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W.P.No.9081 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 15.09.2023

ORDERS DELIVERED ON: 02.11.2023

CORAM

**THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS.JUSTICE N.MALA**

**W.P.No.9081 of 2023
and
W.M.P.Nos.9215 to 9217 of 2023**

The Director,
COHAJ Hospital – SAT Unit
Kameswaram – 611 110,
Thirupoondi via
Nagapattinam District.

... Petitioner

VS.

- 1.The State of Tamil Nadu,
Rep. By its Principal Secretary,
Department of Housing and Urban Development,
Fort St.George,
Chennai – 600 009.
- 2.The Principal Secretary,
The Government of Tami Nadu,
Department of Municipal Administration,
and Water Supply,
Fort St.George, Chennai – 600 009.
- 3.The Commissioner of Municipal Administration,



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No.3, MRC Nagar, Raja Annamalaipuram,
Chennai - 600 028.

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4.The Director of Town and Country Planning,
Directorate of Town and Country Planning
Opposite to LIC, Chengalvarayan Building,
4th Floor, 807, Anna Salai,
Chennai – 600 002.

5.The Deputy Director of Town and Country Planning
Tanjore Region,
No.33, Rajappa Nagar, 4 th Street,
Medical College Road,
Tanjore – 613 001.

6.The Deputy Director of Town and Country Planning,
Vellipalayam, Nagapattinam NH – 45A,
Nagapattinam – 611 001.

7.The Block Development Officer,
Keezhaiyur Block,
Kilvelur Taluk,
Nagapattinam District.

8.The Executive Officer,
Kameswaram,
Thirupoondi East Panchayat,
Nagapattinam District – 611 110.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 1st respondent vide G.O. (D).No.85, Housing and Urban Development (Na. Va-5(1) Department dated 09.11.2021 in so far as it directs the demolition of the



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Canteen, Laboratory and Recovery room of the petitioner hospital, the consequential letter of the 1st respondent in Letter No.200/UD-5(1)/2022-4 dated 12.05.2022, the consequential proceedings of the 6th respondent Deputy Director in Na.Ka.No.186/2022/Nama dated 15.03.2022 and Na.Ka.No.375/2022/Thama2 dated 01.06.2022, quash the same, and further direct the 4th respondent to give concurrence/approval to the proposed hostel building for the School of Nursing run by the petitioner, pass such further or other suitable order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.P.Godson Swaminathan for
M/s.Isaac Chambers assisted by
H.Mary Sowmi Rexi

For R1 to R6 : Mr.E.Vijayanand,
Additional Government Pleader

For R7 & R8 : P.Gurunathan
Additional Government Pleader

* * * * *

ORDER

(Order of the Court was made by N.MALA,J.)

This Writ Petition is filed to call for the records relating to the impugned order issued by the 1st respondent vide G.O.(D).No.85, Housing and Urban Development [Na. Va-5(1)] Department dated 09.11.2021 in so far as it directs the demolition of the



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Canteen, Laboratory and Recovery room of the petitioner hospital, the consequential letter of the 1st respondent in Letter No.200/UD-5(1)/2022-4 dated 12.05.2022, the consequential proceedings of the 6th respondent Deputy Director in Na.Ka.No.186/2022/Nama2 dated 15.03.2022 and Na.Ka.No.375/2022/Thama2 dated 01.06.2022, quash the same, and further direct the 4th respondent to give concurrence/approval to the proposed hostel building for the School of Nursing run by the petitioner.

2.The summary of the facts necessary for consideration of the issue raised in the writ petition are as follows:

The COHAJ Hospital - SAT Unit is one of the numerous institutions established and administered by the Congregation of Sisters of St.Anne's of Tiruchirapalli. The Congregation is an assemblage of Roman Catholic Christian Nuns who have dedicated their lives for the service of humanity. The Congregation is a registered Society under the Societies Registration Act and the object of the Society among others is to provide charitable service to all especially, to the Roman Catholic Christians of the State and to maintain the spiritual, educational, cultural, social, industrial, technical, agricultural, benevolent and other interests of the Society. While so, the petitioner made the following constructions on the respective dates mentioned against each construction.



