

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.13407 of 2018  
and WMP.No.15805 of 2018

S.Umameshwari  
Correspondent

Sri Shakthi Primary and Nursery School  
No.128, Tholkapiyar St., Gugai,  
Salem-6.

... Petitioner

Vs.

1. The Chief Education Officer,  
Salem.
2. District Primary Education Officer,  
Salem.
3. The Assistant Nursery and Primary School Officer,  
Sangagiri,  
Salem.
4. The Assistant Commissioner,  
Corporation of Salem,  
Kondalampatty Zone,  
Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in Notice dated 18.04.2018 made in serial No.006322 by the 1st respondent and the consequential order made in Na.Ka.No.3041/Aa3/2018, dated 18.04.2018 passed by the 1st respondent, quash the same and further direct the 1st respondent to issue approval for the petitioner's School functioning at No.55/33, Kaliyamman Koli Street, Gugai, Salem-6 in per law.

For Petitioner : Ms.Reshmi Christy,  
for M/s.K.V.Sajeevkumar

For Respondents : Mr.V.Annalakshmi, G.A., for RR1 to 3  
Mrs.K.Bhuvaneswari, for R4

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent notice, dated 18.04.2018 and the consequential order

passed by the first respondent dated 18.04.2018 and to direct the first respondent to issue approval for the petitioner's School functioning at Kaliyamman Koli Street, Gugai, Salem-6.

2. The petitioner started a School in the name of Sri Shakthi Nursery and Primary School at Door No.55/33, Kaliyamman Koli Street, Gugai, Salem-6 and the School was started from the academic year 2013-14. It is stated that the petitioner's School is a Nursery School and it was started for the benefit of the Children of the local residents, who could not afford to pay high fees. It is stated that the petitioner applied for approval to the first respondent through proper channel with necessary documents even before commencement of the academic year 2013-2014. Pending permission, due to want of Schools in the nearby locality and the reputation of the petitioner in the locality, it is stated by the petitioner that the parents in the locality are admitting their wards in the petitioner's School, despite the fact that the School has not got the recognition and approval.

3. The petitioner has produced a copy of the certificate issued by the VAO to the effect that the land in which the School is located, is a patta land and no acquisition proceedings are pending. It is further stated that the petitioner obtained No Objection Certificate from the Fire Service Department to enable the petitioner's School to get the stability certificate and approval.

4. The petitioner stated that the Corporation of Salem has granted approval for the building plan on 19.12.2014. However, the first respondent issued a notice on 18.04.2018, directing the petitioner not to admit any student and close the School for the academic year 2018-2019. It was further stated that the respondents can take further action, in case the School is opened for admission to students, contrary to the direction of the Principal Educational Officer, Salem. On the same day, the Chief Educational Officer has passed an order giving certain directions to the School Management to close down the School and not to open the School for admitting students in the classes.

5. Challenging the above order dated 18.04.2018, this Writ Petition is filed.

6. In the Writ Petition, the petitioner has stated that the School has complied with all the requirements that were found insufficient by the second respondent. Stating that the petitioner has obtained No Objection Certificate from the Fire Service Department, Town and Country Planning Authority and other statutory authorities, it is submitted by the counsel for the petitioner that the first respondent ought to have given necessary approval.

7. The learned counsel appearing for the petitioner further submitted that the petitioner has only started a Nursery School for Classes from LKG to fifth standard, which would not require more space as suggested by the respondents. It is also stated that the localbody has granted approval for the building constructed by the petitioner. In the circumstances, the learned counsel for the petitioner submitted that there is no deficiency, and hence, the application seeking approval, ought to have been considered in favour of the petitioner.

8. The third respondent has filed a detailed counter affidavit pointing out several deficiencies and stated that notice was issued by the authorities after inspection of the School. It is the case of the third respondent that as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009, every School shall be established or permitted to function, unless certificate of recommendation has been obtained from competent authority. It is further pointed out that the School has been started without permission or recognition and that the petitioner is liable to pay a fine upto Rupees one lakh for starting the School without a certificate of recognition.

9. It is further stated that the petitioner has failed to satisfy the norms prescribed under the Right of Children to Free and Compulsory Education Act, 2009. It is also the case of the third respondent that the petitioner did not have the building approval of DTCP and that the deficiencies pointed out in the impugned order have not been complied with even after the impugned order. Since the petitioner has not given any proof to satisfy the requirements and other infrastructures and facilities that are needed, it is stated that the respondents had no other option except to pass the order directing the closure of the School.

10. It is not in dispute that the petitioner does not own the land or space required as per the Government Order. It is stated in the counter affidavit that the petitioner's School has not obtained the building plan approval from DTCP. It is the specific case of the respondents that the School did not have the required space and sufficient class rooms. In such circumstances, the contention of the third respondent is to the effect that the petitioner is not entitled to run the School in the present location as the petitioner has not satisfied the norms prescribed.

11. It is also the case of the respondents that the petitioner has only a small extent of 1.50 grounds as against the requirement of 6 grounds as per G.O.(2D).No.48, School

Education (X2) Department, dated 21.07.2004, since the petitioner has started the School within the Corporation limit.

12. The learned counsel appearing for the petitioner is not able to point out any material irregularity in the order passed by the first respondent. It is not in dispute that the petitioner has only an extent of 3,500 sq.ft. of land. It is also pointed out before this Court that the construction was put-up originally for residential purpose and that the building plan was approved by Corporation only for residential purpose. It is not the case of petitioner that DTCP approval is not required.

13. The learned counsel appearing for the respondents relied upon the judgment of this Court in the case of Venkatesa Pandian vs. the Director, The Director of Matriculation School, DPI Campus, Chennai 600 006, wherein, this Court has held as follows:

"5. It is not in dispute that the petitioner has established a School. Admittedly, there is no sufficient space and that there is shortage of 3 acres of land for the petitioner to run the School. As long as there is want of space, the contention of the petitioner that they have identified the land and they are going to purchase the land, cannot be accepted. Unless and until they possess the land and the required space, there is no need for the authorities to give permission. The School is being constructed in a narrow space and the children and public will be affected and the children should not face one more Kumbakonam incident."

14. By G.O.(2D).No.48, School Education (X2) Department, dated 21.07.2004, the Government, after detailed study, has issued certain guidelines, which are made applicable to the Matriculation Schools. Subsequently, the application of G.O.(2D) 48, dated 21.07.2004 was extended to all other Schools by another Government Order in G.O.No.49, Education Department, dated 01.03.2007. As per the G.O.No.49, dated 01.03.2007, requirement of space specified in the earlier G.O. was made applicable to all the Private Schools.

15. Having regard to the admitted facts and the deficiencies pointed out by the respondents, the petitioner is not entitled for any relief in this Writ Petition, as the School is without sufficient space and infrastructure and it is not desirable to permit the School to run. The first respondent has passed the impugned order after considering the facts and circumstances and in the light of the welfare of the students community. This Court find no irregularity in the decision making process. Hence, this Writ petition is dismissed. However, the petitioner may apply for recognition after satisfying the deficiencies

pointed out. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Education Officer,  
Salem.
2. District Primary Education Officer,  
Salem.
3. The Assistant Nursery and Primary School Officer,  
Sangagiri,  
Salem.
4. The Assistant Commissioner,  
Corporation of Salem,  
Kondalampatty Zone,  
Salem.

+1 cc to Mr.K.V.Sajeev Kumar,advocate,sr.64567

+1 cc to Govt.Pleder,sr.64567

krd 23/10

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