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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.7607 of 2015
and
M.P(MD)No.2 of 2015

Immanuel Arasar International Institute of
Science and Technology Educational
and Charitable Trust,
Represented by its Managing Trustee,
Dr.Sam G.JebaJoselin,
S.G.Hospital Campus,
Old Theatre Junction,
Pammam, Marthandam,
Kanyakumari District. ... Petitioner

Vs.

1.The Director of Town & Country Planning,
Directorate of Town & Country Planning,
No.807, Anna Salai, Chennai-600 002.

2.The Deputy Director of Town & Country Planning,
Tirunelveli Region, 108, Trivandrum Road,
Tirunelveli, Tirunelveli District-627 002.

3.The President / District Collector,
Kanyakumari Local Planning Authority,
District Collectorate Campus,
Nagercoil-629 001, Kanyakumari District.

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4.The Member Secretary,
Kanyakumari Local Planning Authority,
District Collectorate Campus,
Nagercoil-629 001,
Kanyakumari District.

5.The Nattalam Village Panchayat,
Nattalam, Kanyakumari District,
Represented by its Executive Officer. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned notice issued by the second respondent Deputy Director of Town and Country Planning in Na.Ka.No.230/ 2015 Thilima3 (06), dated 12.03.2015, quash the same.

For Petitioner : M/s.K.Ragatheesh Kumar
for M/s.Isaac Chamber

For R-1 to R-4 : M/s.A.Sivanupandian
Government Advocate

For R-5 : No appearance

ORDER

The present Writ Petition has been filed challenging an order passed by the second respondent herein under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971.

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2. According to the learned Counsel for the petitioner, they have constructed the buildings prior to 01.01.2011. Thereafter, the Tamil Nadu Town and Country Planning Act was amended and Section 47-A was introduced for non-planning areas. Since the constructions were located in the non-planning areas, the authorities under the impugned order have invoked Section 47-A and proceeded to issue this lock and seal order on the ground that, they have not obtained building plan approval from the first and second respondents herein.

3. According to the learned Counsel for the petitioner, Section 47-A is prospective in nature (i.e.) for any building that is to be constructed on or after 01.01.2011. The building in question have been constructed prior to the said date and hence, Section 47-A is not applicable to the petitioner Institution.

4. The learned Counsel for the petitioner had further contended that the Government has issued G.O.Ms.No.76 Housing and Urban Development [UD4(3)] Department, dated 14.06.2018. Under the said Government order, the Educational Institutions, who have constructed

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the buildings prior to 01.01.2011 in non-plan area were permitted to approach the authorities for regularizing their constructions. This Government order was challenged by the Educational Institutions in a batch of writ petitions in W.P.Nos.18539 of 2018 and other writ petitions and they were disposed of by an order, dated 10.12.2018. Paragraph Nos. 12 and 13 of the order reads as follows:

> *"12. In view of the above, firstly, it is made clear that if any educational institution, either school or college, building is constructed before 01.11.2011, i.e. prior to the introduction of Section 47-A of the Act, after obtaining valid and lawful permission from the competent authority, the G.O.Ms.No.76 cannot be made applicable to them. Because, if any new building was constructed after 01.11.2011 in any part of the State without getting proper concurrence from the Director of Town and Country Planning, the G.O.Ms.No.76 can be made applicable. Secondly, it is made clear that if any building is constructed even prior to the said Section 47-A came into force i.e. before 01.11.2011 leaving any deficiencies to be rectified now and not rectified even today, such buildings will be covered by the impugned proceedings. In any event, if the three months time given in the said G.O. had already lapsed, the second respondent is also entitled to take appropriate action against all those educational buildings which have not*

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obtained planning permission and put up even prior to 01.01.2011 and not rectified any of the deficiencies till 02.01.2011. Lastly, in respect of the charges of Rs.7.50/- per square feet, if any application is made during the relevant period i.e. before the expiry of three months, the second respondent shall consider the same to grant the benefits.