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|---------------------------|--------------|
| a.Convent Building | - 28.06.2010 |
| b.Carla Hall Ground Floor | - 30.03.2012 |
| Amigo Hall First Floor | - 30.09.2013 |
| c.Hospital Building | - 28.03.2007 |
| d.Guest House | - 20.02.2009 |
| e.School of Nursing Lab | - 30.09.2015 |

3.It is the petitioner's case that for the constructions put up by the petitioner before 01.11.2011 approval was obtained from the competent authority viz., 8th respondent. According to the petitioner, for the Carla Hall and the Amigo Hall approval was obtained from the Local Panchayat on 30.03.2012 and 30.09.2015 respectively. In 2015, it was decided to conduct a Diploma Course in Auxiliary Nursing and Midwives with two years duration and therefore it was decided to convert the Carla Hall as Classrooms. As a Laboratory was also needed an application for conversion and usage of the building was submitted to the Panchayat and the same was approved on 11.08.2018. The School of Nursing was started in the year 2018 and for the said purpose, a hostel was proposed to be constructed. An application for plan approval for construction of the hostel building was submitted to the 8th respondent, who insisted on getting concurrence of the 5th respondent for all the existing buildings including the



new proposed building for hostel. The petitioner therefore applied on 10.11.2017 with necessary enclosures to the 7th respondent. It appears that several communications were exchanged between the petitioner and the respondents, which culminated in the appeal by the petitioner to the first respondent Government. During the pendency of the appeal, there was exchange of communications and inspections and ultimately the first respondent vide the impugned G.O.(D).No.85, Housing and Urban Development (Na.Va-5(1) Department dated 09.11.2021 disposed of the petitioner's appeal stating that the buildings, namely, the Convent Building and the Guest House Building were slightly in variance with the norms, and relaxation for the same were given subject to the condition that no additional structures would be put up thereon. The Government further instructed the Director of Town and Country Planning i.e. the fourth respondent to ensure the removal of the Canteen, Laboratory of the Nursing School, shops and recovery room as stated in the Government Order. As the petitioner was forced to comply with the said order the petitioner gave an undertaking to the respondents that the said buildings would be removed. The petitioner thereafter sent representations to the first respondent, the Director and the Hon'ble Minister to consider his request for building approval for the proposed Hostel Building. The 6th respondent vide the communication dated 15.03.2022 reiterated the order passed by the 1st respondent and made its compliance a condition precedent for processing his application for plan



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approval of the proposed hostel building. As it was suggested to the petitioner that the buildings erected before 2019 needed no approval under the Tamil Nadu Combined Development and Building Rules, 2019. The petitioner filed a fresh application for the proposed Hostel Building on 30.04.2022. The first respondent vide letter dated 12.05.2022 informed the petitioner that further time of three month was granted to the petitioner to remove the super structure mentioned in G.O.(3D).No.85, dated 09.11.2021. On 01.06.2022, the 6th respondent refused to process the petitioner's application for plan approval for the proposed hostel and directed the petitioner to remove the structures as informed earlier. The petitioner aggrieved by the orders dated 09.11.2021, 12.05.2022, 15.03.2022 and 01.06.2022 filed the above writ petition for the aforesaid relief.

4.The respondents filed their detailed counter, denying all the allegations and contentions raised in the writ petition apart from stating that the petitioner was bound to comply with the said orders as there was violation of the approved plan. The first respondent Government filed their detailed counter stating that on inspection by the Deputy Director of Town and Country Planning, in pursuance of the approval applied by the petitioner, it was found that there were set back violations in the convent building and the guest house building and therefore the application was returned vide



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letter dated 11.03.2020 with a direction to the petitioner to appeal to the Government under Section 79 for regularization of the violation in the existing hospital

building. It was further stated that the petitioner preferred an appeal on 16.03.2020 requesting for planning permission for their old buildings as per old rules and for the proposed new buildings as per Tamil Nadu Combined Development and Building Rules, 2019. It was further submitted that after inspection the appeal committee in its meeting recommended for relaxation of the setback violations in the convent building and in the guest house building, subject to the condition that no more additional floors should be constructed over and above those buildings and also on the Portico of the Hospital building. The Committee resolved to direct the petitioner to demolish the Canteen, School of Nursing Lab, Shops and Recovery room. It was submitted that on the basis of the appeal committee recommendations the impugned order dated 09.11.2021 was passed. It was further submitted that on the representation of the appellant to the Hon'ble Minister of Housing and Urban Development on 21.11.2021 and on the recommendation of the appeal committee meeting held on 21.04.2022, the Government vide the letter dated 11.04.2022 granted three months time to the petitioner to demolish the structures mentioned in G.O.(3D).No.85, Housing and Urban Development Department dated 09.11.2021. Hence it was submitted that if the buildings were not demolished it would violate the Rules and therefore there was no



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justification in the challenge to the impugned orders.

