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Writ Petition No.6674 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/3/2023

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.6674 of 2023

B. Nagaraj

...

Petitioner

Vs

The Commissioner
Udhagamandalam Municipality
Hospital Road
Upper Bazaar
Ootacamund
The Nilgiris.

...

Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the proceedings in Ka.Vi.No.53/2022/F2 dated 14/2/2023 on the file of the respondent and to quash the same and consequently, direct the respondent to pass orders on the petitioner's building permit application dated 1/9/2020.

For Petitioner

...

Mr.Sharath Chandran

For respondent

...

Mr.P.Srinivas



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ORDER

This writ petition has been filed to quash the Proceeding, dated 14/2/2023, passed in Ka.Vi.No.53/2022/F2, on the file of the respondent and consequently, direct the respondent to pass orders, on the petitioner's building permit application, dated 1/9/2020.

2. Impugned order has been passed by the Commissioner, rejecting the building permission, on the ground that the proposed building is located within 150 meters from a reserve forest, and hence, grant of permission is forbidden by Rule 7 (2) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993.

3. Heard Mr.Sharath Chandran, learned counsel for the petitioner.

4. The learned counsel appearing for the petitioner submitted that the petitioner is the absolute owner of a piece of land, measuring an extent of 0.03 acres situated at Segur Road, bearing T.S.No.A-1/65, in Ootacamund town, The Nilgiris, by virtue of a sale deed, dated 12/10/2018, under Document No.1463/2013, on the file of the Sub-Registrar, Udthagmandalam.



After his purchase, he made an application, on 1/9/2020, before the respondent, under Rule 3 of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993, for grant of permission, to construct a residential building. However, the same has been rejected, on the ground that the proposed building is located 150 meters away from a reserve forest, and hence, grant of permission is forbidden by Rule 7 (2) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993.

5. According to the learned counsel for the petitioner, Rule 7 (2) of the Act, will apply only in respect of the assignment of land made by the Government. The said Rule has been introduced, only to get over Revenue Standing Orders. Sub-Clause (iii) of Revenue Standing Orders 38 deals with **Land in the vicinity of reserved forests**, wherein, the assignment was permitted by the Collector with the consultation of the District Forest Officer.

6. Restriction to grant of building permit is covered under Rule 5 (5) of the said Act and the same reads as follows:-

“No site situated within a distance of 200



metres from the boundaries of lakes in Kodaikanal and Udhagamandalam, 100 metres from the Boundaries of Botanical Gardens at Uthagamandalam, 100 metres from the boundaries of Gymkhana Grounds at Kodaikanal, 100 metres from the boundaries of Race Course at Uthagamandalam and 100 metres from the boundaries of Sims Park at Conoor shall be used for construction of any building or change the present character and use in any manner.”

7. The main point urged by the learned counsel appearing for the petitioner is that when the land is already classified as primary residential zone, rejection of the application, citing Rule 7 (2) is wholly illegal. Hence, prays to quash the impugned order.

8. Mr.P.Srinivas, learned Standing Counsel takes notice for the respondent.

9. When the Court has expressed its mind to the effect that the issue



is only with regard to mis-interpreting the Rule, learned counsel appearing for the respondent, submitted that since the Rule is incorporated in the District Municipalities Act, the same will bar the construction. When this Court further pointed out that there is no such provision in the Rule, learned counsel appearing for the respondent, submitted a judgment of the Division Bench of this Court and walked away, without answering the legal points. Above conduct of the learned Standing Counsel is against the very professional ethics. It is his duty to answer the question posed by the Court on legal issues.

10. Be that as it may. Since the issue is involving the interpretation of the Rule, no other material is required, and hence, this Court is inclined to dispose of the writ petition, in the following manner.

11. Chapter X A was introduced in the Tamil Nadu District Municipalities Act, 1920, pertaining to Building Regulations in Hill Stations. It is relevant to extract Rule 4 of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993.

