

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.13107 of 2017

Traffic Dr. K.R. Ramaswamy
S/o. Rangaswamy
Social Activist No.123
Prakasam Salai, 3rd Floor
Broadway, Chennai 600108

... Petitioner

Vs.

1.The Chief Secretary
Government of Tamilnadu,
Secretariat, Chennai- 600 009.

2. The Home Secretary
Government of Tamilnadu Secretariat
Chennai - 600 009.

3. The Secretary
School Education Department Secretariat
Chennai - 600 009.

4.The Secretary
housing and urban Development Department
Secretariat Chennai - 600 009.

5.The Member Secretary
Chennai Metropolitan Development Authority
Chennai - 600 008.

6. The District collector
Chennai District
Rajaji Salai Chennai - 600 001.

7. The Commissioner of Police
Greater Chennai, Vepery
Chennai- 600 007.

8. The Commissioner
Corporation of Chennai, E.V.R. Salai
Chennai- 600 003.

9. Terapant jain vidyalaya mat.
Hr. sec.school
No.32 vadamalai street
sowcarpet
chennai-600079.

R-9 is impleaded as per order
dated 18.5.2017 by RMDJ&MGRJ in
W.P.No.13107/2017.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to take proper action as per the representation to the letter and spirit dated 05.09.2015 05.02.2017 and 07.05.2017 to save the students life and their studies real Democracy in Tamilnadu which openly ignored by the officials making the public to risk their day today life letter and spirit.

For Petitioner : Mr.S.Ganesan
For Respondents : Mr.Akhil Akbarali,
Govt.Advocate for R1,2,4,6 and 7
Mr.K.Karthikeyan for R3
Mrs.P.Veena Suresh for R5
Mr.K.SoundaraRajan for R8
Mr.R.Mohan for R9

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Instant writ petition has been filed in public interest praying for a direction to the respondents, to take proper action on the representation dated 05.09.2015, 05.02.2017 and 07.05.2017, to save the life of the students.

2. Petitioner has submitted that Public Information Officer and Personal Assistant (General) to the Collector Chennai has given the details about M/s. Terapant Jain Vidyalaya Mat. Hr.Sec.School/9th respondent, through RTI reply vide letter V2/16896/2012 dated 15.10.2012 and has the school license has expired on 19.05.2012. Petitioner has submitted that the said school is running in a property, with a forged document, and according to the petitioner, the document is with the police department, for an proper enquiry. But according to petitioner as of now, no action has been taken by the Police department.

3. Petitioner has submitted that the recognition of the 9th respondent school lapsed on 19.05.2012, and even without any renewal the said school has collected fees from the students, which is known to the education department and they have not taken any action against the 9th respondent school. The 9th respondent is not following the rules and regulations of the Corporation of Greater Chennai, School Education department, Housing and Urban Development, Police Department.

4. Petitioner has further submitted that the report dated 13.04.2017 of the Chief Educational Officer, clearly shows the violation by the 9th respondent. In the inspection conducted on 24.02.2017, education department has found that the license has lapsed in the year of 2012 and no further renewal has been obtained. Though fee is collected from the students 9th respondent has issued two receipts, for the fees paid by the students.

5. Petitioner has further submitted that the building plan obtained is only for 2 floors, but the building comprises of 4 floors, which is known to the Chennai Corporation. The Sanitary Inspector has issued the certificate for the period between 18.07.2016 to 18.07.2017 and stability certificate for the building, from 19.05.2015 to 18.05.2018. Construction of 4 floors, is a violation.

6. Petitioner has further submitted that the inspection report, clearly states that sanitary assistance is not satisfactory, but the sanitary inspector has issued the certificate. Staircase space is not satisfactory. Building permission has been issued for cottage industries, but the 9th respondent is running a school in that place. Even though the petitioner has sent many representation to the respondents, but till date no action is taken by the department. Hence, the petitioner has prayed for issuance of a writ of mandamus directing the respondents to take proper action, as on the representation dated 05.09.2015, 05.02.2017 and 07.05.2017 to save the life of students.

