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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2021

CORAM :

**THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE
AND**

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.A. (MD)Nos.987 & 1004 of 2021

and

C.M.P (MD)Nos.4494 & 4543 of 2021

The Tahsildar,
Sivagangai Taluk,
Sivagangai

... Appellant in both appeals

Vs.

1.Somasundaram Chettiar Higher Secondary School,
Okkur 630 557, Sivagangai Taluk,
Sivagangai District,
Rep.by its Secretary,
RM.Somasundaram

... Respondent/ Writ Petitioner
in W.A (MD)No.987/2021

2.Somasundaram Chettiar Primary School,
Okkur 630 557, Sivagangai Taluk,
Sivagangai District,
Rep.by its Secretary,
SM.Meenakshi

... Respondent/ Writ Petitioner
in W.A (MD)No.1004/2021

COMMON PRAYER: Appeal under Clause 15 of the Letters Patent Act, against the order dated 27.01.2020 respectively in W.P(MD)No.26594 of 2019 and W.P(MD)No.26539 of 2019.

Prayer in WP(MD). 26539/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Directing the respondent herein to issue the Building License to the petitioner school under the Tamil Nadu Public Buildings (Licensing) Act, 1965 for the period from 01.06.2019 to 31.05.2022 based on the Petitioner Schools Application dated 10.04.2019.

Prayer in WP(MD). 26594/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to directing the respondent herein to issue the Building License to the petitioner school under the Tamil Nadu Public Buildings (Licensing)Act 1965 for the period from 1.6.2019 to 31.5.2022 based on the Petitioner Schools Application dt 27.02.2019.



For Appellant
(in both W.As)

: Mr.A.Baskaran,
Additional Advocate General
Assisted by
Mr.P.Thilakkumar,
Government Pleader

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For Respondents
(in both W.As)

: Mr.D.Srinivasa Raghavan

COMMON JUDGMENT

[Judgment of the Court was delivered by ***The Hon'ble Chief Justice***]

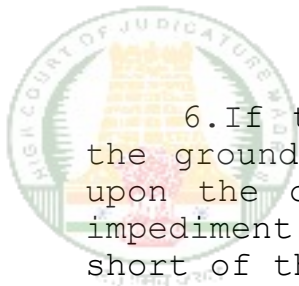
The appeals are utterly frivolous and it is alarming that the public funds are misused for such baseless appeals.

2.The appeals are directed against similar orders dated January 27, 2020 by which the respondents to the writ petitions had been directed to sanction a building licence upon the completion of the construction of a compound wall by the writ petitioners. The writ petitioners apparently run a primary and a secondary school at the relevant premises.

3.According to the respondent-writ petitioners, there was a dispute pertaining to the land in question which resulted in the writ petitioners instituting a civil suit for a declaration and consequential injunction. Though the suit was decreed, it was only an injunction which was granted and the declaratory relief sought was declined. The writ petitioners, thereafter, preferred a first appeal and the declaration as sought was granted in course of the first appeal. It was the State Government which was the principal defendant in the suit.

4.It is the further submission of the writ petitioners that a belated second appeal was sought to be lodged after the delay of some 1300 days before this Court and it is the admitted position that the prayer for condonation of such colossal delay has been rejected.

5.As a consequence of the rejection of the prayer for condonation of delay pertaining to the proposed second appeal, the legal effect is that the order passed by the first appellate Court becomes binding on the State. Thus, the writ petitioners are found to be the owners of the land in question and entitled to an injunction against the State Government from interfering with the writ petitioners' possession in respect of the land in question. In such circumstances, the order impugned appears to be perfectly justified and does not call for any interference at all.



6.If the owner of a land seeks a sanction for a building and the ground for declining the same is the lack of a compound wall, upon the compound wall being put up, there cannot be any further impediment to the sanction being granted. This is the long and short of the order impugned herein.

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7.The State's endeavour in preferring these appeals cannot be appreciated. Indeed, there may be more to it that meets the eye in the State having preferred an application for condonation of delay after nearly three years from the date of the appellate decree. It also appears that the State has failed to comprehend the effect of the dismissal of the application for condonation of delay since such dismissal amounts to the second appeal being dismissed and the appellate decree being confirmed.

8.Since there is no infirmity in the orders impugned, the present appeals in W.A(MD)No.1004 of 2021 and W.A(MD)No.987 of 2021 are dismissed. The State will pay costs assessed at Rs.10,000/- (Rupees Ten Thousand only) to the writ petitioner-schools within a period of four weeks from date. Consequently, C.M.P(MD)Nos.4494 and 4543 of 2021 are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RM/MR

Note: In view of the present lockdown owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.RM.Somasundaram,
The Secretary,
Somasundaram Chettiar Higher Secondary School,
Okkur 630 557, Sivagangai Taluk,
Sivagangai District.



2.SM.Meenakshi,
The Secretary,
Somasundaram Chettiar Primary School,
Okkur 630 557, Sivagangai Taluk,
Sivagangai District.

+2 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-32726, SR-32727[F]
dated 26/10/2021)

W.A. (MD) Nos.987 & 1004 of 2021
25.10.2021

NSN (CO)
RS/JC (10.11.2021) 4P 5C