



W.P.No. 26567 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.26567 of 2017 and

WMP Nos.28285, 28286 of 2017

WMP No.19645 of 2018

Dr.D.C.Kothari Nagar Residents' Welfare Association,
represented by its President A.Pauldhas,
Dhas House, No.3/3, Third Street,
Dr.D.C.Kothari Nagar, Ramapuram,
Chennai 600 089.

.. Petitioner

Vs.

1. Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road, Egmore,
Chennai 600 008.
2. Tamil Nadu Pollution Control Board,
Represented by its Member Secretary,
76, Anna Salai, Guindy, Chennai 600 032.
3. The District Environment Engineer,
Tamil Nadu Pollution Control Board,



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77A, South Avenue Road,
Ambattur Industrial Estate, Chennai 600 058.

4. Greater Corporation of Chennai,
rep. by its Commissioner, Ripon Buildings,
Chennai 600 003.

5. The Executive Engineer, Greater Corporation of Chennai
Zone-XI, Valasarawakkam, Chennai 600 087.

6. The Assistant Executive Engineer,
Greater Corporation of Chennai,
Unit 34, Arcot Road, Chennai 600 020.

7. The Deputy Commissioner of Police,
Traffic South District, St. Thomas Mount,
Chennai 600016.

8. TANGEDCO, rep. by its Chairperson,
0144, Anna Salai, Chennai 600 002.

9. Sri Chaitanya Techno School,
Rep. by its Manager Mr.Nagareddy,
New No.3/45, Old No.121, Thiruvalluvar Salai,
Ramapuram, Chennai 600 089.
(cause title amended as per order made in
WMP No.7605/2018 in W.P.26567/2017
dated 22.06.2023)

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first, fourth, fifth and sixth respondents to withdraw the special sanction given to the ninth respondent, demolish and permanently remove the illegal and unauthorized construction



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carried out by the ninth respondent at survey No.12/1A, 1B, 1C, 1D and 1E of Ramapuram Village, Chennai 600 089.

For Petitioner : Mr.Krishna Prasad

for Ms.G.Mekalashri

For Respondents : Mr.Y.Bhuvanesh Kumar

Standing Counsel for first respondent

Mrs.Shanmugvalli Sekar, Standing Counsel
for respondents 2 and 3

Mr.D.B.R.Prabhu, Standing Counsel
for respondents 4 to 6

Mrs.R.L.Karthika, Govt. Adv. for R7

Mr.L.Jaivenkatesh, Standing Counsel for R8

Mr.P.Subba Reddy for R9.

ORDER

(Order of the Court was delivered by P. DHANABAL, J.)

This writ petition has been filed to direct the first, fourth, fifth and sixth respondents to withdraw the special sanction given to the ninth respondent and to demolish and permanently remove the illegal and unauthorized construction carried out by the ninth respondent at survey



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No.12/1A, 1B, 1C, 1D and 1E of Ramapuram Village, Chennai 600 089.

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2. The petitioner association is comprising of 330 residential houses at Dr.D.C.Kothari Nagar, Ramapuram, Chennai which is located in a primary residential zone. Due to expansion of the City of Chennai, the residents of Dr.D.C.Kothari Nagar are presently subject to high volume of traffic and noise pollution from the various non-residential and commercial presence in the periphery of their nagar. Now, the 9th respondent is carrying out construction of school in between first cross street of Dr.D.C. Kothar Nagar and Annai Sathya Nagar Main Road, infringing into the very heart of purely residential neighbourhood and it will change the very character of Dr.D.C.Kothari Nagar. A school will require ample parking space inside their premises, pickup and drop area for the children. This road which already experiences heavy vehicular traffic will be inundated with school vans, share autos, buses, motor bikes, etc., further creating a bottleneck.

2.1. Therefore, the petitioner has written a letter dated 8.10.2016 to



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the first and second respondent, requesting them that the land in S.No.12 within Dr.D.C.Kothar Nagar should not be re-classified for non-residential purposes, nor any planning permission for commercial construction or school construction should be granted. However, the 9th respondent is continuing the construction, ignoring the statutory notice. At the time of start of construction, the 9th respondent has not obtained any planning or building permission. Later, planning permission was approved by the first respondent on 21.04.2017, without paying heed to the procedures and systems that are in the place to check such short sighted development. The fifth respondent has failed to stop construction at the site and lock and seal the site in the absence of valid planning permit and building permits. The construction being put by the 9th respondent is affecting the right of development of every citizen, especially the residents/other occupants of the area and street, where such deviation of land use has occurred. Hence the writ petition.

3. The first respondent filed counter affidavit stating that, the usage of the land is classified as primary residential use zone, as per Second



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Master Plan Land Use Map of Ramapuram and it covered in DR No.14(1)(B)(X). Therefore, the subject was placed before the special sanction committee meeting held on 07.11.2016 and the Committee, after taking into account the surrounding developments around the site under reference, which is predominantly residential in nature and the school will be a needed facility, recommended to permit the proposed school building in the site under reference , under special sanction of CMDA. Accordingly, CMDA has issued approval for ground floor + 2 floor, school building in the name of Tmt.B.Dhanashree & two others, vide P.P.No.C/9656/22/A - C/2017 in file in NoC4/12779/2016 dated 21.04.2017. Further, as per CMDA's inspection report dated 27.08.2016, the proposed construction of school building was not commenced. Greater Chennai Corporation has issued notice calling for approved plan dated 30.12.2016 and the CMDA issued approval on 21.04.2017, as stated supra.