7. Denying the contentions of the relief claimed by the petitioner, 9th respondent/School, has contended that there is no public interest involved. Prayer in the writ petition has nothing to do with the 9th respondent's school building, as well as other halls, and cottage industry. The petitioner, in order to bring the above writ petition within the ambit of public interest litigation sought for consideration of his representation dated 05.09.2015, 05.02.2015 and 07.05.2015 respectively.

8. The 9th respondent has further submitted that the main

school building is in existence since 1990 and the additional constructions, facing Amman Koil Street, was constructed about 10 years ago. No doubt, the extended constructions facing Amman Koil Street is for a cottage industry and residential purposes, as per approved plan, but recently the deviations pointed out were rectified, pursuant to the directions of this Court passed earlier, and put the additional block, for cottage industry purposes, such as, using the building for weaving craft section, and open auditorium. No classes are conducted in the said building, and the same has been informed to Corporation of Greater Chennai.

9. The 9th respondent has further submitted that just because there is some civil dispute between the 9th respondent school and a neighbour, who has claimed title over a portion of the property from the predecessor in interest, the petitioner has been set up by the neighbour, to coerce the 9th respondent, with the present relief. According to the 9th respondent, the building has been constructed with structural safety and fire safety norms and regulations, have been adhered to. There are five gates, abutting Vadamalai Maistry Street and Amman Koil Street, which will easily meet out the fire safety, in case of emergency, for the students, as well as the vehicles, to pass through. Besides, that there are four stair cases, for the school children to use, which will definitely meet the students requirements, in case of emergency. The stilt floor is meant for parking of two wheelers and other vehicles.

10. With regard to the school building, usage, as well as the fire safety violations, averments and allegations made in the affidavit are false. The road width, abutting Sundaram 5th lane gate on the rear side is 30 feet and equally, on Vadamalai street, the width is 15 feet. The height of the main gate is 17 feet, besides, the other gates are 5 feet height and width. The trust is having the school for so many years and also providing medical facilities to the local public, by having two free dispensaries and a mobile van. The Trust is formed by a section of Jain Community. Most of the members of the Trust are doing yomen service without any remuneration to the community.

11. The 9th respondent further submitted that all the licensing authorities are periodically inspecting the building and issued licenses, after fully satisfying with the stability and fire safety as well as sanitation. The educational authorities are periodically renewing the licenses for conducting the school. The 9th respondent does not collect any donation from the students, as complained by the petitioner. The educational institution run by the trust is an old and reputed institution. Most of the averments in the writ petition pertains to the school, but the relief in the writ petition is something

else and hence the petitioner's intention is not public cause, but to achieve vested interest. If at all there is any deviations in the building, the same can always be exempted and regularized by the Government by invoking powers under section 113 and 113-C of the Tamil Nadu Town and Country Planning Act. For the abovesaid reasons, 9th respondent has prayed for dismissal of the writ petition.

12. The 8th respondent/ Chennai Corporation, in their affidavit has submitted that, on receipt of the complaint, the building in question was inspected by the Assistant Executive Engineer, Unit - 13, Zone - V and the Assistant Engineer, Division - 54, Unit - 13, Zone - V, Greater Chennai Corporation on 11.06.2012. Immediately after the inspection, a Notice, calling for the Approved Plan, under Sections 56 and 57 read with Sec.85 of Tamil Nadu Town and Country Planning Act, 1971 dated 11.06.2012 has been issued to the Trust/9th respondent, which runs the School. On receipt of the above said notice, Management of the Terapanth Educational Institute, has submitted plan copies, for the Higher Secondary School and Primary School, Vadamalai Street and Amman Koil 1st lane, respectively. Upon perusal of the same, it was found that the Management of Terapanth Educational Institute has obtained planning permission for constructing, ground first and second floor for the school building, Vadamalai street and has deviated the approved plan and put up third and fourth floors, unauthorisedly. Further, the said Management of the Terapanth Educational Institute has obtained planning permission for running a Cottage Industry, Amman Koil First Lane, but used the same as Primary School.

