

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.18539, 23484 to 23486, 23079 and
17178 of 2018 and
connected Miscellaneous Petitions

Tamil Nadu Catholic Educational Association
rep. by its Secretary-cum-Treasurer,
Diocesan Pastoral Centre,
25, Rosary Church Road,
Santhome, Chennai-4.

... Petitioner in WP.NO.18539/18

The Manager and Correspondent
Dr.Zahir Hussain Memorial Minority High
School,Pillaiyarnatham, Pithalaipatti Post
Dindigul 2

... Petitioner in WP.NO.23484/18

The Manager & Correspondent
Dr.Zahir Hussain Memorial Minority Aided
Elementary School Pillaiyarnatham
Pithalaipatti Post Dindigul 2

... Petitioner in WP.NO.23485/18

The Manager & Correspondent
Dr.Zahir Hussain Memorial Minority Aided
Elementary School Begam Shahiba Nagaram
Dindigul 2

... Petitioner in WP.NO.23486/18

Association of Management
of Hindu Educational Institution (Reg.No.
48/ 1988) Tamil Nadu Rep. by its Secretary
Shri. Ramakrishna Ashram Thiruvudagam West
Madurai - 62421

... Petitioner in WP.NO.23079/18

All India Private Educational
Institutions Association Rep by its State
General Secretary K.Palaniyappan No.5 M.P.
Avenue Majestic Colony Saligramam
Chennai 600 093

... Petitioner in WP.NO.17178/18

Versus

1. The Principal Secretary,
Housing and Urban Development (UDA(3))
Department, Fort St. George,
Chennai-600 009. ... 1st Respondent in WP.No.18539/18

2. The Director of Town and Country Planning,
807, Anna Salai, Chennai-2.

... 2nd Respondent in WP.No.18539, 23484 to 23486/18

3. The Secretary,
Department of School Education,
Fort St. George, Chennai-9.

.... 3rd Respondent in WP.18539, 17178/2018

4. Director of School Education,
DPI Campus, College Road,
Chennai-6.

5. Director of Elementary Education,
DPI Campus, College Road,
Chennai-6.

6. Director of Matriculation Schools,
DPI Campus, College Road,
Chennai-6.

(R3 to 6 were impleaded as per order
dated 20.8.2018 made in WMP.No.24911/2018
in W.P.No.18539/2018)

7. The Federation of Private Schools in
Tamil Nadu (FAPSIT),
a registered Society (Registration No.108/2010),
rep. by its Secretary D.C.Elangovan,
No.11/6A, P.T.Rajan Salai, 20th Avenue,
K.K.Nagar, Chennai-78.

(7th respondent was impleaded as per
order dated 10.12.2018 made in WMP.No.

22740/2018 in W.P.No.18539/2018 &
3rd Respondent in WP.17178, 23079/18
made in WMP.NO.30786, 30791/18)

... Respondents 4 to 7 in WP.18539/18

Sri Angala Parameswari Educational Trust
Rep by its Managing Trustee
E.Sumathy No.11/1 Mallan Ponnappan
Street, Triplicane Chennai-005.
(Implead vide court order dated 10/12/18
made in WMP.37470/18)

...4th Respondent in WP.No.23079/18

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned G.O.Ms.No.76, dated 14.6.2018, Housing and Urban Development (UD4(3)) Department, on the file of the 1st respondent and the consequential G.O.167, School Education (MS) Department, dated 7.8.2018 on the file of the 3rd respondent and quash the same in so far as imposing a condition that the member institutions of the petitioner shown in Annexure to the Writ Petition, have to submit Plan Approvals from Director of Town and Country Planning of the buildings built in the non-plan area, before 1.1.2011 for the purpose of obtaining school recognition.
(Prayer amended as per order dated 31.8.2018).

Prayer WP.23484 to 23486/18 & 23079/18

to issue orders, directions or writs in particular a Writ of Certiorari, calling for the entire records connected with the impugned G.O.Ms. No.76 Housing and Urban Development (UD4(3)) Department dated 14.6.2018 passed by the 1st respondent and quash the same in so far as petitioners School is concerned and pass such further or other orders.

