

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.10262 of 2020

L.Loganathan

...Petitioner

-Vs-

The Commissioner
Udhagamandalam Municipality
Udhagamandalam, Nilgiris.

...Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent herein to grant building permission/licence to the petitioner in Online Application No.20190101012284 dated 09.09.2019 strictly in accordance with the Revised Master Plan 2011 issued vide G.O.Ms.No.50, Housing and Urban Development Department dated 25.02.2011 and Review Approved Master Plan dated 01.04.2014 within the time frame fixed by this Honourable Court.

For Petitioner : Mr.Abudu Kumar Rajarathinam
for Mr.S.Ashok Kumar
For Respondent : Mr.P.Srinivas
Standing Counsel

O R D E R

This writ petition has been filed for the issue of a writ of Mandamus directing the respondents to grant building permission to the petitioner on the basis of the online application submitted by the petitioner on 09.09.2019 strictly in accordance with revised Master Plan issued by G.O.Ms.No.50, Housing and Urban Development Department dated 25.02.2011 and Review Approved Master Plan dated 01.04.2014 within the time frame fixed by this Court.

2. The case of the petitioner is that the subject property absolutely belongs to him and the survey number within which the subject matter property is situate, has been classified as Primary Residential Use Zone (Economically Weaker Section). The further case of the petitioner is that the Master Plan was drafted in the year 1997 as per the Development Control Rules and it has been approved and notified by Government of Tamil

Nadu in consonance with the Tamil Nadu Town and Country Planning Act, 1971. Pursuant to the same, as and when there was a necessity to modify the Master Plan, the same was submitted before the Government of Tamil Nadu and it was approved and notified. One such instance was when G.O.Ms.No.50 dated 25.02.2011 was passed. The other instance was when it was reviewed in the year 2014. According to the petitioner, under both the Master Plans, the survey number within which the subject property falls has been classified as Primary Residential Use Zone (Economically Weaker Section).

3. The further case of the petitioner is that he submitted an online application on 09.09.2019 seeking for the grant of building permission for construction of a building. The grievance of the petitioner is that the application is kept pending till date and it has not been processed. Aggrieved by the same, the present writ petitions have been filed before this Court seeking for appropriate directions.

4. Mr.Abudu Kumar Rajarathinam, learned counsel appearing on behalf of the petitioner submitted that both the Master Plans 1997 and 2011 as well as the respective Development Control Rules permits the usage of the petitioner's land as a Primary Residential Use Zone (Economically Weaker Section). The learned counsel submitted that the provisions of the Tamil Nadu District Municipalities (Hill Station) Buildings Rules, 1993 should be followed only with respect of minimum extent of land, width of plot, plot coverage and set-back requirements in view of the fact that the 1993 Rules, issued by the Municipal Administration and Water Supply Department was reviewed by a list of twenty one (21) Heads of Departments including the Board of Revenue, Director of Agriculture, Director of Town and Country Planning, Chief Conservator of Forests and also Inspector of Municipalities. The learned counsel brought to the notice of this Court all these authorities in order to impress upon this Court that the authorities who are involved in the Notification of the 1993 Rules as well as the authorities who have to give the No Objection Certificate for putting up the construction, are the same.

5. The learned counsel for the petitioner further submitted that the application submitted by the petitioner was kept pending since the respondent was under the impression that the application submitted by the petitioner is against Rule 7(2) of the Tamil Nadu District Municipalities (Hill Station) Buildings Rules, 1993. The learned counsel submitted that once the Master Plan 1997 and 2011 and also the Development Control Rules for Udthagamandalam Local Planning Area has declared the subject property as a Primary Residential Use Zone (Economically Weaker Section) and the same is in force, the building plan approval

sought for by the petitioner will have to be considered only in line with the Master Plan and the Rules.

6. The learned counsel for the petitioner further submitted that the respondent cannot rely upon the Hill Station Building Rules, 1993 by completely ignoring the Master Plans 1997 and 2011 and the Development Control Rules for Udhagamandalam Local Planning Area. The learned counsel, in order to substantiate his submissions, relied upon the following judgments.

a) K. Karthick -Vs- Principal Secretary to Government, Municipal Administration and Water Supply, 2017 SCC Online Mad 28640 Page 1

b) R. K. Mittal -Vs- State of Uttar Pradesh, (2012) 2 SCC 232 Page 6

c) Girnar Traders -Vs- State of Maharashtra, (2007) 7 SCC 555 Page

d) Maharashtra University of Health Sciences and Others -Vs- Satchikitsa Prasarak Mandal (2010) 3 SCC 786 Page 89

e) State of Maharashtra -Vs- Dr. Praful B Desai (2003) 4 SCC 601 Page 98.

