

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.29682 of 2017
and
WMP.Nos.31999 to 32000 of 2017

Kalvikkottai Christian High School
rep. by its Correspondent
C.N.Yesudoss Sadhu ... Petitioner

Vs

- 1.The Joint Director of School Education,
(Higher Secondary)
College Road, Chennai -6.
- 2.The Chief Educational Officer,
Vellore.
- 3.The District Educational Officer,
Vellore -1. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the orders of the second respondent made in Na.Ka.No.5509/A5/2017 dated 06.11.2017 and that of the order of the third respondent made in Na.Ka.No.6723/A4/2017 dated 09.11.2017 to quash the same and to consequently, direct the respondents to await DTCP approval of the school as per the time limit prescribed in G.O.Ms.No.73 School Education Department dated 22.04.2017.

For Petitioner : Mr.L.Chandrakumar
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 respondents 2 and 3 relating to the orders in Na.Ka.No.5509/A5/2017 dated 06.11.2017 and Na.Ka.No.6723/A4/2017 dated 09.11.2017 respectively and quash the same and consequently direct the respondents to await DTCP approval of the school as per the time limit prescribed in G.O.Ms.No.73 School Educational Department dated 22.04.2017.

2.It is the case of the petitioner that on 18.12.2006, the petitioner school has been upgraded as High School and submitted an application seeking approval for the same. By the proceedings dated 30.05.2017, the third respondent recommended the claim of the petitioner seeking up-gradation to higher secondary level. Thereafter, the first respondent, by proceedings dated nil.07.2017, directed the petitioner to rectify certain defects pointed out therein, which were duly, complied with, except approval from the Department of Town and Country Planning. According to the petitioner, the school is located within the limit of Thanigaipolur Panchayat and the building was constructed, after obtaining planning permission from the said Panchayat by its proceedings dated 27.08.2008. In the mean while, the third respondent by proceedings dated 06.11.2017, directed the petitioner to produce the approval from the Director of Town and Country Planning. Following the same, the second respondent, by proceedings dated 09.11.2017, prohibited the petitioner from continuance of the XI standard. 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 seeking approval. 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 school is running at Thanigaipolur, Arakkonam 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 communications, dated 06.11.2017 and 09.11.2017 issued by the respondent concerned, are set aside, as far as the production of certificate from the Director of Town and Country Planning is concerned and the matter is remitted back to the respondents and the petitioner is directed to file a representation, seeking approval for upgradation of the school 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 school, 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 school 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. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Director of School Education,
(Higher Secondary)
College Road, Chennai -6.

2.The Chief Educational Officer,
Vellore.

3.The District Educational Officer,
Vellore -1.

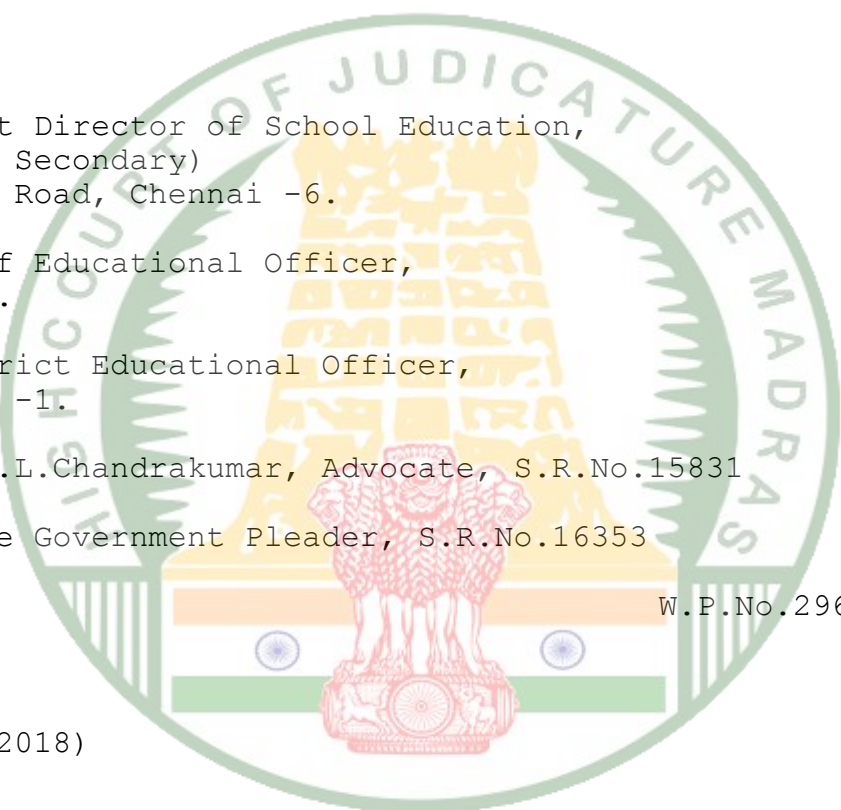
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.15831

+1cc to the Government Pleader, S.R.No.16353

W.P.No.29682 of 2017

KS (CO)

RRK (19/03/2018)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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