



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.09.2019	Pronounced on: 12.09.2019
-------------------------	---------------------------

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.22121 of 2019
and W.M.P.No.21396 of 2019

Dayasadan Agarwal Vidyalaya,
Represented by its Correspondent,
No.127, Ponamallee High Road,
Nerkumdran, Thiruvallur District.
Chennai - 600 107. Petitioner

/versus/

1. The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Member-Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road, Egmore,
Chennai - 600 008. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the respondents to permit the petitioner to use the fourth floor to accommodate the students studying in XI and XII standards of the petitioner school without reference to the Letter of Undertaking given by the petitioner dated 04.03.2016 and without insisting upon implementation of the recommendation made by Mr.Justice Sampath Committee as per the orders of this Hon'ble Court in W.P.No.7824 of 2017 and to pass appropriate order as deem it fit.

For Petitioner : Mr.A.L.Somayaji, Senior Counsel,
for Dakshayani Reddy.

For R1 & R2 : Mrs.V.Annalakshmi,
Government Advocate

For R3

: Mr.S.Thiruvengadan, Standing Counsel

ORDER

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner is the Correspondent of the Education Institute by name 'Dayasadan Agarwal Vidyalaya' at Nerkundram, Thiruvallur District. The School is functioning in a four storied building constructed with C.M.D.A permission, dated 22.04.2014. Earlier, when the School sought for permission from the Director of School Education Department, for affiliation of the School to admit students from LKG to VI standards under C.B.S.E scheme, the Director of School Education refused to give 'No Objection Certificate', unless the School Management give an undertaking that, it will not utilize the 4th floor of the building. Though the School building was constructed as per permitted plan and have stability Certificate, in order to get 'No Objection Certificate', the Management gave undertaking on 02.03.2016 that they will not utilize the 4th floor. The School Management was obliged to give such undertaking for the reason, after investing huge money in the construction, they were not affordable to wait for affiliation. Further, at that time, the class rooms in the 4th floor were not required by them. Since, they were desperate to get No Objection Certificate to admit students, they gave the undertaking that they will not utilise the 4th floor. In compliance to the undertaking, they closed the access to the fourth floor.

3. Now, to cater the need of their students, who are likely to complete X standard, the petitioner intend to upgrade their School from High school to Higher Secondary (XI and XII standards). They want to accommodate XI and XII standard students in the fourth floor. Therefore, they want the Director of School Education to consider their request for No Objection Certificate to admit students in XI and XII standards, without reference to their undertaking given on 04.03.2016.

4. According to the petitioner, the said undertaking was not given by them voluntary. The CMDA, which is the Authority competent to grant building permission has given the permission for STILT + Ground + 3 floors, vide planning permission dated 22.04.2014. Only after obtaining permission, the building was constructed. On completion of the construction, certificate was also issued vide proceedings dated 04.11.2015. For the purpose of getting affiliation of the school to the CBSE Board, a No Objection Certificate from the Director of School Education was necessary. For issuance of NOC, the Director of School education insisted for the undertaking.

5. The restriction for School buildings in Tamil Nadu to the maximum number 1 + 2 (Ground+First+Second floor) is based on the G.O.Ms.No.131, School Education (B) Department, dated 10.08.2006 issued in view of Mr.Justice Sampath Committee Report. The said committee was constituted after the Kumbakonam School fire tragedy. The said tragedy happened because the School management did not ensure adequate safety measures and part of the School was running in a thatched structure. Whereas, the petitioner School building is structurally sound and stable with C.M.D.A approval and stability Certificate. This Court, in W.P.No.7824 of 2017 has held that the proceedings of the Director of School Education dated 11.02.2015 cannot override statutory regulations of the CMDA.

6. The proceedings of the Director of School Education Department, dated 11.02.2016 having been held to be non-est by this Court, the undertaking given by the petitioner based on the said proceedings is also unenforceable. The recommendation of Justice Mr.Sampath Committee regarding the prohibition of utilising 4th floor is not incorporated in any of the Act or Regulation. When there is no prohibition either in the Tamil Nadu Recognised Private School Regulations Act, 1973 or in the Right to Education Act, 2009, prohibiting the utilisation of 4th floor, the Director of School Education Department, cannot impose condition regarding size of the building contrary to the Regulations of CMDA, which permits Education Institutes upto 4th floor. Citing the judgment of this Court rendered in M/s.Rtm Real Estates Vs. Secretary to Government, the petitioner through its letter dated 08.03.2019 has sought to supersede the earlier direction and permit them to utilise the 4th floor.

7. In the counter, filed in response to the writ petition, the Director of School Education (2nd respondent) has stated that the CMDA granted building permission to construct 4 floors not in the name of 'Dayasadan Agarwal Vidyalaya Educational Trust' which is running the School. The building permission is in the name of Daya Sadan Childrens Home.