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5.The 5th respondent filed a detailed counter reiterating the submissions made by the 1st respondent. The 5th respondent submitted that the claim of the petitioner that for constructions erected before 01.11.2011 concurrence of the Town and Country Planning department was not necessary was unsustainable, as the petitioner failed to provide evidence in support of the said claim. Even otherwise, according to the 5th respondent in view of the provisions of Rule 25 of the Tamil Nadu Panchayat Rules, approval of the planning authority was necessary in respect of public buildings. The 5th respondent therefore submitted that there were no merits in the writ petition and the same deserved to be dismissed.

6.The learned counsel for the petitioner submitted that the impugned order directing the petitioner to demolish the Canteen, Laboratory and the Recovery room was unsustainable as the said structures were constructed before 01.11.2011, after obtaining due permission from the 8th respondent. The learned counsel further submitted that the respondent could not make the demolition of the said structures, a condition precedent for processing the petitioner's application for the proposed hostel building because section 47 A of the Town and Country Planning Act was enacted long after the said



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constructions were put up. As far as the laboratory is concerned, the learned counsel submitted that it was constructed in the year 2013 after due approval from the 8th respondent vide proceedings dated 03.07.2013. The learned counsel further submitted that though originally the said building was intended to be let out as shops, it was later converted into laboratory and approval of the 8th respondent for conversion was obtained on 11.08.2018. According to the learned counsel as the construction of the laboratory building took place much prior to the Tamil Nadu Combined Development and Building Rules, 2019, the impugned orders passed by the respondents could not be sustainable. The learned counsel on the aforesaid submissions submitted that the writ petitions deserved to be allowed by setting aside the impugned orders with appropriate directions to the fourth respondent to give concurrence and approval to the Hostel building of the petitioner.

7.The learned Additional Government Pleader submitted that if the petitioner was able to establish that all the buildings which were ordered to be demolished were constructed before 2011 with planning permission of the Local Panchayat, then the concurrence of the Town and Country Planning Department would not be insisted. The learned Additional Government Pleader further submitted that for buildings constructed after 2011 as per the Tamil Nadu Panchayat Rules 1987 r/w Section 25 of the Panchayat



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Building Rules, the petitioner was bound to get concurrence of the department of Town and Country Planning and therefore if the petitioner submitted a revised building plan, the same would be considered without insisting on demolition of Canteen, Laboratory and Recovery Room provided the petitioner satisfies the authorities that the construction was put up before 2011.

8.We have heard the learned counsels and we have perused the materials on record.

9.We find force in the submission of the learned Additional Government Pleader that the concurrence of the DTCP for constructions put up before 2011 was not necessary but for buildings constructed after 2011 the procedure contemplated under Section 47-A of the Town and Country Planning Act had to be followed. At this stage, the learned counsel for the petitioner submitted that he would submit a revised building plan to the respondents, as it is now fairly admitted in view of the law laid down by this Court that for buildings constructed before 2011, the concurrence of the DTCP was not necessary. The learned counsel for the petitioner further submitted that the respondents may be directed to consider the revised plan of the petitioner without insisting on the



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demolition of the Canteen, Laboratory and Recovery room as earlier undertaken to be removed by the petitioner

10. In view of the submissions made by the counsels, we are of the view that it would suffice to issue a direction to the petitioner to submit a revised building plan to the respondent for plan approval of the proposed hostel building. The respondents are directed to consider the said revised building plan without insisting on the demolition of the Canteen, Laboratory and Recovery Room in accordance with law, but subject to the satisfaction of the respondents that the constructions were made by the petitioner prior to 2011. The revised plan shall be submitted by the petitioner, within a period of two weeks from the date of receipt of a copy of this order and the respondents shall pass orders thereafter within a period of eight weeks from the date of receipt of the revised plan of the petitioner.

11. With the aforesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

J.N.B., J. N.M., J.

02.11.2023



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Index : yes/no

Internet : yes/no

Speaking order : Non-speaking order

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To

- 1.The Principal Secretary,
State of Tamil Nadu,
Department of Housing and Urban Development,
Fort St.George,
Chennai – 600 009.
- 2.The Principal Secretary,
The Government of Tami Nadu,
Department of Municipal Administration,
and Water Supply,
Fort St.George, Chennai – 600 009.
- 3.The Commissioner of Municipal Administration,
No.3, MRC Nagar, Raja Annamalaipuram,
Chennai - 600 028.
- 4.The Director of Town and Country Planning,
Directorate of Town and Country Planning
Opposite to LIC, Chengalvarayan Building,
4th Floor, 807, Anna Salai,
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- 5.The Deputy Director of Town and Country Planning
Tanjore Region,

13/16



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J.NISHA BANU, J.
and

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PRE-DELIVERY ORDER IN
W.P.No.9081 of 2023

02.11.2023