4. Site requirements:- (1) No site shall be



approved for construction or reconstruction of a dwelling house unless it has an extent of not less than 95 square metres and minimum width of six metres:

Provided that this rule is not applicable to sites in layouts approved by the Directorate of Town and Country Planning or a Planning Authority for development, Tamil Nadu Housing Board, Tamil Nadu Slum Clearance Board, Weavers' Cooperative Societies, Ad-Dravidar Welfare/Tribal Welfare Department or any similar Quasi-Government Institution:

Provided further that this rule is not applicable to any subdivision that are existing on the date of commencement of these rules.

(2). No site having a gradient steeper than-one vertical to three horizontal shall be used for construction of a building:

Provided that in case where the site requires treatment, its stability shall be certified by a competent Engineer.



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(3). No site consisting of made up soil shall be used for construction of building, unless it is properly consolidated and protected on the unsupported boundaries with revetments or retaining wall and the stability of soil shall be certified by a qualified Engineer.

(4). No site notified as geologically weak zones by Collector and any land falling within 30 metres from the boundary thereof shall be used for the construction of any building.

(5). No site which would admit of storm water draining into it, owing to its level or location, shall be used for the construction of a building unless arrangements are made to prevent effectively the flooding of the site either by draining into a storm water course, if one is available, or by raising the level of the site to an adequate height by the deposit of layers of sound and non-puriecible material, to the satisfaction of the Executive Authority.



(6). No site be used for the construction of a building, intended for public worship or for religious purpose, without the prior approval of the Collector of the district who may refuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order.

Provided that an appeal shall lie against the decision of the Collector to the Government within 30 days from the date of receipt of the order of the Collector who may pass such orders on the appeal as it deems fit.

12. It is relevant to extract the Development Control Rules, which read as under:

“The uses permitted and parameters of Development in each use zone are given hereunder:

I. Primary Residential Use zone (PR);



The major portion of Primary Residential use zones are earmarked in the East, North-East and in the centre portion of the Local Planning Area. All the provision of Tamilnadu District Municipalities (Hill station) Building rules 1993 in respect at minimum extent and width of plot, plot coverage and set back requirements shall be followed:

The uses permitted in the Primary residential use zones:

- 1. The height of the building shall not exceed 7 metres or two floors respective or narrow structure like cellar, basement ground floor or first floor etc., whichever is less. The height shall be reckoned from the natural ground level of the site.*
- 2. No other type of roof except cable roof or sloped roof is permissible in the upper most floor of the building.*
- 3. Only dwelling houses that confirm fully without relaxation to the hill area building rules and restrictions in the Master Plan.*
- 4. Incidental uses and professional consulting offices not employing more than three staff members.*



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5. *Petty shops of not exceeding a floor area of 50 Sq.M. dealing with daily essential like provisions Soft drinks, Newspaper, Kiosks, Telephone Booth, Computer centre etc.*

6. *Small service establishment not exceeding a floor area of 50 Sq.M. such as washer men, cycle repairs, tailors, hair dressers and beauty specialists, photographers bakers etc., which do not generate any audible noise outside their compound. No Motor mechanic shops will be allowed.*

7. *Nursery and primary schools in a plot area with minimum of 1000 Sq.M.*

8. *Taxi and auto stand.*

9. *Parks and Play fields.*

10. *Residential bank branches and post offices, Architectural and Aesthetic Aspects committee may from time to time earmark reasonable areas meant exclusively for housing economically weaker section and obtain approval of the special committee to be constituted by Government.*

11. *Public Sub-offices State or Central government and local bodies in a plot area with minimum of 200*



Sq.m. plinth area.

General

12. All the holdings in existence at the time of publication of consent of earlier Master Plan upto 14.05.93 may be permitted provided that they have registered document and valid sale deed subject of other parameters prescribed for the use zones. Smaller pieces of land already purchased and registered for residential use upto 14.05.93 the date on which the draft Master Plan was consented may be approved as individual holdings for the purpose of residential construction. For the smaller plots purchased prior to consent of the Master Plan instead of the parameters of DC rules the rules relating to TNDM (Hill Station) Building rules, 1993 may be enforced.

