



W.P. No. 4793 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4793 of 2022

and

W.M.P. Nos. 4902 and 4903 of 2022

1. Madhu

2. A.Rani

... Petitioners

-VS-

1. The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600009.

2. The Commissioner/Director,
Town and Country Planning,
Government of Tamil Nadu,
No. 807, Anna Salai,
Chennai – 600002.

3. The District Collector,
Salem District,
Salem-1.

4. The Deputy Director,
Town and Country Planning,
Salem Region,
Salem-1,
Salem District.



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5. The Block Development Officer,
Village Panchayat,
Omalur Panchayat Union,
Omalur,
Salem District.

6. The President,
Sangeethapatti Village Panchayat,
Omalur Panchayat Union,
Sangeethapatti,
Omalur Taluk,
Salem District.

7. A.Selvaraj

8. M.Gopal

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of impugned order issued by the Sixth Respondent dated 03.02.2021 in Permission Nos. 4 & 5/2020-21/Ka.Oo in favour of the Seventh and Eighth Respondents and quash the same, consequently forbear the Third to Sixth Respondents from changing the land use from agricultural to non-agriculture purpose in non-planned areas of Sangeethapatti Village, Omalur Taluk, Salem District.



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For Petitioners : Mr. M.R. Jothimanian
For Respondents : Mrs. N.Senthil Selvi,
Government Advocate (for R1 to R4)
Mr. T.Arun Kumar,
Additional Government Pleader
(for R5 & R6)
Mr. R.Ramanraj (for R7 & R8)

ORDER

Heard Mr. M.R.Jothimanian, Learned Counsel for the Petitioners, Mrs. N.Senthil Selvi, Learned Government Advocate appearing for the First to Fourth Respondents, Mr. T.Arun Kumar, Learned Additional Government Pleader appearing for the Fifth and Sixth Respondents and Mr. R.Ramanraj, Learned Counsel for the Seventh and Eighth Respondents and perused the materials placed on record.

2. It is the case of the Petitioners that the Seventh and Eighth Respondents have wrongly obtained planning permission from the Sixth Respondent and constructed an industrial unit in an agricultural area and the said planning permission is challenged in this Writ Petition.



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3. Though the Petitioners as well as the Sixth, Seventh and Eighth Respondents had been under the impression that the said land falls within an area other than planning area in terms of Section 47-A of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as 'the Act' for short), in which the Sixth Respondent, who is the local authority, is competent to grant planning permission, Learned Government Advocate appearing for the First to Fourth Respondents has brought to notice that Sangeethapatti Village falls under planning area and the S. Nos. 44/2C1 and 44/2C2, where the properties of the Petitioners are situated, have been ear-marked for agricultural use. It has been further pointed out that in terms of the Tamil Nadu Combined Development and Building Rules, 2019 (hereinafter referred to as 'the Rules' for short), the activities permitted for agricultural use are as follows:-

“(1) In the Agricultural use zone building or premises shall be normally permitted for the following purpose and accessory uses:

A. Normally permissible uses:

- i) All agricultural uses.*
- ii) Farm houses and buildings for agricultural activities.*



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- iii) *All the uses permissible in the residential use zone within the natham boundaries (settlements)*
- iv) *Dairy and cattle farms*
- v) *Piggeries and poultry farms*
- vi) *Forestry*
- vii) *Storing and drying of fertilizers*
- viii) *Installation of electric machinery of not exceeding 15 horse power may be allowed for the uses mentioned above.*
- ix) *Sewage farms and garbage dumping sites.*
- x) *Mills for grinding, hulling, etc. of cereals, pulses, food grains and oil seeds provided the site has proper access and installation do not exceed 50 H.P.*
- xi) *Burning and Burial grounds, Crematoria and Cemeteries."*

The activities which do not fall under the said categories are prohibited in agricultural area.

