



W.P.(MD).No.9927 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 29.11.2022

ORDER PRONOUNCED ON : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.9927 of 2014

and MP(MD).No.1 of 2014

The Secretary
Reddy Educational Trust
Cauvery College Campus
Annamalai Nagar
Trichy 18

....Petitioner

Vs

1.The Director of Town & City Planning
Chennai 600 002

2.The Assistant Director /Member Secretary
Tiruchirappalli Local Planning Authority
No.10, William Road
Cantonment, Tiruchirappalli 620 001

3.The Commissioner
Tiruchirappalli Municipal Corporation
Tiruchirappalli

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Ceritiorari, calling for the records on the file of the 2nd respondent in e.f.vz;.1693/2012 jpcjpF2 dated 22.05.2014 quash the same as illegal and arbitrary or other orders as this Court may deem fit.



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For Petitioner : Mr.S.Vinayak
For R1 : Mr.A.Sivanupandian
Government Advocate
For R2 & R3 : Mr.R.Baskaran
Standing Counsel

ORDER

The present writ petition has been filed challenging an order passed by the second respondent herein under which he has directed the petitioner College to hand over 10% Open Space Reservation (OSR) along with access road to the local body within a period of 30 days.

2.According to the learned counsel for the petitioner, the petitioner trust was established in the year 1984 and they are running a School and a College having the students strength of 6500. In the year 2009, the petitioner trust had applied for construction of additional building for Cauvery Matriculation Higher Secondary School. The second respondent herein after detailed scrutiny of papers and inspection, had approved the plan for the purpose of construction of additional building on 25.03.2011. The third respondent being an Executive Authority under the Act has also approved and granted permission by an order dated 18.05.2011.

3.The first respondent herein by his communication dated 22.10.2012 had intimated the petitioner trust to hand over 10% Open Space Reservation

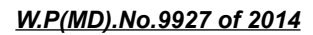


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(OSR) as a gift to the second respondent. The petitioner has submitted various representations to the respondents relying upon G.O.Ms.No.161 Housing and Urban Development, dated 26.06.2013 and contended that 10% OSR need not be handed over to the local body and the same can be retained by the institution as a park.

4.The learned counsel for the petitioner had further contended that on 13.05.2014, they have made a representation and the second respondent without affording any personal hearing or opportunity had passed the impugned order on 22.05.2014 and has directed the petitioner trust to hand over 10% OSR to the local body within a period of 30 days. The said order is under challenge in the present writ petition.

5.According to the learned counsel for the petitioner, as per G.O.Ms.No.130 Housing and Urban Development dated 14.06.2010, the Open Space Reservation (OSR) land should be earmarked only on the area abutting public road. Only under unavoidable circumstances the OSR may be permitted within the site abutting internal circulation road provided that road also to be handed over to local body. The said G.O. was passed on 14.06.2010. According to the learned counsel, the petitioner had made an application for approval of additional construction on 01.12.2009 itself and hence, G.O.Ms.No.130, Housing and Urban Development which was published on 14.06.2010 is not applicable to him. He had further contended



6. The learned counsel for the petitioner had further contended that the issue has been compounded and hence, the question of handing over any portion as a park to the local body will create problem to the students' community. The learned counsel had relied upon G.O.Ms. 161, Housing and Urban Development [UD4(3)] Department, dated 26.06.2013 and in respect of educational institution, an exemption has been granted and they can retain the portion provided they keep it open to the sky and utilise it only as a park. Hence, in view of the said Government Order dated 26.06.2013, the learned respondent cannot direct the petitioner to hand over 10% OSR to the local body. The petitioner trust is ready to file an undertaking affidavit to the effect that 10% OSR will be retained by them open to sky as a park without any construction whatsoever.

7.The learned counsel had further contended that the second respondent in his impugned order, has arrived at a finding that G.O.Ms.No. 161, dated 26.06.2013 is not having any retrospective effect and hence, the



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petitioner College is duty bound to hand over 10% OSR. He had further stated that the said Government Order is applicable to all educational institutions irrespective of the date of construction and hence, the said finding is not legally sustainable.

8.The learned counsel for the petitioner had relied upon a judgment of this Court in ***W.P(MD).No.17383 of 2015 dated 25.09.2015 (Pushpalatha Educational Centre, rep.by its Director Vs. The State of Tamil Nadu and others)*** to contend that this Court has allowed the said writ petition and directed the authorities concerned to consider the application of the petitioner for planning permission in the light of G.O.Ms.No.161, Housing and Urban Development [UD4(3)] Department, dated 26.06.2013. In the said writ petition, this Court has directed that the building plan approval shall be considered on an undertaking affidavit of the institution that they will keep the Open Space Reservation open to the sky without any construction. Hence, according to the learned counsel for the petitioner, the said judgment is squarely applicable to the facts of the present case and hence, he prayed for allowing the writ petition.