II. Primary Vegetative Zone (PV)

Primary Vegetative Zone of 50 metre around the Botanical Garden and 300 metre around the lake beyond the PH zones and western side of the lake have been earmarked and shown in the Map and Schedules.



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Uses permitted:

- 1. Permanent Vegetation including trees of ornamental or fruit value but excluding annual crop.*
- 2. Only a residential building of a single floor irrespective of nomenclature as basement cellar or ground floor etc., to the extent of not more than 250 Sqm. (6 Cents) of plinth area or 30% of the holding whichever is less is to be permitted in a holding.*

The height of that building shall not exceed 7 Metre or 2 floors including basement floor. The height shall be reckoned from the natural ground level of the site and cable type of roof alone shall be permissible in the top floor for this primary vegetative use zone.

- 3. Sewage disposal, garbage dumpings running of dairy forms or maintenance of cattle farms shall not be allowed in this zone.*
- 4. No relaxation of the above rules relative to the vegetative zone is permissible.*

General



All the holdings in existence at the time of publication of consent of Master Plan may be permitted. Provided that they have registered documents and valid sale deed subject to other parameters prescribed for the use zone.

III. Primary Residential Zone (Economically Weaker Section)

The areas have been earmarked wherever found the poor hut dwellings, the places in the Local Planning Area where the huts located and their surrounding areas also included. The comprising survey Nos. have been shown in the schedule.

The Survey Nos. included in the schedule for this zone, the Tamil Nadu District Municipalities Hill area Building Rules alone can be enforceable subject to the condition that the height of the building shall not exceed 7 metres or two floors irrespective of nomenclature like cellar, basement, etc., whichever is less. No other type of roof except cable roof is permissible in the upper most floor of the building.

<i>Minimum extent of the plot</i>	-	<i>40 Sq.m</i>
<i>Plot front width</i>	-	<i>4 M</i>
<i>Front setback</i>	-	<i>1M</i>
<i>Plot coverage</i>	-	<i>60%</i>
<i>Side setback</i>	-	<i>NIL</i>
<i>Rear setback</i>	-	<i>1.5 Mts, for plots with</i>



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depth upto 15 Mts and 3
Mts, with a depth of upto
30 Mts.

General

All holdings in existence at the time of publication of consent earlier of Master Plan may be permitted provided that they have registered document and valid sale deed subject to other parameters prescribed for the use zone.

IV. Multi-Use Zone (MUZ)

Uses permitted.

All uses that are permitted in the primary residential zones.

- *Hostels and Single Person Apartments, Community Hall, Kalyanamandapam, Religious Buildings, welfare centres, Gymnasium, clubs, etc.,*
- *Libraries, reading rooms, petty offices, police, Fire and Electric Sub Stations.*
- *Government, Quasi-Government, Offices of Local Authorities.*
- *Banks and Public and Private Offices, Business and Commercial Establishment.*



- *Commercial and business uses including all shops, stores, market, hotels, restaurant and whole sale, retail shops excluding explosives, obnoxious products.*
- *Schools, Educational Institutions, Colleges and Research Laboratories.*
- *Clinical dispensaries and Nursing Homes, Hospitals and Public Health Institutions.*
- *Service Stations and Petrol Bunk.*
- *Warehouses and repositories, storing non hazardous and toxic substances.*
- *Cinema Theatres, Entertainment Houses*
- *Auto Repair shops and Machine Shops, Museums, Art Galleries, Aquaria, Zoological or Botanical Gardens, Information and Communication Centres, Parking lots and Transport Terminic, Sponsored Housing for Economically Weaker Sections, Tribals, Plantation workers.*

Parameters of Development



Residential

<i>Minimum Plot Extent</i>	:	<i>150 Sqm</i>
<i>Maximum Plot Coverage</i>	:	<i>60%</i>
<i>Set Back requirement</i>	:	<i>1.75 Mts. in the front & 1.00 Mts. on all other sides.</i>

Commercial

<i>Minimum Plot Extent</i>	:	<i>200 Sq.m</i>
<i>Maximum Plot Coverage</i>	:	<i>50%</i>

(However this will not be applicable to Kiosks, Bunks and Petty shops serving day to day needs for which the plot size shall be 50 Sq.m.)