WP.NO.17178/2018:

to Issue order or direction, in the nature of a Writ, a Writ of Declaration declaring the G.O.Ms.No.76 dated 14.06.2018 issued by the 1st Respondent and Consequential Letter No.1818 / MS / 2018 1 dated 25.06.2018 of the 2nd Respondent as illegal and unconstitutional being passed without any legislative sources as it is ultra - virus and inconsistent with legislative domain conferred under Article 243(g) 243(w) 243ZD r/w Article 40 of the constitution of India and pass such other order.

For Petitioner : Dr.Fr.A.Xavier Arul Raj,
Senior Counsel
for M/s.Father Xavier Associates
in WP.No.18539/18

Mr.S.N.Ravichandran for
W.P.No.23079, 23484 to 23486/18

Mr.E.Vijay Anand for WP.17178/18

For Respondents : Mrs.P.Rajalakshmi,
Addl. Govt. Pleader for R1 & 2
Mr.K.Karthikeyan,
Government Advocate for R3 to 6

Mr.V.G.Suresh Kumar for R7
(in WP.No.18539, 17178)
Mr.N.Muralikumaran for
Mr.R.Gopinath for in WP.23079/18

C O M M O N O R D E R

There are totally 6 Writ Petitions filed questioning the correctness of the Government Order in G.O.Ms.No.76, Housing and Urban Development (UD4(3)) Department, dated 14.6.2018, issued by the 1st respondent and the consequential Government Order in G.O.167, School Education (MS) Department, dated 7.8.2018 on the file of the 3rd respondent and to quash the same in so far as imposing a condition that the member institutions of the petitioners shown in Annexure to the Writ Petitions, have to submit Plan Approvals from Director of Town and Country Planning of the buildings built in the non-plan areas, before 1.1.2011 for the purpose of obtaining school recognition.

2. Heard Dr.Fr.A.Xavier Arul Raj, learned Senior Counsel appearing for the petitioner in W.P.No.18539/2018, Mr.S.N.Ravichandran, learned Counsel for the petitioners in W.P.Nos.23079 and 23484 to 23486 of 2018 and Mr.E.Vijay Anand, learned Counsel for the petitioner in W.P.No.17178/2018.

3. Dr.Father Xavier Arul Raj, learned Senior Counsel, leading the petitioners submitted that the petitioner in W.P.No.18539/2018 is an organisation of all the educational agencies established and administered by the Catholic Church under the Societies Registration Act XXI of 1860 and the said body is co-ordinating the Catholic educational services for the past 80 years. Since all the Catholic Dioceses and the religious congregations of men and women in Tamil Nadu and Puducherry are running educational institutions which are members of the Tamil Nadu Catholic Educational Institution, namely, TANCEAN with an objective of protecting and promoting the rights of the Minority Educational Institutions (MEI) as they are protected by Article 30(1) of the Constitution of India. Likewise, the petitioners in W.P.Nos.23484 to 23486/2018 are Aided Religious Minority Institutions falling within the ambit of Article 30(1) of the Constitution of India and the petitioner in W.P.No.23079/2018 is a Registered Association and their members are Managers of Aided Private Schools and the petitioner in W.P.No.17178/2018 is the All India Private Educational Institutions Association and they are all committed to the excellence of education for all, especially, for the marginalized and the poor in the rural areas.

4. Learned Senior Counsel argued further that some of the petitioners have also set up various schools, namely, Nursery, Primary Schools, Middle Schools, High Schools, Higher Secondary

Schools, Matriculation High Schools, Matriculation Higher Secondary Schools, Anglo Indian Schools and School for Special Children and also Higher Education Schools, namely, Arts and Science College, Nursing School and Colleges, Polytechnic College, Technical Institutes, Teacher Training Institutes, B.Ed. Colleges and Engineering Colleges etc. for the prime object of contributing towards nation building in realizing the constitutional objectives of quality education for all. Some of the educational institutions are working for the last 300 years and the buildings of the said educational institutions are located in various local bodies in the Corporation Limits, Municipality Limits, Cantonment Limits and Panchayat Limits and they have also obtained necessary building permission. Till date, there has been no illegality in the construction of the said buildings for educational purposes. Even their stability and structural soundness are also verified by competent authorities from time to time as per Section 4(a) of the Tamil Nadu Public Buildings (Licensing) Act, 1965. Therefore, there is no illegality either in respect of construction, plan approval or certification in the aforesaid educational institutions.