13. The 8th respondent has further submitted that the Management of the Terapanth Educational Institute has requested not to take any coercive action, as there are nearly 2000 students studying in their school and that the education of the children will be affected. Management of the school has given an oral Undertaking that they will rectify the deviations. While the matter stood thus, again complaints were received against the said schools, in the year 2014 and on inspection, it was found that the Management of the Terapanth Educational Institute has not rectified the defects, and therefore, action has been initiated, by issuing a Locking and Sealing and Demolition Notice under Section 56 and 57 read Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 dated 17.10.2014. After the expiry of the statutory period, further action has been initiated by issuing a De-occupation Notice under Section 56(2) Sub-Clause (iii) and (2A) of the Tamil Nadu Town and Country Planning Act, 1971 dated 22.12.2014.

14. The 8th respondent Corporation has further submitted

that being aggrieved by the above said notices, Management of the Terapanth Educational Institute has filed an Appeal before the Government and, thereafter, a Writ Petition in W.P.No.2800 of 2015, seeking a Writ of Mandamus forbearing the respondents 1 and 2 therein, from initiating any coercive action of locking and sealing and demolition, with regard to the school building constructed in No.32/44 & 45, Vadamalai Street, Kondithope (also abutting No.3/2 and 2A, Amman Koil First Lane on the rear side), Chennai - 79 under Town and Country Planning Act, till the disposal of the appeal petition, submitted under Section 80-A of the Tamil Nadu Town and Country Planning Act. In the above W.P.No.2800 of 2015, this Court has passed an order on 05.02.2015, which reads as under: -

"...5 Accordingly, we direct the third respondent to consider the petitioner's application for interim relief as early as possible, preferably, within a period of two weeks from today and also to consider the petitioner's appeal within the statutory period prescribed under the provisions of law, on its own merits and in accordance with law. There shall be an order of status quo as obtained today, for a period of two weeks...."

15. The 8th respondent Corporation has further submitted that pursuant to the above orders, the Secretary to the Government, Housing and Urban Development Department has disposed of the appeal filed by the Management of Terapanth Educational Institute vide Letter No.21635/UD-VI(2)/2015-1 dated 03.11.2015 which reads as follows:-

" 3. The Government after careful consideration, hereby give you a further time of 30 days of issue of this order to rectify the defects mentioned in the Locking and Sealing and Demolition Notice and apply for a revised planning permission to the appropriate planning Authority for approval. The further proceedings pursuant on the Locking and Sealing and Demolition Notice issued by the Corporation of Chennai is stayed for month. If the defects are not rectified within the above period of one month, the Corporation of Chennai may proceed with enforcement action..."

16. The 8th respondent Corporation of Chennai has further submitted that since the Management of Terapanth Educational Institute has failed to comply with the directions of the Secretary to the Government, Housing and Urban Development Department, further action has been taken by issuing a De-occupation Notice under Section 56(2) Sub-Clause (iii) and (2A) of the Tamil Nadu Town and Country Planning Act, 1971 dated 09.12.2016, to the Management of Terapanth Educational Institute.

17. The 8th respondent has further submitted that a letter dated 10.03.2017, has been addressed to the Director of Elementary School, Chennai, stating that Greater Chennai corporation has proposed to lock and seal the Terapanth Jain Vidhayala Primary School within a time frame of 90 days and requested the Director of Elementary School, Chennai to take alternate arrangements for the students to continue their studies in some other institutions. But, till date no reply has been received from the Director of Elementary School, Chennai. Similarly, a letter dated 08.05.2017 has been addressed to the Director of Matriculation School, Chennai. But till date, no reply has been received from the Director of Matriculation School. Subsequently, another De-occupation notice to the School at Amman Koil 1st lane was issued on 09.12.2016, against which a revision has been filed by the Management before the Government. Thereafter, the Management of the Terapanth Educational Institute has again, filed another Writ Petition in No.6318 of 2017, for issuance of a Writ of Mandamus, forbearing the respondents 2 and 3 therein or anybody on their behalf from initiating any coercive action of locking and sealing and demolition action with regard to the school building, put up in No.3/2 and 2A, Amman Koil Street (First Lane), Kondithope, Chennai - 79 pending determination of revision petition dated 05.01.2017 with the 1st respondent. In the said W.P.No.6318 of 2017, this Court has passed an order on 17.03.2017 which reads as follows:

"...5. Considering the facts and circumstances of the case, we direct the first respondent to consider the review/revision filed by the petitioner on 5.1.2017 and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the petitioner within three months from the date of receipt of a copy of this order. Till the disposal of the appeal no coercive steps shall be taken by the respondent authorities. All the contentions raised in this writ petition are left open to be urged by the petitioners before the appellate authority. The petitioner, in terms of the undertaking recorded above, is permitted to rectify the deviations in the constructions, pending disposal of the review/revision..."