Set Back Requirements

Petty Shops

<i>Sides</i>	:	<i>Nil</i>
<i>Front set back</i>	:	<i>1.75 M</i>
<i>Rear</i>	:	<i>Nil</i>

Other Commercial Establishments

<i>Sides</i>	:	<i>1.50 M</i>
<i>Front set back</i>	:	<i>3.00 M</i>
<i>Rear</i>	:	<i>1.50M</i>



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Educational

Nursery Schools

Minimum Plot Extent	:	500 Sq.m
Maximum Plot Coverage	:	50%
Set Back	:	3 Mts. on all sides.

Primary Schools

Minimum Plot	:	Extent 1000 Sq.m
Maximum Plot	:	Coverage 40%
Set Back	:	3 Mts. on all sides.

High Schools

Minimum Plot Extent	:	5000 Sq.m
Maximum Plot Coverage	:	30%
Set Back requirements	:	3 Mts. on all sides.

Higher Secondary Schools

Minimum Plot Extent	:	5000 Sq.m
Maximum Plot Coverage	:	30%
Set Back requirements	:	3 Mts. on all sides,

Colleges Higher Educational Institution

Minimum Plot Extent	:	4.00 Hec.
Maximum Plot Coverage	:	20%



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Set Back requirements : 3 Mts. on all sides.

Public offices

Minimum Plot Extent : 500 Sq.m
Maximum Plot : Coverage 50%
Set Back requirements : 3 Mts. on all sides.
Maximum Height : 7 Mts. from Ground level of the sites for all uses of buildings. The top most floor shall be with slopped/gabled roof

The minimum extent shall not be applicable for sub-offices such as Post office, police outpost, V.A.O office, Municipal ward office etc.,

Provided the Hotels, Lodges, Restaurants that are already existing in multi use zone and which fall within prohibited use zone or within 1 Km of primary vegetative zone around lake, Botanical garden, they will not be allowed to expand add or rebuild the same.

General

All holdings in existence at the time of publication of



consent earlier of Master Plan may be permitted provided that they have registered documents and valid sale deed subject to other parameters prescribed for the use zone.

V. Prohibited use zone (PH)

Prohibited zone comprises the areas 200 Mts. depth around Ooty lake and 100 Mts around Botanical Garden.

1. No construction is permissible within the prohibited zone. The buildings are in existence in PH zones should not be allowed to expand or alter the external appearance in anyway. Only repairs without any structural alternations in the existing buildings may however be allowed. Disposal of sewage garbages and establishment of dairy and cattle forms shall not be allowed in these areas.

2. All lands identified as land slid areas and all lands within 30 meters of the land slide area.

3. As said above no development shall be permitted except afforestation, landscaping with trees and vegetation without any structure, buildings, sheds or any other such built-up elements. No relaxation of these rules relating to the PH zone is permissible.



VI. Wooded lands and forest uses (WA)

Areas declared as reserved forests and lands already under cultivation by the Government, Municipality or Private ownership, catchment area of lake, marginal lands, grazing land and poramboke lands are indicated as wooded land.

No uses other than these permissible in primary vegetative zone shall be permitted in the wooded land. Provided prior approval is obtained from the appropriate authority for tree cutting in private wooded lands.

Any cutting of trees or felling of trees unless approved by authority competent to permit felling and cutting trees under Indian Forest Act or any authority nominated by Government.