7. Per contra, Mr. P. Srinivas, learned counsel appearing on behalf of the respondent submitted that the application submitted by the petitioner is in the process of consideration and certain reports are awaited by the respondents before taking a decision as to whether the permission should be granted to the petitioner for putting up the construction. The learned counsel submitted that some reasonable time can be fixed by this Court and the respondent will process the application strictly in accordance with law.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. A careful look at the provisions of the District Municipalities Act, 1920 would show that Section 217 of the Act was amended and Section 217-C was incorporated into the Act by Act 58 of 1992 and it was brought into force on 09.12.1992. This provision was incorporated into the Act with a specific purpose to regulate the constructions and land use in Hill Stations. The Master Plans 1997 as well as 2011 and the Development Control Rules, prepared in accordance with the Master Plan involves several stages from the preparation of land and building use map under Rule 3, preparation of Master Plan under Rule 4, the submission of Draft Master Plan for

consideration of the Government under Rule 5, the consent of the Government for the Draft Master Plan under Rule 6, the Notice of Preparation of Master Plan by the Local Standing Authority by publishing the notice in the manner prescribed under Rule 7 by inviting objections from the persons concerned or interested in the Master Plan and these copies of Draft Master Plan with all enclosures are sent to nearly 21 Heads of Department listed in the annexure, which among other authorities, includes the Chief Conservator of Forests, Inspector of Municipalities, Director of Town and Country Planning, Board of Revenue / Commissioner of Revenue Administration etc., The Draft Master Plan is thereafter published under Rule 12 and the Review of the Master Plan is done under Rule 13. Wherever there is a variation or revocation of the Master Plan, it is dealt with under Rule 14 and if there is any variation or revocation, the manner of re-publication of such notice is dealt with under Rule 15.

10. Therefore it is clearly seen that the Master Plan Rules, 1975 is a compendious code prescribing both the procedure prior to the preparation of the Draft Plan and after preparation dealing with objections, variations and revocations in each stage. Ultimately, the entire records are sent to the Government seeking for consent and approval. Only the final notification that is published after the approval of the Government will be notified in the Official Gazette. Therefore the Master Plans 1997 and 2011 and the Development Control Rules will completely govern the usage, construction of buildings etc., in the Hill Stations.

11. A careful persual of the Master Plans 1997 and 2011 shows that the survey number within which the subject property is situated falls within the category of Primary Residential Use Zone (Economically Weaker Section).

12. In view of the above, once an application satisfies the requirements under the Development Control Rules which are sanctioned and notified along with the Master Plan, the respondent will have to process the application and give necessary sanction / permission for construction of the building. The judgments that are cited by the learned counsel for the petitioner only shows that the approval will have to be dealt with strictly in accordance with the Development Control Rules and the sanctioned and notified Master Plan. There is no requirement to go into the various other apprehensions raised by the learned counsel for the petitioner or the ratio that is involved in the judgments cited by the learned counsel for the petitioner.

13. This Court has no doubt in its mind that the respondent will strictly process the application submitted by the petitioner in accordance with the Development Control Rules prepared, sanctioned and notified along with the Master Plan.

14. In view of the above discussion, there shall be a direction to the respondent to process the application submitted by the petitioner on 09.09.2019 strictly in accordance with the Development Control Rules prepared, sanctioned and notified along with the revised Master Plan 2011 that was issued in G.O.Ms.No.50 dated 25.02.2011 and also the Review Approved Master Plan dated 01.04.2014 and shall pass necessary orders within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is directed to make a fresh representation to the respondent along with a copy of the online application dated 09.09.2019 and also a copy of this order. The Writ Petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Commissioner
Udhagamandalam Municipality
Udhagamandalam, Nilgiris

W.P.No.10262 /2020

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MG (CO)
RV (08/10/2020)

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