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W.P.No.12887of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.12887 of 2023

Mr.Vishal Gowda

... Petitioner

.Vs.

- 1.The District Collector
The Nilgiris District
Church Hill Road
Charing Cross
Ooty-643 001.
- 2.The Building Plan Approval Committee
Udhagamandalam
Collectorate Office Buildings
Udhagamandalam.
- 3.The Committee for Architectural and
Aesthetic Aspects (AAA)
Office of the District Revenue Officer
Ootacamund,
The Nilgiris.
- 4.The Deputy Director
District Town and Country Planning Office
Ootacamund,
Nilgiris – 643 007.



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5.The Prsident
Hullathy Panchayat Union
Udhagamandalam
The Nilgiris – 643 007.

6.Mr.Micheal Fernando

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 3rd respondent to pass orders on the building plan approval application bearing No.2020/06/01937, pending on its file within a time frame to be fixed by this Court.

For Petitioners	Mr.Sharath Chandran
For Respondents	Mr.S.Arumugam Government Advocate for R1 to R4 Mr.G.Ameedius Government Advocate for R5

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the 3rd respondent to pass orders on the building plan approval application submitted by the



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petitioner and which is pending in A.No.2020/06/1937, dated 18.08.2021.

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2. When the writ petition came up for admission on 25.04.2023, this Court passed the following order:

Mr.S.Arumugam, learned Government Advocate takes notice on behalf of respondents 1 to 4. Mr.G.Ameedius, learned Government Advocate takes notice for 5 th respondent.

2. The main relief that has been sought for in this writ petition is for a direction to the 3 rd respondent to pass orders on the building plan approval application that has been submitted by the petitioner and is pending from the year 2021. When this was pending, the Government has issued Letter No. 3513158/UD4(L.Re.2/2022-3 dated 31.03.2023 and has issued certain directions. The grievance of the petitioner is that on the one hand the 3 rd respondent is not acting upon the application that is pending for more than two years. On the other hand, the Government is taking hasty steps to seal the property.

3. The written instructions that were produced before this Court shows that the 3 rd respondent is not inclined to deal with any applications pending in view of the order passed by the Division Bench in WP.No.19553 of 2021 dated 15.09.2021. This Court is not able to comprehend as to how the order passed by the Division Bench will come in the way of the 3 rd respondent from dealing with the pending applications. The concerned order only dealt with cases where no permission was obtained to run a resort and inspite of the same, the



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resort owners indirectly permitted people to stay by calling it as "home stay".

This was sought to be restrained by this Court. This will not have the effect of restraining the 3rd respondent from dealing with applications that are pending seeking for approval.

4. The 3rd respondent is directed to file a counter affidavit in this case. Such counter is required since the stand of the 3rd respondent must be ascertained and it will help not only the petitioner but also others who have submitted their applications seeking for approval and the same is pending before the 3rd respondent.

5. Post this writ petition under the caption "adjourned Admission" on 12.06.2023. In the meantime, the counter affidavit shall be filed. The Enforcement order that has been issued by the Government shall be kept in abeyance insofar as the petitioner is concerned, since even as admitted by the petitioner the property has not been put to any use.

3. When the matter was taken up for hearing today, the learned Government Advocate filed the counter affidavit of the 3rd respondent which is adopted by respondents 1, 2 and 4.

4. The stand taken by the 3rd respondent in the counter affidavit is extracted hereunder:

7. I submit that in this Hon'ble Court, Mr. Elephant G. Rajendran had filed an Writ Petition W.P.No.19553/2021 on 15.09.2021 with a prayer " to issue a Writ of Mandamus or any other order, Direction in



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the nature of Writ and direct the District collector not to give any regularization to these illegal resorts and Home stay buildings with a consequential relief of lock and seal these buildings in the entire District of Nilgiris without further delay under this Hon'ble Court Monitoring and pass such other and further order deem fit and thus render justice".

*Our Hon'ble High Court had passed interim order that "**Till a plan is put in place upon appropriate studies being conducted and a viable scientific report being obtained, no further permission for homestays in the Nilgiris should be granted and the district authorities should conduct inspections to ensure that the homestay arrangements do not continue without any permission being obtained. In fact, there may not be any law governing the matter and the State is requested to put a system in place**". The Case is still pending in the Hon'ble High court.*

*8. I submit that based on the above Hon'ble Court direction the District Collector (i/c) has filed a status report on 20.11.2021 stating that the **District Administration has decided not to give any permission for the conversion of Residential to Commercial Building for the purpose of Resorts, Homestays and cottages in Nilgiris District from 27.09.2021.***

9. I submit that the approvals for resorts, homestays and cottages are not given in the AAA committee from the date 27.09.2021. And based on the further directions from the Hon'ble High court the AAA committee will take the necessary actions.

