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W.P. (MD).No.13375 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD).No.13375 of 2019

and

W.M.P. (MD)No.9960 of 2019

Keren Matriculation School,
Rep. by its Managing Trustee,
Joy Hilda,
W/o.P.Thiyagarajapandian,
Peraiyur Road,
Karayanpatti Post,
Madurai District - 625 532.

.. Petitioner

Vs.

1.The Director of Government Examinations,
DPI Campus,
College Road,
Chennai - 600 006.

2.The Director of Matriculation Schools,
DPI Campus,
College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Madurai District,
Madurai.

4.The Deputy Director of Town and Country Planning,
Maduari. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings bearing Na.Ka.No.1083/Aa5/2019, dated 03.04.2019 on the file of the second respondent and to quash the same and consequently direct the respondents to grant permission to run the school with classes 9th and 10th standard for the academic year 2019-2020, without insisting for plan approval from the fourth respondent within a time frame that may be stipulated by this Court.



For Petitioner : Ms.L.Victoria Gowri

For Respondents : Mr.A.Thiyagarajan
Government Advocate

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ORDER

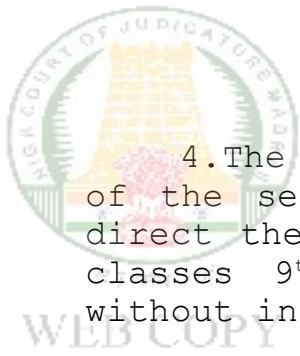
This Writ Petition is filed for issuing a Writ of Mandamus to quash the proceedings of the second respondent dated 03.04.2019 and to direct the respondents to grant permission to run the school with classes 9th and 10th standard for the academic year 2019-2020 without insisting for plan approval from the fourth respondent.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

2.1.The petitioner is a reputed school established by a religious minority. The petitioner established the school in the name of Keran Matriculation School, Peraiyur Road, Karayanpatty Post, Usilampatti, Madurai District. It is stated that the entire land comprised in Survey No.214/2 is in the enjoyment of the petitioner by virtue of a registered lease for a period of 30 years.

2.2.It is stated that the school started functioning from 08.06.2016. The proposal submitted for permission to open new matriculation school in the name of Keren Matriculation School at Karayanpatti was returned only on the ground that the building plan was not approved by Director of Town and Country Planning. Hence, the Inspector of Matriculation School has passed the order on 04.05.2017 returning the application only on the ground of want of DTCP approval and no other reason is assigned.

3.The petitioner has produced before this Court the Lease Deed, No Objection Certificate issued by the Fire and Rescue Officer, Usilampatti, Building Plan, Building Stability Certificate, License issued by the Tahsildar under the Public Building Licensing Act and Sanitary Certificate issued by the competent authority. It is stated by the petitioner that the second respondent granted permission to run the school with classes LKG to 8th standard from the academic year 2018-2019 by proceedings dated 22.10.2018. It is only the request of the petitioner to grant permission to commence 9th and 10th standard in the petitioner school was returned for want of building approval from DTCP by order dated 03.04.2019 of the second respondent. The order of the second respondent dated 03.04.2019 is challenged in the above writ Petition.



4.The prayer in the Writ Petition is to quash the proceedings of the second respondent dated 03.04.2019 and consequently to direct the respondent to grant permission to run the school with classes 9th and 10th standard for the academic year 2019-2020 without insisting the plan approval from the fourth respondent.

5.The learned Counsel appearing for the petitioner submitted that the petitioner has obtained approval from the President of Pothampatti Village Panchayat and that the said approval granted by the local body is valid and there is no requirement of getting separate approval from the fourth respondent. The position is made clear by a Division Bench of this Court in **Director of Matriculation Schools v. Kaviyan School** reported in **2015-5-L.W.101**. Though the Division Bench observed that the educational authorities cannot reject the application simply by stating that the school has to get approval from the Town and Country Planning authorities and with great caution, has given further direction. Paragraphs 7, 13 and 14 of the judgment are relevant and are extracted as under:

"7.The interpretation as pointed out by the learned Single Judge may be accepted to the extent that approval should be granted through one authority. But, there should be compliance of the requirement of law in relation to public building, more particularly school buildings and it is incumbent on the part of the appellant or the educational authorities to seek compliance of all other requirements, as may be prescribed. If the Educational Authorities had any doubt that the approval of the Town and Country Planning Authorities has not been obtained, it is for them to seek information and thereafter proceed to consider the claim for permanent recognition, either way. We agree with the view of the learned Single Judge that unless there is specific prescription by law on the school concerned that they have to file application before the Town and Country Planning Authority and seek its approval, independent of the approval by the Village Panchayat, then all requirements may be justified. The Educational Authorities cannot merely shirk their responsibilities to ensure compliance of requirement of law, by throwing the blame on the schools, because we find that proviso to Rule 25 of the Rules mandates the Executive Authority to seek approval of the Town and Country Planning Authority and thereafter to grant approval. Duty is cast on the authorities to act in a particular manner. This aspect could be verified by the Educational Authorities, by

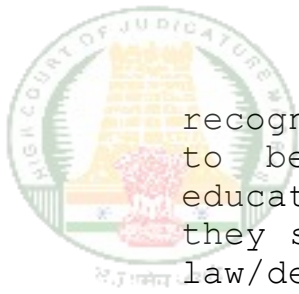
<https://hcservices.courtservice.in> the matter to the village panchayat or to the



Town and Country Planning Authorities and get a clarification whether approval is granted by Town and Country Planning Authority or not. If it is a case of no approval, then the consequence that is to follow is that the Educational Authorities can call upon the institution concerned to get approval of the Town and Country Planning Authority, through the Executive Authority. If approval has been granted by the Town and Country Planning Authorities, on behalf of the Executive Authority, there is no cause for concern. Either of the above two situations has not arisen in the present case. On the contrary, the educational authorities have just pushed the ball out of their table, by merely stating that the respondent school has to get approval from the Town and Country Planning Authorities. We deprecate such action of the educational authorities.

...
13.The order of the learned Single Judge, setting aside the entire impugned proceedings of the appellant, dated 18.11.2014, may not be justified. The only issue that has been addressed is whether a separate approval should be granted by the Town and Country Planning Authorities. Proviso to Rule 25 of the Rules makes it clear that executive authority, namely, village panchayat, should do an act in a particular manner. There is no prescription in the Rules that the school concerned should seek approval, directly, from the Town and Country Planning Authorities. Therefore, such a requirement in the impugned proceedings is unwarranted. That, however, does not preclude the Director of Matriculation Schools, the appellant herein, from asking relevant particulars from the Panchayat concerned or the Town and Country Planning Authorities and find out whether approval is granted, in the manner that law requires. In case, the village panchayat, for some reason, has not done its duty, the Director of Matriculation Schools can very well call upon the panchayat to get approval from the Town and Country Planning Authorities or write to the District Collector or any other competent authority to take action on the said person, in accordance with law, so that defects can be cured.

14.As has been pointed by Mr.B.Pugalendhi, learned Special Government Pleader appearing for the appellant, before grant of recognition, it is incumbent on the educational authorities to indicate what are all the requirements the law requires and the directions of the Hon'ble Supreme Court in Avinash Mehrotra, cited supra, have been complied with by the schools, while seeking



recognition and what are the requirements/directions yet to be complied with by the schools. We expect the educational authorities that before granting recognition, they should be very clear whether all the requirements of law/defects pointed out have been complied with by the schools who seek approval and thereupon take a decision, in either way. We, therefore, modify the order of the learned Single Judge to the effect that the application of the respondent school for recognition should be considered in the parameters of the various guidelines issued by the Government and in the light of the decision of the Hon'ble Supreme Court in Avinash Mehrotra vs. Union of India, reported in (2007) 6 SCC 398 and after getting clarification from the concerned Panchayat or from the Town and Country Planning Authorities, whether building plan approval has been granted to the respondent school, as required under law. Therefore, the respondent school be informed about the status, so that they can workout their remedy. For compliance, the appellant is directed to clarify all these issues to the respondent school, by a letter, within two weeks from the date of receipt of a copy of this order and the respondent school shall comply the same within four weeks thereafter. On receipt of the reply, the appellant shall consider the same and pass appropriate orders, expeditiously."

