with classes VI-VIII standard without insisting either DTCP approval or a No Objection Certification from any other neighbouring schools within a period of three months from the date of receipt of copy

of this order;

(ii) The petitioner may also take appropriate steps as may be required in law to get concurrence of Town and Country Planning Act in terms of Rule 25 as specified by the Hon'ble Division Bench of this Court in the Judgment above referred to. It is made clear that the first respondent cannot wait for the concurrence for considering the application of the petitioner.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

gsi/vsg

To

1. The Director of Matriculation Schools
DPI Campus, College Road
Chennai 600 006
2. The Chief Educational Officer
Nagapattinam District
3. The Government Advocate
Madras High Court
Chennai - 600 104.

+1cc to Mr.Dakshayani Reddy, Advocate SR.No.62551

+1cc to Government Pleader SR.No.62671

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GMV (19/09/2018)

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