18. The 8th respondent has further submitted that pursuant to the above order, the Management of the Terapanth Educational Institute has rectified the deviation, in respect of the School at Amman Koil First Lane, Kondithope, Chennai, by converting the said building into a Cottage Industry. Again a de-occupation notice was issued to the School at Nos.32/44 8c 45, Vadamalai

Street on 09.12.2016, since a School is running, further coercive steps were delayed. In the meanwhile, the Trust sent a communication on 29.06.2017 to the Executive engineer, Zone - V and informed that the Management is taking steps to regularise the School building, since the same has been constructed before 2007 and therefore they are eligible to regularize the School building, as per G.O.Ms.No.110, Housing & Urban Development Department (UD-4(3) dated 22.06.2017.

19. The 8th respondent Corporation of Chennai, has further submitted that that in the meanwhile, on 03.07.2017, in order to take further action, a letter has been addressed to the Deputy Secretary to the Government, Housing and Urban Development Department, requesting him to furnish the present stage of the appeal filed by the Management of the Terapanth Educational Institute. The 8th respondent has filed a status report reiterating the above averments.

20. Again a reminder letter has been sent to the Secretary, Housing and Urban Development Department/4th respondent on 11.06.2018, but till date no written communication has been received from the office of the 4th respondent's and therefore, further action will be taken, depending upon the outcome of the appeal pending in the Housing Secretariat, made by the 9th respondent, in the Primary School building.

21. Heard Mr.s.Ganesan, learned counsel for the petitioner, Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents 1,2,4,6 and 7, heard Mr.K.Karthikeyan, learned Government Advocate appearing for the 3rd respondent, heard Mrs.P.Veena suresh, learned counsel appearing for the 5th respondent, heard Mr.R.Mohan, learned counsel appearing for the 9th respondent/school.

22. When the matter came up for hearing before this Court on 03.04.2019, this Court has passed the following order:

" No representation for the petitioner.

2. On instructions from the Additional Secretary (Technical) Housing and Urban Development Department, Chennai, Mr.E.Manoharan, learned Additional Government Pleader submitted that revision petition filed under Section 80(A) of Tamil Nadu Town and Country Planning Act, 1971 has been disposed of with a direction to Terapant Jain Vidyalaya Mat. Hr.Sec. School, Chennai to rectify the defects mentioned in Locking & Sealing and Demolition Notice and apply for a revised planning permission to the appropriate planning authority for the approval.

3. Learned Additional Government Pleader further submitted that fire safety requirements have not been

met by the abovesaid school.

4. Mr.Soundararajan, learned standing counsel for CMDA submitted that unauthorised additional construction has been made. Submission is placed on record.

5. Learned counsel for the school submitted that a review petition under Section 81 of the Act has been filed for which, acknowledgment has been obtained.

6. Petitioner is directed to file copy of the review petition, if any, filed under Section 80(A) of the Act.

7. Learned Additional Government Pleader further submitted that he would ascertain as to whether any review petition is filed under Section 81 of the said Act and whether the same is pending or not."

23. Reverting, on the basis of letter No.379/UD-VI(2)/201-2, dated 05.04.2019 of the Under Secretary to the Government, Housing and Urban Development Department, Secretariat, Chennai addressed to the Member Secretary, Chennai Metropolitan Development Authority, Chennai and the Commissioner, Greater Chennai Corporation, Chennai, Mr.Akhil Akbar Ali, learned Government Advocate, submitted that the review petition filed by M/s.Terapanth Educational and Medical Trust, Chennai/9th respondent, is fixed for personal hearing on 10.06.2019 at 11.30 a.m, in the office of the Under Secretary to the Government, Housing and Urban Development Department and in that context the Member Secretary, Chennai Metropolitan Development Authority, Chennai has been directed to attend the above personal hearing with relevant records.