4. The status report dated 17.11.2022 has been filed by the Fourth Respondent stating that crushing stone industrial building is not permissible in



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agriculture zone as per Annexure XVII of zoning regulations of the Rules, in terms of G.O. Ms. No. 18, Municipal Administration and Water Supply [(MA) 1] Department dated 04.02.2019 issued by the Government of Tamil Nadu. That apart, it has been pointed out in the said report that the existing construction are in violation of the Rules in the following aspects:-

“7. It is submitted that the area details of constructed building in S.F. No. 44/2C1 (Seventh Respondent) are as follows.

Site area:

As per Sale Document No. 3060/2020, dated 03.06.2022 = 0.33

Acre or 1335.46 m² = 0.13.38 Hectare or 1338 m²

As per Patta No. 362

Existing building area details:

<i>Floor details</i>	<i>Total area in m²</i>	<i>Building height</i>	<i>Use</i>
<i>Main building Ground floor</i>	<i>224.33</i>	<i>6.70m, 3.35m</i>	<i>Industrial</i>
<i>Electrical room</i>	<i>12.24</i>	<i>2.50m</i>	<i>Electrical room</i>
<i>Toilet with store room</i>	<i>14.90</i>	<i>2.50m</i>	<i>Toilet and Store room</i>
<i>Total Area</i>	<i>251.47</i>		

*Tamil Nadu combined Development and Building Rules, 2019 –
Planning Parameters of Industries – Green and Orange Category
of Industries – Existing Building in S.F. No. 44/2C1*



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S. No	Rule	Description	Required	Available	Remarks
1.	36(D)(i)	Main building-Front	6.0 m	4.90	18.33% Not satisfied
	36 (D)(ii)	Main building Side setback-South side	3.0 m	0.90 m	70% Not satisfied
2.	28	Structures in setback spaces	~	Electrical room at Front setback of main building	100% Not satisfied-No structure shall be constructed within the minimum prescribed set back spaces
		Structures in setback spaces-Compound wall not exceeding 2m height	2 m	2.90	Not satisfied

8. It is submitted that the area details of constructed building in S.F. No. 44/2C2 (Eighth Respondent) are as follows:-

Site area:

As per Sale Document No. 3059/2020, dated 03.06.2022 = 0.36

Acre or 1456.87 m² = 0.14.62 Hectare or 1462 m²

As per Patta No. 363

Existing building area details:

Floor details	Total area in m²	Building height	Use
Main building Ground floor	276.53	6.70m	Industrial
Electrical room	9.48	2.50m	Electrical room
Toilet with store room	29.90	2.50m	Toilet and Store room
Total Area	315.91		



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*Tamil Nadu Combined Development and Building Rules, 2019 –
Planing Parameters of Industries – Green and Orange Category
of Industries – Existing Building in S.F. No. 44/2C2.*

S. No.	Rule	Description	Required	Available	Remarks
1.	28	Structures in setback spaces	~	Electrical room at front setback of Main building	100% Not satisfied – No structure shall be constructed within the minimum prescribed setback spaces
	28	Structures in setback spaces-Compound wall not exceeding 2m height	2m	2.90	Not satisfied

It has further brought to notice that by proceedings in Na. Ka. No. 785/2022/soma3 dated 16.11.2022, a separate notice has been sent to the Seventh and Eighth Respondents under Sections 56 and 57 of the Act in respect of the the violations.

5. In view of the aforesaid subsequent events after the filing of the Writ Petition, nothing remains for further consideration in the matter. It is needless to add here that it would not preclude the rights of the Seventh and Eighth Respondents to take necessary corrective measures and work out their rights following the prescribed procedure in accordance with law and no view has been



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expressed by the Court in that regard.

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6. In fine, the Writ Petition is disposed with the aforesaid observations.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

Note: Issue order copy by 04.01.2023.

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Secretariat,
Chennai – 600009.
2. The Commissioner/Director,
Town and Country Planning,
Government of Tamil Nadu,
No. 807, Anna Salai,
Chennai – 600002.
3. The District Collector,
Salem District,
Salem-1.
4. The Deputy Director,
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5. The Block Development Officer,



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6. The President,
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Omalur Panchayat Union,
Sangeethapatti,
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P.D. AUDIKESAVALU, J.

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