5. Adding further, the learned Senior Counsel for the petitioners submitted that after the Tamil Nadu Town and Country Planning Act, 1971 came into force w.e.f. 24.11.1972, some of the areas in the State of Tamil Nadu came under the formation of Local Planning Authority (LPA). Now, as per Section 47 of the said Act, no development can be undertaken in any land, unless in conformity with the development plan of the area. After long time from the introduction of the Tamil Nadu Town and Country Planning Act, 1971, the Government has brought an amendment under Section 47-A. As per the said provision, it has become the duty of the local authority granting permission to any development on any land in the non-plan area to obtain prior concurrence of the Director under the Tamil Nadu Town and Country Planning Act, 1971. As a result, the approval for the buildings even in the non-plan area, under the control of the Local Authority are also subjected to the permission to be obtained by the Local Authority under Section 47A(2) of the Act.

6. While so, when the members of the petitioners Associations have obtained planning permission and also put up their construction without any single deviation, irregularities or deficiencies, long before the advent of Section 47-A of the Act, the G.O.Ms.No.76, Housing and Urban Development (UD4(3)) Department dated 14.6.2018 issued by the 1st respondent, thereby issuing certain guidelines cannot be made applicable to the buildings put up by the educational institutions either schools or colleges that had obtained due planning permission before 01.01.2011. Therefore, the condition imposed in the G.O.Ms.No.76 stating that the one time offer to accord

concurrence to old buildings will be valid only for a period of 3 months from the date of issuance of that order cannot be made applicable to the buildings constructed and completed after obtaining proper planning permission and approval from the competent authority existed prior to 01.01.2011. But, in the light of the said Government Order, the respondents are indirectly forcing all the educational institutions to obtain approval for the buildings from the Director of Town and Country Planning. They have also fixed an one time charge of Rs.7.50 per sq.ft. on the FSI/plinth area of the buildings. The reason being that all the educational institutions, at the time of obtaining concurrence for the old buildings from the Director of Town and Country Planning, have paid the requisite charges and already obtained the approval from the competent authorities and till date, the planning permission obtained by the members of the petitioners Association had not been cancelled or found fault with. Being so, on the premise that some of the deficiencies are still existing, it is not open to enforce the impugned Government Order against the buildings of the educational institutions which were constructed and completed after obtaining proper and valid planning permission from the competent authority before 01.01.2011.

7. Continuing his argument, the learned Senior Counsel for the petitioners would submit that all the schools are non-profit in nature. The unaided schools have to strictly adhere to the fee structure determined by the Statutory Committee and cannot collect anything in excess of the same. If any fresh approval is sought for by the Director of Town and Country Planning, the 2nd respondent herein, pursuant to the order passed by the 1st respondent in the impugned Government Order, the managements have no other source of income to pay this exorbitant amount arbitrarily demanded for granting a second approval for old school buildings, as they have already paid at the time of obtaining planning permission from the competent authority. Therefore, the impugned demand of Rs.7.50 per sq.ft. for the FSI of the educational buildings, as charges, cannot be levied or collected from the members of the petitioners Association inasmuch as the word 'charge' as per the Law Lexicon gives a meaning that 'the price required or demanded for services rendered or less frequently, for the goods supplied'. In this case, the respondents have neither rendered any service nor supplied any goods in respect of the buildings that existed, already approved, even before 01.01.2011 and hence, the impugned Government Order cannot be enforced against the petitioners by means of collection of the charges.

8. Concluding his arguments, the learned Senior Counsel for the petitioners submitted that so far as the buildings that were constructed and completed after obtaining planning

permission from competent authority before ***01.01.2011** are concerned, they cannot be subjected to comply with the conditions mentioned in the impugned Government Order 76 stated supra, as it is in violation of Articles 21A and 19(1)(g) of the Constitution of India. It is for the simple reason that the unaided schools cannot increase their fees because their fees structure have already been determined by the Statutory Committee. For all these reasons, the impugned order in G.O.Ms.No.76, Housing and Urban Development (UD4(3)) Department, dated 14.6.2018 and the consequential G.O.167, School Education (MS) Department, dated 7.8.2018 on the file of the 3rd respondent, have to be quashed.