8. The petitioner Trust when sought for No Objection Certificate from the 2nd respondent/Director of School Education, for opening of New School affiliated to CBSE, the 2nd respondent considered the request on the undertaking given by the petitioner that they will not utilise the 4th floor of the building under any circumstances. Only on the said undertaking, the 2nd respondent issued NOC for affiliation by C.B.S.E Board for Pre-KG to VI Standards, vide letter K.Dis.No.9142/G1/S4/2016, dated 04.03.2016. After getting NOC, the petitioner School obtained affiliation for LKG to X standard From C.B.S.E Board on 06.05.2017.

9. The condition restricting the buildings of the

Educational Institutes under the Directorate of School Education to a maximum of 1 +2 floors is pursuant to the G.O.Ms.No.131 of the School Educational Department, dated 10.08.2006. The NOC issued to the petitioner based on the undertaking and it cannot be breached. The said undertaking was given voluntarily to comply the conditions imposed in the Government order. Besides the construction condition in G.O.Ms.No.131, to get recognition for Classes XI and XII, the petitioner has to fulfil other norms such as land availability, existing students strength, infrastructure facility and other conditions. Before fulfilling those norms, the petitioner School should not admit students for XI and XII standards. Mere permission for constructing 4th floor does not confer any right on the part of the petitioner to claim remedy when other conditions stipulated in the GO's/Bye-laws are not adhered to. The Order of the High court in the Writ Petition referred by the petitioner, direction was issued to C.M.D.A to give Building Plan Approval, as per their norms. That order does not say anything about use of 3rd and 4th floor for instructional purpose. Hence, the request of the petitioner is not feasible.

10. The 2nd respondent/Director of School Education, trace the power to restrict the number of floors for Educational Institute to G.O.Ms.131, School Education Department, dated.10.08.2006. This Government Order has been issued by the School Education Department on the recommendation of Mr.Justice K.Sampath Committee appointed to enquire into the Fire Accident occurred at Shri Krishna Aided Primary School at Kumbakonam, Thanjavur District on 16.07.2014. The Enquiry Commission apart from fact finding was also asked to give its recommendation to reform needed to prevent recurrence of such incidents in future. The commission assisted by expert panel consisting of Secretary to Government, School Education as its Convenor, The Secretary to Government, Municipal Administration and Water Supply Department and Chief Engineer (Buildings) as Ex-officio members besides experts in Education and child psychology. The Government accepting the report and its recommendation has issued the above said G.O. The portions of the Government Order relevant for consideration of this writ petition reads as below:-

7. The Government have also accepted the top ten recommendations of the Commission of Inquiry may under in Terms and Reference (2) for Schools, Buildings, Constructions, Fire Safety, Amenities, Transportation, Professional Teacher Preparation, Do and Don'ts to the Managements, Guidelines to the Department and Suggestions to the Media as found in Annexure I to XIX appended to this Order and order accordingly.

8. The recommendations of the Commission

of Inquiry accepted and ordered in para 7 above would be further examined in detail by the Sub-Committee appointed subsequent to the recommendations made by the High Level Committee headed by Dr.Muthukrishnan to enable making suitable provisions in respective codes such as code of Regulation for Approved Nursery and Primary Schools, the code of Regulation for Matriculation/Anglo Indian Schools and the Tamil Nadu Recognised Private School (Regulation) Rules, 1974.

Construction - The 10 Recommendations

7.	The maximum number of floors in the school should be 1 + 2 (Ground + First + Second Floors)
8.	Lower Classes (up to Standard III) should always be in the ground floor.

11. In the Writ Petition relied by the Learned Senior counsel for the petitioner, M/s.AR.V and Associates Vs. The Secretary to the Government (W.P.No.1610 of 2017) followed by M/s.RTM Real Estates Vs. The Secretary to the Government (W.P.No.7824 of 2017) this Court has held that;

This Court is of the view that, the Writ Petition deserves to be allowed. A mere circular or letter of an Authority, who was not concerned with the approval of the Planning permission, cannot override the statutory regulations. As long as Regulation 25(7) is in force in the statute, the petitioner cannot be denied permission to put up the third floor subject to other compliance.

12. There cannot be any second opinion that C.M.D.A is the Authority competent to decide about the building to grant building permission. As far as the grant of building permission, the Regulations of Development Control Rules and Regulations will prevail. However, when the building is to be used as Educational Institute, the Department concern with the said Education has a say how the building is to be. The letter/circular of the Director of School Education, dated 11.02.2016 is reiteration of the G.O.Ms.No.131/School Education, dated 10.08.2006. As pointed earlier, the said Government Order is in turn based on the recommendation of a Commission assisted by a Expert panel consisting of Chief Engineer (Buildings) of the Government and the Secretary to the School Education. The State Government has taken a policy decision to accept the recommendation and issued Government Order to that effect. The

policy decision of the Government to restrict the usage of School buildings upto 3 floors is backed by good reasoning. The Director of School Education taking note of the fact that the petitioner Institute has already constructed four floor building, had granted No Objection Certificate on condition that the 4th floor shall not be put to use and there shall be no access to the fourth floor.