9.Per contra, the learned Standing Counsel appearing for the respondent authorities had contended that though the petitioner had made an application on 01.12.2009, the technical approval was granted only on 24.08.2011 and a final approval was granted by the Corporation on



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18.05.2011. G.O.Ms.No.130 was published on 14.06.2010. The Government Order that is applicable on the date of granting approval should alone be taken into consideration. The date of application for building plan approval is immaterial. Hence, G.O.Ms.No.130 dated 14.06.2010 is applicable to the writ petitioner and they are duty bound to hand over 10% OSR to the concerned local body.

10.The learned Standing Counsel had further contended that G.O.Ms.No.161, Housing and Urban Development [UD4(3)] Department, dated 26.06.2013 is applicable only for the buildings that were constructed prior to 01.07.2007. Admittedly, in the present case, the application for building plan approval itself has been filed only on 01.12.2009. Hence, the Government Order is not applicable to the writ petitioner. G.O.Ms.No.161 dated 26.06.2013 is only in relation to reduction of infrastructure and amenities charges for the buildings constructed prior to 01.07.2007. Hence, G.O.Ms.No.161 Housing and Urban Development Department, dated 26.06.2013 is no way concerned with handing over of 10% OSR to the local body. G.O.Ms.No.161 does not refer to G.O.Ms.No.130 dated 14.06.2010 and hence, it cannot be construed that G.O.Ms.No.161 dated 26.06.2013 has superseded G.O.Ms.No.130 dated 14.06.2010. In view of the above said facts, he prayed that the order impugned in the writ petition may be sustained.



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11.I have considered the submissions made on either side and perused the materials available on record.

12.The petitioner is running an Educational Institution after getting building plan approval. In order to put up additional construction, the petitioner has sought for building plan approval in December 2009 which was granted to the writ petitioner on 18.05.2011. In between the date of application and the date of building plan approval, G.O.Ms.No.130 dated 14.06.2010 has been passed. A perusal of the said G.O. indicates that 10% OSR land should be earmarked only on the area abutting public road and the same shall be handed over to the local body.

13.The Government of Tamil Nadu had passed G.O.Ms.No.161, Housing and Urban Development [UD4(3)] Department dated 26.06.2013. A perusal of the said G.O indicates that the consortium of self-financing Professionals, Arts and Science Colleges in the State of Tamil Nadu had approached the Government with the following requests:

(a). To reduce infrastructure and amenities charges for the buildings constructed prior to 01.07.2007.

(b). To relax the condition stipulated in Development Control Regulations which necessitates handing over the Open Space Reservation area to the respective local bodies instead they have requested to allow the



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respective institutions to maintain the Open Space Reservation areas as parks.

14.The request of the consortium of self-financing Colleges has been considered and in Paragraph No.7, the Government has reduced the infrastructure and amenities charges for the buildings that were constructed on or before 01.07.2007. In the same paragraph, the Government has also accepted the request of the consortium of self-financing Colleges and has stated that the earmarked OSR shall be kept open to sky without any construction with a condition that the Open Space Reservation area should be utilized only as a park and not as a playground by the concerned institution. Hence, it is clear that the Government of Tamil Nadu has taken a policy decision that 10% OSR reserved in the buildings constructed by the Educational Institutions shall be utilised only as a park and that too by concerned institutions themselves. Therefore, it is clear that the Government has chosen to exempt the Educational Institution from handing over 10% OSR to the same local body.

15.In view of the above said findings, G.O.Ms.No.161, Housing and Urban Development [UD4(3)] Department, dated 26.06.2013 had cleared that the said Government Order is not only applicable for reduction of infrastructure and amenities purposes, but also for retention of OSR land by



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the educational institution as a park. Hence, the contention of the learned Standing Counsel is not legally sustainable.

16.The learned Single Judge of this Court in ***W.P.(MD).No.17383 of 2015 dated 25.09.2015 (Pushpalatha Educational Centre, rep.by its Director Vs. The State of Tamil Nadu and others)*** has allowed the writ petition which was filed challenging the rejection of the building plan approval for not complying with handing over 10% OSR reservation. In the said case, the building plan approval was sought for by the educational institution on 17.03.2011 and the said application was rejected by the authorities on 07.12.2011. This Court while quashing the order, had directed the educational institution to file an affidavit of undertaking before the authorities that the institution shall keep the Open Space Reservation, open to the sky without any construction and the said Open Space Reservation shall be utilised only as a park and not as a playground. Subject to the above said undertaking, this Court has directed the authorities to consider the application of the petitioner in the light of G.O.Ms.No.161, Housing and Urban Development [UD4(3)] Department dated 26.06.2013. Hence, it is clear that G.O.Ms.No.161, dated 26.06.2013 has been made applicable even for the building plan permission application dated 17.03.2011. Therefore, the contention of the learned Standing Counsel that G.O.Ms.No.161 dated 26.06.2013 does not have any retrospective effect is not legally sustainable.



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17. In view of the above said facts, the order impugned in the writ petition is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
Index : Yes/No
msa

To

1. The Director of Town & City Planning
Chennai 600 002



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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