9. The respondents 1 and 2 have filed their respective counter affidavits.

10. Learned Additional Government Pleader appearing for the respondents 1 and 2 opposing the above contentions submitted that in most of the cases, the individual builder in collusion with the executive authority of the local body has accepted the permission issued by the local body without making the said consultation with an ulterior motive and has evaded payment of necessary charges like infrastructure and amenities charges payable to Government. Since the impugned G.O.Ms.No.76, Housing and Urban Development (UD4(3)) Department, dated 14.6.2018 requires educational buildings in non-planning areas constructed prior to 1.1.2011, the date of coming into force of the Section 47-A of the Town and Country Planning Act, 1971 to obtain concurrence, if it was not obtained so far, the petitioners cannot have any objection. Making it clear the learned Additional Government Pleader submitted that if any additional buildings constructed by the members of the petitioners Association was issued with planning permission from the competent authority on or before 01.01.2011 with the time limit to rectify any deficiencies and if such deficiencies have not been complied with till now, naturally, the impugned G.O.Ms.No.76 can be enforced against them.

11. The learned Senior Counsel leading all the petitioners submits that there is no quarrel on the same.

12. In view of the above, firstly, it is made clear that if any educational institution, either school or college, building is constructed before ***01.01.2011**, i.e. prior to the introduction of Section 47-A of the Act, after obtaining valid and lawful permission from the competent authority, the G.O.Ms.No.76 cannot be made applicable to them. Because, if any new building was constructed after ***01.01.2011** in any part of the State without getting proper concurrence from the Director of Town and Country Planning, the G.O.Ms.No.76 can be made

applicable. Secondly, it is made clear that if any building is constructed even prior to the said Section 47-A came into force i.e. before ***01.01.2011** leaving any deficiencies to be rectified now and not rectified even today, such buildings will be covered by the impugned proceedings. In any event, if the three months time given in the said G.O. had already lapsed, the 2nd respondent is also entitled to take appropriate action against all those educational buildings which have not obtained planning permission and put up even prior to 01.01.2011 and not rectified any of the deficiencies till 02.01.2011. Lastly, in respect of the charges of Rs.7.50/- per square feet, if any application is made during the relevant period i.e. before the expiry of three months, the 2nd respondent shall consider the same to grant the benefits.

13. With the above observations and directions, all these Writ Petitions are allowed and the Government Order in G.O.Ms.No.76, Housing and Urban Development (UD4(3)) Department, dated 14.6.2018, issued by the 1st respondent and the consequential Government Order in G.O.167, School Education (MS) Department, dated 7.8.2018 on the file of the 3rd respondent are hereby quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

Dated: 28.12.2018

*** Corrected and amended as per order dated 08.01.2019 made herein**

**Sd/- Assistant Registrar (CS VI)
Dated: 21.01.2019.**

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Housing and Urban Development (UDA(3))
Department, Fort St. George,
Chennai-600 009.
2. The Director of Town and Country Planning,
807, Anna Salai, Chennai-2.
3. The Secretary,
Department of School Education,
Fort St. George, Chennai-9.

To be Substituted
to the order
already despatched
on 07.01.2019

4. Director of School Education,
DPI Campus, College Road, Chennai-6.
5. Director of Elementary Education,
DPI Campus, College Road, Chennai-6.
6. Director of Matriculation Schools,
DPI Campus, College Road, Chennai-6.
7. The Secretary,
Federation of Private Schools in
Tamil Nadu (FAPSIT),
a registered Society (Registration No.108/2010),
No.11/6A, P.T.Rajan Salai, 20th Avenue,
K.K.Nagar, Chennai-78.
8. E.Sumathy, Managing Trustee
Sri Angala Parameswari Educational Trust
No.11/1 Mallan Ponnappan
Street, Triplicane Chennai-005.

+2cc to M/s.Father Xavier Associates, Advocate sr.no.85369
+3cc to Mr.S.N.Ravichandran, Advocate sr.no.85219
+1cc to Mr.Gopinath, Advocate sr.no.1696
+1cc to Mr.E.Vijay Anand, Advocate sr.no.1747
+1cc to Mr.V.G.Suresh Kumar, Advocate sr.no.1857
+1cc to Government Pleader sr.no.85840

W.P.Nos.18539, 23484 to
23486, 23079& 17178/2018

NR(28/12/2018)
SP(21/01/2019)

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