Caravans, camping sites or exhibitions without involving any structure of permanent nature and running for short duration may be allowed with prior approval of the Collector.

General

All holdings in existence at the time of publication of consent earlier of Master Plan may be permitted provided



that they have registered document and valid sale deed subject to other parameters prescribed for the use zone.

VII. Agriculture use zone (A)

This use zone includes:

- 1. All lands presently put to actual annual or seasonal crops other than plantations.*
- 2. Current follows.*
- 3. Permanent Pastures.*

Uses Permissible:

- a. Cultivation of annual crops and seasonable crops without altering the soil condition and terrain.*
- b. Terrain modification, contour bunding, or terracing or other soil, conservation techniques shall be undertaken with the prior sanction of Agriculture Engineering Department.*
- c. Crop rotation if any should be restored to only with express approval of Agricultural Department.*
- d. Dairy, Cattle Farms.*
- e. Water tanks, reservoirs.*
- f. Sewage works and garbage dumps.*
- g. Cremation and burial grounds.*
- h. Forestry.*
- i. Any addition of new areas to agriculture shall be*



done with the prior sanction of the Government.

j. No construction of any structure or building is permitted, except farm houses. The minimum extent of land holding required for setting up a farm house is 1 hectare. The plinth area shall not exceed 100 Sqm. and shall be single storied, maximum height permissible is 5.5 M with slope roof.

General

All holdings in existence at the time of publication of consent of Master Plan may be permitted provided that they have registered document and valid sale deed subject to other parameters prescribed for the use zone.

VIII. Preserved Open Places (Lake, Botanical Garden & Race Course)

This is essentially meant to keep the area open to sky and also to preserve the precincts of lake and botanical garden. Hence all available open spaces whether it is private or public are sought to be preserved as such. No construction of a permanent nature will be allowed.

The following uses without involving any structure of permanent nature may be allowed with prior permission of planning Authority.



Parks, Playground, Zoological, Botanical Gardens, Museum, flower show and Horticultural show.

The following uses may be permitted with prior permission of Government.

- ❖ *Water front development-Boat houses.*
- ❖ *Installation required for operational of recreational gadgets.*
- ❖ *Open air theatre, exhibition, circus fair and festivals.*

Hotels zone

Hotels, Lodging houses, eating establishments, resorts time share apartments by whatever name they are called will be permitted only in lands zoned as Multi Use Zone other than, Primary Vegetative zone, Prohibited zone, Agricultural Zone, forest and wooded lands zone provided the site is 1.5 Km. away from the boundary of lake and 1 Km. from the boundary of Botanical Gardens and race Course. The sites for Hotels, Lodging houses, resorts, and time share apartments should satisfy the following parameters.

Minimum Size Extent



1. Unstarred Hotels, lodges, etc. : 0.5 Acres
2. One starred Hotels etc. : 3.0 Acres
3. Two and three or four
starred hotel : 5.0 Acres
4. Five starred Hotels, property time
share units, resorts and similar units: 10.0 Acres
- Maximum plot coverage : 30%
- Maximum height : 7 meters
- Setback : 3 M along the
boundary line.

*The top floor should be with slopped/gabbled roof.
The development parameters listed in various use zones
shall be adhered to while making any addition or
modification to any of the existing buildings. All the
buildings shall be provided with adequate parking spaces
for parking of vehicles with suitable ingress and egress as
per the standards stipulated in the building rules.*

*Regarding location of hotels near educational
institutions, the following rules should be strictly adhered.*

No new Hotel Building should be constructed.

1. Within 10 M. from the boundaries of primary
schools.



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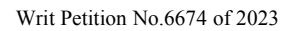
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2. Within 30 M. from the boundaries of High school and Higher Secondary schools.

3. Within 50 M. from the boundaries of Colleges and Higher Educational Institutions.”

A careful perusal of the above Development Control Rules, it is seen that permission and restriction are contemplated in various zone classified under the approved Master Plan.

