



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.152 of 2017

and

C.M.P(MD)No.1689 of 2017

1.The Director of Town and Country Planning,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2.The Deputy Director,
Directorate of Town and Country Planning,
Rajappa Nagar,
Thanjavur Region,
Thanjavur District.

... Appellants / Respondents

Vs.

Ponnaiyah Ramajayam Institute
of Science and Technology Trust,
Represented by Managing Director,
P.Murugesan

... Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 28.10.2015 passed in W.P(MD)No.6331 of 2015.

Prayer in WP(MD). 6331/ 2015 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a writ of
Certiorarified Mandamus calling for the records relating to the
impugned order passed by the 2nd respondent in and by its
proceedings in Na.Ka.No.319/2013jK dated 07.04.2015 and quash the
same and consequently direct the respondents to grant palanning and
building permission to the petitioner institution .

For Appellants	: Mr.K.P.Narayanakumar, Special Government Pleader
For Respondent	: Mr.Veerakathiravan, Senior Counsel for Mr.M.Saravanakumar

**JUDGMENT**

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

The Writ Appeal is preferred, challenging the order dated 28.10.2015 passed in W.P(MD)No.6331 of 2015.

2. Brief facts of the case are as follows:

(i) The writ petitioner, who is an Educational Institution had obtained necessary building plan approval from the local body viz., Vallam panchayat for certain buildings on 17.05.2007. Thereafter, applied for planning permission from the second appellant. The planning permission was granted by letter dated 23.08.2013 with two conditions that the Institution has to execute a Gift Deed for Open Space Reservation (OSR) area of 5390 sq. mtrs. along with approach road and to obtain 'No Objection Certificate' from the Public Works Department Authority for construction of a bridge. The writ petitioner had executed a gift deed in favour of the Town Panchayat on 17.04.2013, which was duly registered in the Sub-Registrar Office, Vallam and a copy of the same was handed over to the second appellant on 26.04.2013. No Objection Certificate was also obtained from the Public Works Department pursuant to the orders of this Court dated 11.07.2014 passed in W.P(MD)No.10581 of 2014. As the two conditions imposed were complied with by the petitioner, the second respondent had to grant planning permission to the writ petitioner. However, despite the same, the second respondent failed to forward the application to the first respondent for the purpose of granting building plan approval. Therefore, once again the petitioner had moved this Court in W.P(MD)No.1694 of 2015 and sought a Mandamus issued on 11.02.2015 to the second appellant to grant building plan approval.

(ii) Thereafter, pursuant to the order passed by this Court, the second respondent has passed an order in proceedings in Na.Ka.No.319/2012 dated 07.04.2015, imposing a new condition that the writ petitioner should apply for fresh planning permission including for the administrative block and get a technical approval from the first respondent handing over the approach road to the local body apart from payment of infrastructure and amenity charges.

((iii) Aggrieved by the same, W.P(MD)No.6331 of 2015 was filed. This Court had allowed the writ petition on 28.10.2015. While allowing the writ petition, this Court had held that as per G.O.Ms.No.161 Housing and Urban Development [UD4) (3)] dated 26.06.2013, the writ petitioner need not hand over the Open Space Reserve area and the same can be kept open to the sky. Being an Educational Institution, the open space can be utilized only for the purpose of a park and not as playground. In the technical approval, the conditions imposed were that a gift deed has to be executed for



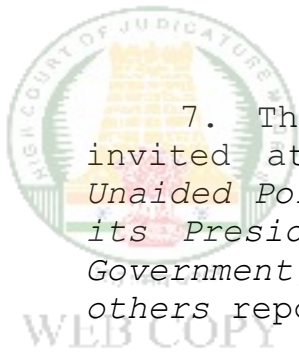
the open space, which has already been complied with and 'No Objection Certificate' from the Public Works Department was also obtained by the writ petitioner. But, the order was passed by the second respondent directing the writ petitioner to hand over the approach road to the main road to the local body. Therefore, the learned single Judge accepted the contention of the writ petitioner and held that there was no necessity for the writ petitioner to hand over the approach road to the main road to the local body and refusal for building plan approval is in violation of the said G.O.Ms.No.161 Housing and Urban Development [UD4) (3)] dated 26.06.2013 and allowed the writ petition quashing the order dated 07.04.2015. Aggrieved by the said order, the above writ appeal is preferred by the appellants.

3. Heard the learned Special Government Pleader appearing for the appellants and the learned Senior Counsel appearing for the respondent and perused the materials available on record.

4. The learned Special Government Pleader appearing for the appellants would submit that the respondent had not disclosed the administrative block while presenting the drawing before the first appellant for getting building plan approval. Therefore, the respondent was directed to submit a fresh drawing along with the left out administrative block for building plan approval before the first appellant. It is also further contended that G.O.Ms.No.161 Housing and Urban Development [UD4) (3)] dated 26.06.2013, was issued subsequent to the technical approval issued to the respondent / writ petitioner on 28.03.2013. Therefore, benefit of the above said G.O., is not applicable to the respondent as retrospective effect cannot be ordered.

5. The learned Special Government Pleader would further submit that even in the order dated 07.04.2015, the second appellant has specifically stated that the Open Space Reserve area of 5390 sq. mtrs., should have been handed over to the local body, which has already been done by the respondent by executing a gift deed on 17.04.2013. The 'required No Objection Certificate' from the Public Works Department was also obtained by the petitioner. The only objection raised was that in the building plan submitted for obtaining planning permission, the administrative block was not included and hence, the respondent was directed to include the administrative block and submit a revised plan for the purpose of getting planning permission from the appellants.

6. The learned Senior Counsel appearing for the respondent would submit that as early as on 17.05.2007, planning permission was given to the respondent by Vallam panchayat vide proceedings in Order No.B.R.A.10/07, ROC.No.142/2007 and when already a separate building permission has been obtained from the competent authority viz., the local body in the year 2007, the appellants cannot demand for including the plan for the administrative block and file a



7. The learned Senior Counsel appearing for the respondent invited attention of this Court to the decision in *Tamil Nadu Unaided Polytechnic Management Association (Regd. No.117/12) rep. by its President v. State of Tamil Nadu, rep. by its Secretary to Government, Housing and Urban Development Department, Chennai and others* reported in 2018(4) CTC 129.

8. As per the said decision, there shall be only one window where Application for constructions, alteration of all Public buildings in the panchayat must be made and this will be the Executive Authority of the Panchayat. It is the Executive Authority, who shall engage in the Consultative process with the Joint Director or Deputy Director, Town and Country Planning providing the latter with all necessary materials and particulars for the latter to form his opinion and advice. If the Executive Authority finds any arbitrariness or lack of application of mind by a Consultee viz., the Joint Director or the Deputy Director of Town and Country Planning, the local Authority cannot supersede the opinion of the Authorities of the Town and Country Planning. While holding so, the Division Bench finally had declared as follows:

"46. (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 his 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."

9. As per the above direction, it is for the Executive authority to direct and forward the papers to the Town and Country Planning Authority for consideration and whenever a positive opinion is received, date of permission of the Executive Authority may be ratified. The cut-off date was given till the date of the said judgment.

10. Admittedly, in this case, the building plan approval was granted by the local body as early as on 17.05.2007, which is well within the cut-off date given in the judgment. Therefore, there is no reason to interfere in the order passed by the learned single Judge and also in the light of the decision cited above.



11. In view of the same, this writ appeal is dismissed confirming the order of the learned single Judge. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note :

In view of the present lock down 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

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SJ(CO)

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