13. The wisdom of the administrative action to restrict the maximum number of floors for an Educational Institute imparting School Education is backed by robust reasoning. It cannot be viewed as illegal, arbitrary or bristling with malafide. Neither it could be termed as ultra vires. The decision has been taken considering the safety of the school children. Under the said Government Order, the students upto III standard are restricted to Ground floor. The students of Higher classes are permitted to be have access upto 3rd floors. This restriction imposed by the School Education Department in respect of usage, should be harmoniously read with the building Regulations governing C.M.D.A. As pointed out by the Learned Government Advocate representing the state, the permission granted by CMDA to construct is different from restriction of usage of certain portion of the building for particular purpose. In this case for the petitioner, the CMDA has permitted to put up building with 4 floors. The Education Department restrains the petitioner not to use the 4th floor, in order to avoid children getting access to high rise building endangering the safety of the children.

14. If the petitioner can accommodate XI and XII standard student in rest of the floors other than the 4th floor of the building, then it is always open for them to seek No Objection Certificate for admitting XI and XII standard students subject to compliance of other norms stipulated. Also, it is for the Government to reconsider the policy decision regarding maximum floor limit imposed in G.O.Ms.No.131, School Education (B) Department, dated 10.08.2006 and permit Educational Institutes to have more than 3 floors with additional safety features.

15. For the above said reasons, the Writ Petition is dismissed. No costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
The State of Tamil Nadu,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Member-Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road, Egmore,
Chennai - 600 008.

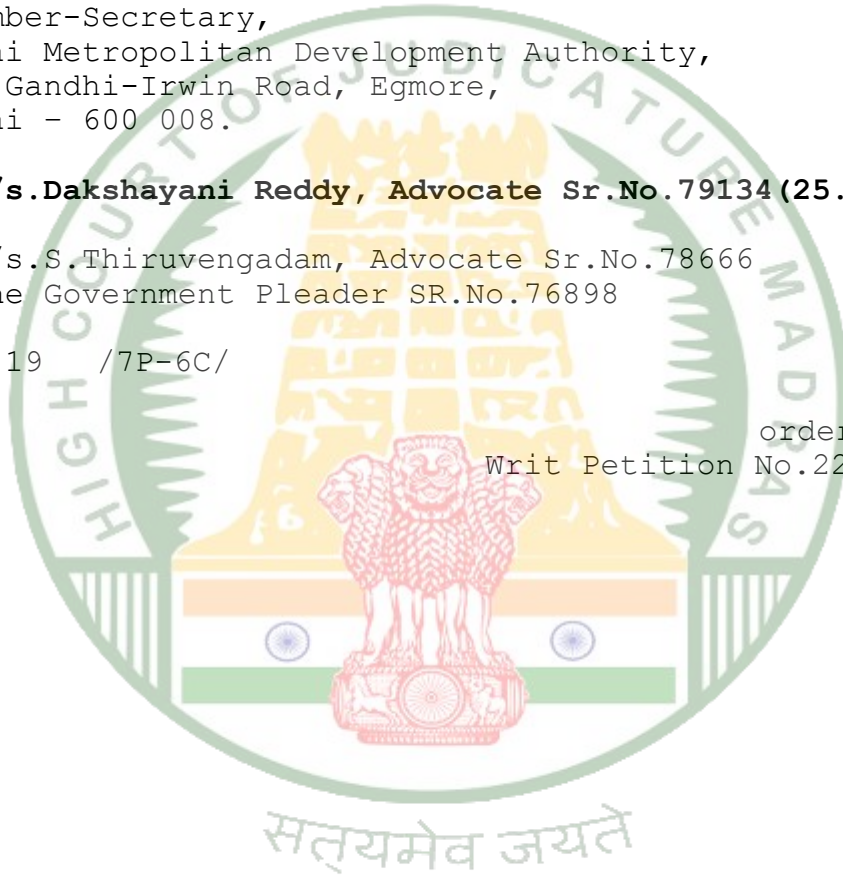
+1cc to M/s.Dakshayani Reddy, Advocate Sr.No.79134(25.10.19)

+1cc to M/s.S.Thiruvengadam, Advocate Sr.No.78666

+1cc to The Government Pleader SR.No.76898

AKM/03.10.19 /7P-6C/

order in
Writ Petition No.22121 of 2019



WEB COPY