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W.P.Nos.17842 and 17907 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.17842 and 17907 of 2023

and

W.M.P.No.16966 of 2023

Srinivasan

..Petitioner in W.P.17842/2023

Vivek Valsaon

..Petitioner in W.P.17907/2023

Vs.

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

..Respondents in both the WPs

PRAYER in W.P.No.17842 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorarified Mandamus to call for the records of the proceedings in Ka.Vi.No.54/2020/F2 dated 14.02.2023, on the file of the respondent and to quash the same as illegal, and without jurisdiction and to consequently direct the respondent to pass orders on the petitioner's building application dated 01.09.2020.



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PRAYER in W.P.No.17907 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Mandamus to direct the respondent to pass orders on the application for building permission bearing No.B.A.No.29/2021/F1 within a time frame fixed by this Court.

For Petitioners : Mr.K.Sharath Chandran in both WPs

For Respondent : Mr.P.Srinivas,
Standing Counsel in both Wps

COMMON ORDER

The issue involved in the both the writ petitions are common and hence they are taken up together, heard and disposed of through this common order.

2. The petitioner in W.P.No.17842 of 2023 has challenged the proceedings of the respondent in Ka.Vi.No.54/2020/F2 dated 14.02.2023 and has sought for consequential direction to the respondent to pass orders on the building application submitted by the petitioner on 01.09.2020.



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3. The petitioner in W.P.No.17907 of 2023 has approached this Court seeking for issue of a writ of Mandamus directing the respondents to pass order on the application submitted by the petitioner seeking for building permission within the time frame fixed by this Court.

4. Heard Mr.K.Sharath Chandran, learned counsel appearing for the petitioners and Mr.P.Srinivasan, learned Standing Counsel appearing for the respondent.

5. The learned Standing Counsel appearing on behalf of the respondent/ Municipality sought for time to file counter in these writ petitions. However, considering the fact that the issue involved in these writ petitions are squarely covered by the earlier order passed by this Court in ***L.Loganathan Vs. Commissioner of Udhagamandalam Municipality*** reported in ***2020 SCC OnLine Mad 18809*** and the subsequent order passed in ***B.Nagaraj Vs. The Commissioner of Udhagamandalam Municipality*** in ***W.P.No.6674 of 2020*** dated **03.03.2023**, it will be an useless formality to wait for counter, since the stand that was taken by the respondent / Municipality was considered



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and only thereafter those orders were passed by this Court.

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6. The case of the petitioners is that they are the absolute owners of the subject property and they are claiming their right and title through registered documents. The petitioners submitted their applications seeking for building permission before the respondent/ Municipality under the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993, for grant of permission to construct a residential building. Pursuant to the same, the report was also sought for from the Tahsildar and the Tahsildar has submitted a report to the effect that the building is within 150 Kms from the reserve forests. In view of the same, the respondent seems to have come to the conclusion that the building permission cannot be granted in view of the bar under Section 7(2) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993.

7. The very same issue was considered by this Court in the earlier writ petitions that have been referred *supra*. In fact, the order passed in ***W.P.No.6674 of 2023*** had taken into consideration the earlier



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order passed by this Court and it was held as follows:-

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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



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binding on the Commissioner, Udhagamandalam Municipality.

25. In such 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.

8. In view of the above, it is quite clear that the respondent cannot reject the application by quoting Rule 7(2) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993 and the application has to be considered independently without any reference to Rule 7(2). These writ petitions can also be disposed of in terms of the above orders referred *supra*.



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9. In the light of the above discussion:

a) W.P.No.17842 of 2023 is allowed and the impugned proceedings of the respondent in Ka.Vi.No.54/202/F2 dated 14.02.2023 is hereby set aside. The respondent is directed to process the application submitted by the petitioner seeking for building permission and it shall be considered and permission shall be granted, if it is otherwise in order without making reference to Rule 7(2) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993. This process shall be completed by the respondent within a period of four (4) weeks from the date of receipt of a copy of the order.

b) W.P.No.17907 of 2023 is allowed and the respondent is directed to process the application submitted by the petitioner seeking for building permission and it shall be considered and permission shall be granted, if it is otherwise in order without making reference to Rule 7(2) of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993. This process shall be completed by



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the respondent within a period of four (4) weeks from the

date of receipt of a copy of the order. No costs.

Consequently, the connected miscellaneous petition is closed.

28.06.2023

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Speaking order/ Non-speaking order



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To:-

WEB COM The Commissioner,
Udhagamandalam Municipality,
Hospital Road,
Upper Bazaar, Ootacamund,
The Nilgiris.



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N.ANAND VENKATESH, J.

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