3.1. As per second Master Plan Land Use Map of Ramapuram Village, the street alignment of Thiruvalluvar salai connecting to Arcot road is 18m. Accordingly the street alignment portion was handed over to



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CMDA through a registered gift deed vide doc.No527/2017 dated 22.03.2017. Also the CMA issued planning permission for the school building under reference on compliance of DR parameters, which is part of second Master Plan, as approved by Government, vide G.O.ms.No.190, H & UD department dated 02.09.2008. The building under reference is not an unauthorized commercial building and it is a school building approved by CMDA, vide order dated 21.04.2017, as stated supra, on compliance of DR parameters which is part of second Master Plan, as per Town and Country Planning Act, 1971 and Justice Sampath Committee and G.O.Ms.No.131/SE(B) Department, dated 10.08.2006, issued by School Education Department. The applicant furnished an undertaking stating that the recommendation/ condition as stipulated by the Hon'ble Sampath Commission report, including building norms as per G.O.Ms.No.131/SE(B) Department dated 10.08.2006 School Education(B) Department shall be strictly adhered. Hence the writ petition is liable to be dismissed.

4. The fifth respondent has filed counter affidavit stating that, the 9th respondent school has obtained planning permission from the CMDA, viz.,



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the first respondent in planning permission No.C/C4/PP/INST/22-A to C/2017 in Letter No.C4/12779/2016 dated 21.04.2017 and has obtained building approval from the Greater Chennai Corporation vide CEBA/WDCN11/00182/2017 dated 30.05.2017 as per the order of this Court dated 11.10.2017. Further, this Court has passed an order on 11.10.2017, as follows.

... 3. A perusal of the materials placed before this Court would indicate that the 9th respondent has been accorded permission in the communication of the first respondent dated 21.06.2017 and it would also indicate that the planning permission complies with the Development Regularization parameters as well as G.O.Ms.No.131/SE(B) Department dated 10.08.2006 issued by the School Education Department and therefore, the first respondent as well as the Zonal Officer, Zone-11, Greater Chennai Corporation, Valasarawakkam, Chennai-87, is directed to verify and find out whether the construction activity being carried out by the 9th respondent is strictly in accordance with the planning permission in file No.C4/12779/2016 dated 21.04.2017 and file a Status Report.

4. The petitioner-Association shall also file an additional affidavit as to the superstructure/building owned by the members of the petitioner - Association have been constructed strictly in accordance with the planning permission or with deviation (major or minor).

5. Call on 15.11.2017. Counter of the official respondents as well



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as the Status Report by then.

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Pursuant to the above order, the site in question was jointly inspected by the Assistant Planner, Chennai Metropolitan Development Authority and the Assistant Executive Engineer, Work Department, Greater Chennai Corporation on 07.11.2017. At the time of joint inspection, it was found that the 9th respondent has put up the building as per the approved plan with minor deviations in the front and rear set back and it was noted as follows.

- ◆ Ground floor + 2 floors school building has been completed and not occupied.
- ◆ Construction of compound wall is under progress.
- ◆ Front compound wall is being constructed after leaving the space left for road widening portion.

The 9th respondent school has constructed the building with minor deviation to the approved plan as follows.

<i>Sl No</i>	<i>Description</i>	<i>As per plan</i>	<i>As per site</i>	<i>Deviations</i>
1	Front side	6.27 m	6.10 m	0.17 m
2	Side set back (North)	6.80 m	6.83	-
3	Side set back (south)	6.0 m	6.07	



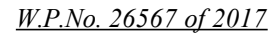
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<i>Sl No</i>	<i>Description</i>	<i>As per plan</i>	<i>As per site</i>	<i>Deviations</i>
4	Rear side	6.35 m	6.13 m	0.22 m

Therefore, the writ petition is liable to be dismissed.

5. The 9th respondent has filed counter affidavit stating that the respondent school is located in the border of Annai Sathya Nagar & D.C.Kothari Nagar, having access from Ramapuram Main Road (40 feet) and also Annai Sathy Nagar & D.C.Kothar Noagar, having access from Ramapuram Main road (40 feet) and also Annai Sathya Nagar Main Road (30 feet). The building has been approved vide C/9656/22A/C/2017 dated 21.04.2017. The committee members of the petitioner association have made it a habit to create hurdles to any commercial establishment which tries to establish in the area and only after demands of the said members are satisfied, the establishments are allowed to function. The building has been constructed with a minor deviation in front and rear set back and it would not categorize the building as illegal or unauthorized.

6. Heard the counsel for the petitioner and the learned counsel appearing for the official respondents and also the ninth respondent. We



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direct the official respondents to withdraw the planning permission given to the ninth respondent, and also to demolish the construction carried out by the 9th respondent, cannot be entertained, as it has no merits.

8. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. However, since the 9th respondent has constructed the building with small deviations, as stated by the 5th respondent, it is for him to approach the authorities concerned for regularization of the building, if permissible under law.

(D.K.K.J.)

(P.D.B.J.)

22.06.2023

Internet: Yes/No

Index : Yes/No

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To

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Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road, Egmore,
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and

P. DHANABAL, J.

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