13. With the above said observations and directions, all these Writ Petitions are allowed and the Government Order in G.O.Ms.No.76, Housing and Urban Development (UD4(3)) Department, dated 14.06.2018, issued by the first respondent and the consequential Government Order in G.O.167, School Education (MS) Department, dated 07.08.2018 on the file of the third respondent are hereby quashed."

5. This order of the learned Single Judge was challenged before the Hon'ble Division Bench in a batch of writ appeals in W.A.No.233 of 2019 etc., and they were disposed of by an order, dated 10.02.2021. Paragraph Nos.8, 13 and 14 of the order reads as follows:

"8. Mr.Aravindh Pandian, learned Additional Advocate General submitted that the Government Order was issued as an one time measure and it is optional for the educational institutions to get the concurrence and it is not compulsory.

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He also invited the attention of this Court to the counter affidavit filed in the W.P.No.17178 of 2018 wherein it was stated as follows:-

> *"5. It is further submitted that by way of implementing the impugned G.O., those educational buildings which are functioning without the concurrence of the Town and Country Planning Department are to be subject to audit to confirm whether they stand to the scrutiny of safety and security of the students and the staff of the educational institution. With a view to ensure the above objective, the impugned G.O. has been issued as a one-time measure and it is optional for the educational institutions to avail the benefits under the scheme and it has not been made compulsion in the perspective of the Town and Country Planning Department. It is further submitted that in respect of the said letter issued by the second respondent instructing all the educational departments to mandatorily insist the institutions to apply for concurrence under the impugned G.O. authenticity of which will be confirmed by him.*
>
> *6. With regard to the averments made in Ground (F, G, H & I) of the affidavit, it is submitted that the*

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averment made by the petitioner is false. Under the impugned G.O. the individual developers of the educational institutions are not compelled to obtain concurrence, however, it is only an optional to avail the benefits under the one-time scheme. The concurrence to be issued under the impugned G.O. is not another approval and the necessity to obtain concurrence of the official of the Town and Country Planning Department under the said proviso of Rule 25 has been confirmed vide the order of the Division Bench of the Madras High Court, dated; 06.07.2018 in W.P.Nos.17236 of 2013 and 3622 of 2014 and other connected Miscellaneous Petitions"

13. In our opinion, when the Government itself says that obtaining concurrence is only optional and not mandatory, dealing with the direction given by the learned Single Judge is unnecessary. Therefore, by recording the statement of the respondents in para Nos.5 and 6 above to the effect that compliance of the Government Order is not mandatory and it is only optional, the writ appeals can be disposed of.

14. In the light of the above submission of the learned Counsel on either side, particularly, the averments in Para Nos.5 and 6 of the counter affidavit filed before the learned

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Single Judge in W.P.No.17178 of 2018, which we have extracted above, all the writ appeals are disposed of. No costs. We direct the Directorate of Town and Country Planning to process the applications already filed by the educational institutions during the pendency of the writ petition / writ appeal before this Court seeking concurrence and to pass appropriate orders thereof as per the guidelines issued in G.O.Ms.No.76, Housing and Urban Development Department, dated 14.06.2018. To those educational institutions, who have not applied so far, they are permitted to submit their application (s) seeking concurrence to the Directorate of Town and Country Planning within a period of two weeks from the date of receipt of a copy of this judgment and on receipt of the same, the Directorate shall process it and pass appropriate orders thereof."

6. In view of the above said judgments, Section 47-A is not applicable to the buildings of the petitioner College. That apart, they are applicable only to the constructions that have been put up after 01.01.2011. The said Section does not have any retrospective effect. Since there is no building plan violation by the petitioner College, the question of invoking Section 56 and 57 of the Tamil Nadu Town and Country Planning Act does not arise.

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7. In view of the above said facts, the order impugned in the writ petition is set aside. The writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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Index : Yes / No
Internet : Yes / No
btr

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R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)No.7607 of 2015

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