13. It is also to be noted that after introduction of Chapter X A to the Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993, there was an approved master plan for regulating planning permission. The areas have been classified as primary residential zone in which the residential building can be built. Similarly, other zone called multi purpose zone and on that zone, not only the residential but also the commercial building can be built. In Primary Vegetative Zone, construction of the building is permitted with certain restrictions. Similarly, in agri zone, wherein, farm house is permitted. Once the entire landscape has been classified by the Government into different zones and building, permission



15. Assignment of the Government land is governed by Revenue Standing Orders. Revenue Standing Order No.5 deals on **what lands may be assigned and what may not** and the same reads as follows:-



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“Only land, the assignment of which is unobjectionable shall be assigned. Such lands may be assigned to individuals where they are in isolated bits or in compact blocks. Lands acquired for communal purposes shall not be assigned. Grazing ground porambokes shall not be assigned unless there is sufficient grazing ground (other than Panchayat and Reserved Forests) available to serve the needs of cattle, without specific orders from the Government. Tank-bed lands should on no account be assigned without consulting the appropriate technical officer including the Chief Engineer and without specific orders from the Government. Lands close to village sites which are likely to be required for communal purposes or provision of house sites should not be assigned. Applications for assignment of lands with dense valuable forest growth should be rejected. Such lands may be included in the Prohibitory Order Book.



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16. Similarly, Clause (iii) of Revenue Standing Order No.38 deals with **Land in the vicinity of reserved forests** and the same reads thus:-

“Assignment should not be made from land which adjoins a reserved forest or an unreserved block of 2.59 sq.kilo metre or more until the Collector has consulted the District Forest Officer and considered any objection he may have to its assignment. Assignment of land should not be made right upto the boundary of reserved forests but a belt of vacant land 40.2 metres by 60.4 metres wide should be left unassigned between the reserve boundary and the land to be assigned.”

17. Since there is a provision in R.S.O for assignment of lands of the Government land by the Collector with consultation of the District Forest Officer, in order to rescind that Rule 7 (2) has been incorporated. Further, it is also relevant to note that assignments can be given only by the Government and not by any individual.



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18. In this regard, the Hon'ble Apex Court in **GRAMAPHONE COMPANY OF INDIA LIMITED Vs. BIRENDA BAHADUR PANDEY** {(1984) 2 SCC 534}, has held that “the meaning of a word of common parlance must be construed in the context of the relevant provision” and also held that “Dictionary meaning not helpful where word of common parlance should be construed in the context in which it appears”. Whereas in this case, the assignment as per the Revenue Standing Orders could be done only by the Government since it applies only to the Government land but not to the patta land.

19. The learned counsel appearing for the respondent submitted about the judgment of the Division Bench of this Court. On an earlier occasion a Hon'ble Division Bench of this Court, in a judgment in **Srikanth Badruka Vs The Commisioner, Ooty Municipality** reported in **2010 (6) CTC 673**, while interpreting Rule, 7 (2) of the Act held that “though the expression 'assignment' has not been defined either under the Act or Rules, we are of the view that it should not be given a restrictive meaning to mean as if assignment given by the Government but should be read to mean assignment to include conveyance or transfer or part away with property, etc. Thus, the Rule clearly prohibits any residential activities within 150 mtrs., from the



boundaries of reserve forest and wooded land.

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20. It is to be noted that the judgment of the Hon'ble Apex Court in **(1984) 2 SCC 534** has not brought to the notice of the Division Bench.