10. I submit that Mr. Pon Ramachandran, Advocate, Ootacamund



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had issued legal notice on 24.12.2022 stating that the 6 Respondent is the absolute owner of the property for an extent of 0.13 acres of Land in survey No.521/1 of Hullathy Village and as such a suit is filed before the Hon'ble District Court at Udhagamandalam in O.S.No.162/2022 and the said suit is pending for disposal. I further represent that in the said legal notice issued by Mr. Pon Ramachandran, Advocate, Udhagamandalam had also stated that the "AAA" should not give any permission for construction of any building in respect of land in Survey No.521/1 of Hullathy village

11. The Hullathy village is located in the Ooty to Masinagudi Road which is highly accident prone road due to the steep terrain, where the District administration allows only the Nilgiris District registered vehicles to travel from Ooty to Masinagudi. Allowing resorts to function in such vulnerable place will put the tourist lives in danger.

12. The Hullathy Panchayat has taken necessary action against the Petitioner for unauthorised construction who had violated the building plan rules under the Town and Country Planning Act, 1971 (Section 56 and 57) and as such the Petitioner is not liable to seek any relief against this Respondent Office.

5. Heard Mr. Sharath Chandran, learned counsel for the petitioner, Mr. S. Arumugam, learned Government Advocate for R1 to R4 and Mr. G. Amedius, learned Government Advocate for R5.



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6.The 3rd respondent has taken a stand in the counter affidavit as if no application has been received from the petitioner. This stand taken by the 3rd respondent may not be right since the proceedings in letter dated 31.03.2023, issued by the Additional Secretary (Technical) Housing and Urban Development, Chennai, clearly states that the petitioner's proposal has been forwarded by the District Collector, Udthagamandalam, through proceedings dated 18.08.2022, before the AAA Committee.

7.The second stand that has been taken by the 3rd respondent is that by virtue of the interim order passed by the Division Bench, no approvals have been granted by AAA Committee from 27.09.2021 onwards for resorts, home stay buildings and cottages.

8.The above stand that has been taken by the 3rd respondent is also not sustainable. The issue before the Division Bench pertains to cases where no permission was obtained to run a resort and inspite of the same, resort owners indirectly permitted people to stay by calling it as home stay. This was sought to be restrained by this Court. This interim order does not in any way completely tie the hands of the AAA Committee from dealing with the approvals which have already been forwarded to them. Ultimately, it is not the AAA Committee which takes a decision on the approval or refusal of the application and such a power is vested only on the Government under Rule 27 of the Tamil Nadu District Municipalities [Hill Stations] Building Rules 1993 ('the Rules'). Therefore, the 3rd respondent should not be under the impression that they are the authority for granting approval or refusal and such a power is only vested on the Government. This is yet another reason as to



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why the 3rd respondent should not keep the file pending and they must process the same and place it before the Government and enable the Government to take a final decision on the application submitted by the petitioner.

9.The 6th respondent has raised a rival claim on the subject property and he has already filed a suit before the District Court, Udhagamandalam in OS.No.162 of 2022 and the same is pending. It is left open to the 6th respondent to workout his remedy before the Civil Court and unless and otherwise, the Civil Court passes any order restraining the petitioner from exercising his rights over the property, the mere pendency of the suit cannot be a ground for non-consideration of the application submitted by the petitioner. It was brought to the notice of this Court that the Government of Tamil Nadu has already issued guidelines for Registration and Classification of Bed & Breakfast Establishments and Homestay Establishments (2022). In view of the same, AAA Committee cannot take a stand that they will not process the application. They are bound to process the application and forward to the Government to take a final decision.

10.In the light of the above discussion, there shall be a direction to the 3rd respondent to deal with the building plan approval application submitted by the petitioner bearing A.No.2020/06/1937,dated 18.08.2021 and they shall take a decision on the pending application, within a period of six weeks from the date of receipt of copy of this order. Thereafter, the same shall be placed before the Government in order to enable the Government to take a final decision under Rule 27 of the Rules. The enforcement action that



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was proposed to be taken against the petitioner during the pendency of the application shall be kept in abeyance till a final decision is taken by the Government. It is also made clear that this order will not have any bearing in the Civil Suit that has been filed by the 6th respondent and is pending before the competent Civil Court.

11.This writ petition is disposed of in the above terms. No costs.

12.06.2023

KP

Internet : Yes/No

Index : Yes/No

Neutral Citation :Yes/No

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N.ANAND VENKATESH, J.
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