6. Again a Division Bench decision of this Court in the case of ***the Tamil Nadu Unaided Polytechnic Management Association and Another v. State of Tamil Nadu*** has formulated the position in paragraph 46 of the judgment which runs as follow:

"46. In cases, which may include the petitioners herein, where the Executive Authority of the Panchayat might not have consulted either the Joint Director or the Deputy Director of Town and Country Planning before granting permission for construction of public buildings, this Court declares:

(a) In all such cases, the Executive Authority is directed to forward the papers to the Town Planning Authority, who may now consider them, and if required visit the premises in question, and offer his advice if the constructions have complied with all necessary statutory Rules and Regulations, and the latter shall forward his views or opinions to the Executive Authority. If opinions offered are positive, in that if the constructions are found to have complied with the Rules and Regulations and such other legal requirements, then the Executive Authority shall issue an order ratifying his earlier order granting permission. This will apply only to those public



buildings in the Panchayat area constructed after the coming into force of the Tamil Nadu Panchayat Building Rules, 1997 till today, the date of this Order, and not to any future application for constructions.

(b) Where any permission has been granted by the Executive Authority of the Panchayat without consulting the joint or Deputy Director of Panchayat in terms of Proviso to Rule 25, but no construction has yet commenced, it shall not be commenced, till opinion of the Town Planning Authority is obtained. If the opinion is not negative, then the earlier permission granted shall, subject to other provisions of law, remain in force. If the opinion of the Town Planning Authority is negative, the Executive Authority of the Panchayat shall forthwith cancel the permission earlier granted after following the due process of law.

(c) In cases of partially constructed buildings, no completion certificate or other amenities be provided unless a favourable opinion is given by the Town Planning Authority.

(d) In all cases falling under (a) and (c), if the opinion of the Town Planning Authority is negative, then such authorities as are empowered to initiate action for illegal constructions shall initiate appropriate actions as per law. The power to grant sanction for construction by the Panchayat is no answer to a builder or a developer violating Rules and Regulations pertaining to construction activities.

7. From both the cases, it is made clear that no separate approval is required from the Town and Country Planning Authorities. However, proviso to Rule 25 of the Building Rules framed under the provisions of Tamil Nadu Panchayat Act makes it clear that the Executive Authority of Village Panchayat should consider the application for approval of Building Plan in consultation with Town and Country Planning Authorities. Further direction was given to the respondents therein that the Town and Country Planning authorities are required to inform the status of the building plan approval where it was granted by the local body in consultation with the Town and Country Planning authorities. Even in the second judgment, procedure to be followed by the local authority and Town and Country Planning Authorities has been narrated.

8. Having regard to the facts in the present case, the impugned order rejecting the permission on the only ground that the building plan approval has not been obtained from Town and Country Planning authorities is *ex facie* illegal and hence, the impugned order is set aside. However, further direction is issued to the



respondents to consider the application submitted by the petitioner in accordance with the guidelines of this Court in the two judgments above referred to namely the judgment in **Kaviyan School** case reported in **2015-5-L.W.101** and the judgment of the Division Bench dated 06.07.2018 in **the Tamil Nadu Unaided Polytechnic Management Association** case in **W.P.No.17236 of 2013** and batch. The second respondent shall consider the petitioner's application in the manner indicated above within a period of twelve weeks from the date of receipt of copy of this order. The petitioner also may approach the local body so that the local body can clarify the petitioner as to the status of the building plan approval obtained by the petitioner. The second respondent also shall do the needful in terms of the earlier order passed by the Division Bench above referred to. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

- 1.The Director of Government Examinations,
DPI Campus, College Road, Chennai - 600 006.
- 2.The Director of Matriculation Schools,
DPI Campus, College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Madurai District, Madurai.
- 4.The Deputy Director of Town and Country Planning,
Maduari.

+1 CC to M/s.SPL.GP (SR-105573[F] dated 18/12/2019)

+1 CC to M/s.M/S.L.VICTORIA GOWRI, Advocate (SR-105805[F] dated 19/12/2019)

ORDER MADE IN
W.P. (MD)No.13375 of 2019
17.12.2019

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