21. Be that as it may. It is also to be noted that prior to the judgment of the Division Bench, the stand of the Government in an earlier occasion, which is also accepted by this Court, in W.P.No.28276 of 2010, wherein, at paragraph 4, of the above judgment, it is observed as follows:-

“As rightly contended by the learned counsel appearing for the petitioner, I find from the records that the learned Special Government Pleader (Forest) attached to this Court, Madras has forwarded his opinion as early as on 5/7/2010 to the first respondent, wherein he has clearly stated as follows:-

“As per the above Rules any person who constructs or alter, re-construct, adds to the building, shall wherever site is within 15 metres of any tank, reservoir, water course, river, fresh



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water channel or well shall undertake such measures as may be necessary for the purpose of preventing any contamination or any risk of drainage of the building into such tank, reservoir, water channel, river or wall. Therefore, the above provision contemplates remedial measures to be taken but by the person who intends to construct the building within 15 metres of the water channel, well etc. Even according to this provision, the person who constructs a building, re-construct, etc., is not under an obligation to get NOC from the Forest Department. But as per clause 3 of Rule 7 of the Rules, no assignment of lands shall be made for agricultural purpose or for any other purpose including residential purpose within 150 metres from the boundary of a Reserve Forest, etc. But this provision shall not apply for the private patta lands. Therefore, if anybody seeks NOC from the Forest Department, the same shall be given insisting the applicant to leave 15



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metres from the Reserve Forest boundary as buffer zone, insisting this condition NOC shall be issued by stating as follows:-

No objection for forming a layout in accordance to the prevailing Act and Rules and on condition that the applicant leaves 15 metres as buffer zone from the Reserved Forest boundary.”

22. This Court with great respect disagreeing with the judgment of the Hon'ble Division Bench, since the judgment of the Hon'ble Apex Court has not been brought to the notice before it. Further, previous stand of the Government and the order passed by this Court in W.P.No.28276 of 2010 are also not brought to the notice of the Division Bench. A plain reading of Rule 7 (2) does not restrict any prohibition. Prohibition is dealt under different Rules, viz., Rules 4 (4) to 4(6), which are referred in paragraph 11 of this order. If Rule 7 (2) was interpreted to mean that there is a total prohibition in respect of construction of the land, it will take away the rights of the citizen's right to hold the property particularly, in the Hill Stations. It



is relevant to note that in every Hill Station, the private land is surrounded by the Forest. As far as the Nilgiris is concerned, the forest cover is more than 67% and if Rule 7 (2) is interpreted in such a manner as understood by the officials, it will take away the right of the citizen to live with dignity and right of residence, which is considered as a fundamental right. Besides it is also take away the constitutional right to hold the property.

23. In ***L.LOGANATHAN Vs. THE COMMISSIONER, UDHAGAMANDALAM MUNICIPALITY, UDHAGAMANDALAM, NILGIRIS (W.P.No.10262 of 2020)***, the learned Single Judge of this Court extensively considered the Master Plan and Development Control Rules applicable to the Hill areas and also considering the Rule 7 (2) had directed the authorities to grant permission and the above order has also been complied. The above judgment was passed on 04.09.2020. Despite this Court interpreted and directed the authorities to grant permission, the authorities simply rejected the application citing Rule 7(2). Such act of the officials is certainly take away the rights of the citizens to have a decent living with dignity and to shelter and also it violates fundamental rights.

24. Therefore, considering the above, the rejection citing Rule 7(2) is



improper and already a judgment of this Court interpreted the rules in the latest judgment in W.P.No.10262 of 2020 and the said order has been complied and therefore, the same is binding on the authorities, as they are already parties to the above said writ petition and the same is also binding on the Commissioner, Udhagamandalam Municipality.

25. In such a view of the matter, the impugned order is set aside. Respondent is directed to consider the application and grant permission, if it is otherwise in order and also there shall be a direction to the Commissioner of Udhagamandalam Municipality not to reject any such application in future merely on the ground of Rule 7 (2), if the application satisfies the other parameters provided in the approved Master Plan.

26. In the result, this writ petition is allowed. No costs.

3/3/2023

Index : Yes / No
Internet: Yes
Speaking/non speaking order
Neutral Citation: Yes/No



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To

The Commissioner
Udhagamandalam Municipality
Hospital Road
Upper Bazaar
Ootacamund
The Nilgiris.



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