



W.P.No.12479 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.12479 of 2023

and W.M.P.Nos.12302 and 12303 of 2023

Zing International Pre School and Day Care,
3/421-A, Rajiv Gandhi Salai, OMR,
Kazhipattur, Chennai 603 103
Represented by its Correspondent
Pradeepa Thinakaran
D/o.Vijayaraghavan.

... Petitioner

Vs.

1. The Chief Educational Officer,
Chengalpattu District,
Chengalpattu.
2. The District Educational Officer,
Chengalpattu Education District,
Chengalpattu.
3. The Block Educational Officer,
Thiruporur Block,
Chengalpattu District.
4. The Tahsildar,
Thiruporur Taluk,
Chengalpattu District.
5. R.Poonkodi
Tahsildar,
Thiruporur Taluk, Chengalpattu District.



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6. M.Aravind Kumar

7. M.Gopinath

8. N.Nirmala Devi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the fifth respondent in the capacity as fourth respondent in Na. Ka. No. 1554/ 2022 / A2 dated 06.04.2023 and to quash the same and consequently, to direct the fourth respondent to pass orders granting Public Building Licence in Form-D to the petitioner School based on the inspection report submitted by the Revenue Inspector dated 11.07.2022, forthwith.

For Petitioner : Mr.G.Sankaran,
senior counsel
for Mr.S.Nedunchezhiyan

For Respondents
R1 to R4 : Mr.U.Baranidharan
Additional Government Pleader

R6 and R7 : Mr.T.N.Rajagopalan

R8 : Mr.Sirish Chowdary T
for M/s T.M.Naidu and Co



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ORDER

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This writ petition has been filed seeking for issuance of a writ of Certiorarified Mandamus to quash the impugned order issued by the fifth respondent in the capacity as fourth respondent in Na. Ka. No. 1554/ 2022 / A2 dated 06.04.2023 and consequently, to direct the fourth respondent to pass orders granting Public Building Licence in Form-D to the petitioner School based on the inspection report submitted by the Revenue Inspector dated 11.07.2022, forthwith.

2. Mr.U.Baranidharan, learned Additional Government Pleader accepts notice for respondents 1 to 4, Mr.Sirish Chowdhary.T for T.M.Naidu & Co accepts notice for eighth respondent, Mr.T.N.Rajagopalan, accepts notice for respondents 6 and 7. This court has taken up the matter without issuing notice to the fifth respondent.

3. It is the case of the petitioner that the petitioner / school was established in the land and building which belongs to the respondents 6 and 7 in Survey No.240/1 and 241/1A situated in Kazhipattur, Chennai by way of entering into a rental agreement dated 08.12.2021. The petitioner school has



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obtained NOC from the Department of Fire and Rescue as well as Sanitation Certificate from the Public Health Department and has also applied vide application dated 24.06.2022 to the fourth respondent for issuance of D-licence, which remained pending even after the report submitted by the Deputy Tahsildar and Revenue Inspector dated 11.07.2022 to the fourth respondent to grant D-licence in favour of the petitioner. The eighth respondent is the paternal aunt of the respondents 6 and 7, who gave hindrance to the petitioner / school by obstructing the process for grant of D-Licence to the petitioner / school and filed a writ petition in W.P.No.22508 of 2022 before this Court which is still pending and a suit was also instituted against the petitioner / school, which is also pending. It is further the case of the petitioner that the fourth respondent at the instigation of the eighth respondent conducted enquiry without hearing the eighth respondent and the Firka Surveyor of Thirupporur Taluk surveyed the subject property without issuing any notice. Thereafter, the fifth respondent in capacity as fourth respondent, passed an impugned order dated 06.04.2023, rejecting the claim of the petitioner seeking D-licence citing the pendency of the suit and writ petition filed by the eighth respondent and further stated that the school building is constructed by encroaching the public



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road by 2.0 metres. Challenging the same, the above writ petition has been filed.

4. Learned senior counsel appearing for the petitioner submits that though the eighth respondent has filed a suit in C.S.No.730 of 2019 before this Court against the respondents 6 and 7, which is still pending and in the said suit the eighth respondent filed an application in O.A.No.1196 of 2019 seeking interim injunction of the suit mentioned properties, wherein this Court vide order dated 18.08.2020 held that the eighth respondent has no right over the subject property. However, without considering the dismissal of above said injunction petition filed by the eighth respondent, the fifth respondent is referring the pendency of C.S.No.730 of 2019 and rejected the claim of the petitioner is not sustainable.

5. Learned senior counsel appearing for the petitioner further submits that the fourth respondent conducted the survey without issuing any notice to the petitioner's School as well as the land owners. Hence, this Court may direct the Tahsildar concerned to conduct a re-survey of the petitioner's school and upon re-surveying if the said land was found to be encroached by



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2.0 metres of the public road, the said encroachment may be removed and if the said land is not encroached, this Court may direct the fourth respondent to pass orders on the petitioner's application seeking grant of public building licence in Form-D to the petitioner / School based on the inspection report submitted by the Revenue Inspector dated 11.07.2022.

5. On the above contentions heard learned counsel appearing for respective counsels on behalf of the respondents and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the eighth respondent filed the above said suit seeking injunction against the land owners of the said school which is pending before this Court and in the said suit she filed an application in O.A.No.1196 of 2019, wherein this Court held that she has no right or title over the disputed property. However, it is the grievance of the petitioner that the fourth respondent conducted enquiry in the absence of the eighth respondent and survey was conducted without issuing any notice to the petitioner and blatantly arrived at a conclusion that the petitioner's School has encroached 2.0 metres of the public road. Though the



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facts stand as such, however, in view of the limited request sought for by the petitioner, this Court without interfering with the order impugned, directs the fourth respondent to conduct the survey in the presence of the petitioner and the eighth respondent after issuing notice to the petitioner and aggrieved persons if any. Upon re-survey if the petitioner / school has encroached the public road by 2.0 metres, the said encroachment shall be removed in the manner known to law. If there is no such encroachment, the fourth respondent shall entertain the application made by the petitioner seeking D-licence to the petitioner / School. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

7. With the above observation and directions this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21.04.2023

Index : Yes / No
Speaking order / Nonspeaking order
Netrual Citation Case : Yes / No
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M.DHANDAPANI, J.

(rap)

To

1. The Chief Educational Officer,
Chengalpattu District,
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2. The District Educational Officer,
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Chengalpattu.
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