24. Learned Government Advocate further submitted that within 15 days from the date of hearing of the review petition, orders will be passed on merits, in accordance with law. From the material, it could be deduced, that there are deviations in the building, there are deviations in the building plan, for which action has been taken, by invoking the provisions of the Town and Country Planning Act, 1971. Though, in W.P.No.6318 of 2017 a direction has been issued by this Court, as early as on 17.03.2017, to dispose of the review petition filed u/s. 81 and 80A of the Tamil Nadu Town and Country Planning Act, 1971 so far orders have not been passed.

25. In the light of the above, placing on record the submissions of the learned Government Advocate, we direct that the review petition should be disposed of as expeditiously as possible, within a period of 15 days from the date of personal hearing fixed on 10.06.2019. It is made clear that the 9th respondent shall not take any adjournment on the date fixed for personal hearing.

26. If the decision in the review petition comes in favour of the 9th respondent, then there may not be any impediment in running the school except, the complaint of the writ petitioner that toilet and stair cases, have not been adequately provided, which the 9th respondent has refuted. As such from the averments of the 8th respondent Corporation of Chennai, we do not find any security threat. But the deviation from the planning permission is clearly noticed.

27. In the light of the above directions, we are not inclined to retain the writ petition and accordingly, writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Secretary
Government of Tamilnadu,
Secretariat, Chennai- 600 009.

2. The Home Secretary
Government of Tamilnadu Secretariat
Chennai - 600 009.

3. The Secretary
School Education Department Secretariat
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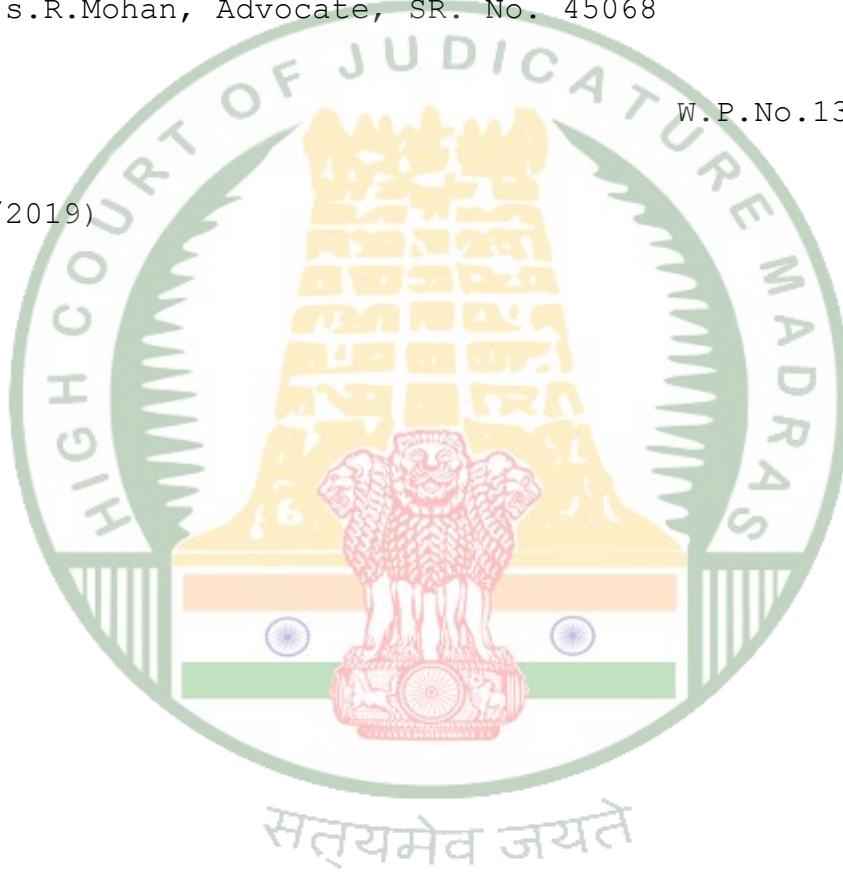
+1cc to The Government Pleadeer, High court, Madras, SR. No.
45353 & 45340

+1cc to M/s.K.Soundarajan, Advocate, SR. No. 45115

+1cc to M/s.R.Mohan, Advocate, SR. No. 45068

W.P.No.13107 of 2017

PPA (CO)
RMP (04/07/2019)



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