

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.5757 of 2019
& WMP.Nos.6578 & 6579 of 2019

Southern Educational & Rural Development Society,
Rep. By its Secretary Mrs.P.Kala
Salem Cuddalore Main Road,
Deviyakurichi, Attur Taluk,
Salem - 636 112. ..Petitioner

Vs.

1.The Government of TamilNadu,
Rep. by its 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 - 600 002.

3.The Director of School Education,
College Road, Chennai - 600 006.

4.The Chief Educational Officer,
Salem District, Salem. ..Respondents

PRAYER: This Petition is filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records, pertaining to the impugned G.O.M.S.No.76 dated 14.06.2018, Housing and Urban Development [UD4(3)] Department on the file of the 1st respondent, in respect of the petitioner society and quash the same and consequently, direct the respondent 3 and 4 to process the application of the petitioner submitted for recognition under the Right to Education Act without insisting upon the production of Building Plan Approval from the Town and Country Planning Authority.

For petitioner : Mr.Kandan Doraisamy
for Mr.N.Mathivanan

For Respondents 1 & 2: Mr.V.Shanmuga Sundar
Special Government Pleader.

For Respondents 3 & 4: Mr.K.Karthikeyan
Additional Government Pleader

ORDER

This writ petition has been filed to quash the impugned G.O.M.S.No.76 dated 14.06.2018, Housing and Urban Development [UD4(3)] Department on the file of the 1st respondent, in respect of the petitioner society and consequently, to direct the respondents 3 and 4 to process the application of the petitioner submitted for recognition under the Right to Education Act without insisting upon the production of Building Plan Approval from the Town and Country Planning Authority.

2. According to the petitioner, the petitioner has submitted an application dated 15.11.2018 to the third respondent seeking for recognition under the Right to Education Act. By letter O.Mu.No.001456/A2/2019 dated 29.01.2019, the said application was returned by the fourth respondent on the ground that the petitioner society should obtain Building Plan Approval from the Director of Town and Country Planning, alternatively to apply under G.O.Ms.No.76, Housing and Urban Development Department dated 14.06.2018. According to the petitioner, the building of the petitioner were constructed and completed before the cut off date i.e., on 01.01.2011. Therefore, the respondent cannot be compelled to obtain fresh Building Plan Approval from DTCP or to apply under G.O.Ms.No.76, Housing and Urban Development Department dated 14.06.2018. Further according to the petitioner, several writ petitions viz., W.P.Nos.18539, 23484 to 23486, 23079 and 17178 of 2018 have filed before this Court regarding the same issue by the several schools, this Court by order dated 10.12.2018 allowed the writ petitions. The petitioner drew the attention of this Court by relying upon paragraphs 12 and 13 of the said Judgment, which is observed as follows:

"12. In view of the above, firstly, it is made clear that if any educational institution, either school or college, building is constructed before 01.11.2011, 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 01.11.2011 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 01.11.2011 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."

The facts of that case is squarely applicable to the facts of the instant case.

3. The learned Additional Government Pleader appearing for the respondents 3 and 4 would submit that the petitioner's application will be considered, if it is covered under the order of this Court cited supra and if no appeal has been filed by the Department on the above said writ petition.

4. Considering the facts and circumstances of the case and the submissions of the learned counsel on either side, the following directions were issued:

(a) The petitioner is directed to re-submit the application dated 15.11.2018 to the third respondent with explanation, within a period of three weeks from the date of receipt of a copy of this Order.

(b) if any such application is received from the petitioner, the fourth respondent is directed to consider and pass orders in the light of the above common order passed by this Court in W.P.No.18539 of 2018 batch dated 10.12.2018, within a period of eight weeks from the date of receipt of such application.

5. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//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 - 600 002.
- 3.The Director of School Education,
College Road, Chennai - 600 006.
- 4.The Chief Educational Officer,
Salem District, Salem.

+lcc to Mr.N.Mathivanan, Advocate Sr.20422

+lcc to the Government Pleader Sr.20935

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