



W.P(MD)No.924 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.924 of 2023

Sri Mutharamman Middle School,
Rep. By its Secretary,
R.Jeyapaul

... Petitioner

Vs

1. The Director of Elementary Education,
Directorate of Elementary Education,
DPI Compound, College Road,
Chennai.
2. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
3. The District Elementary Educational Officer,
Valliyoore Educational District,
Tirunelveli.
4. The Block Educational Officer-I,
Valliyoore Range,
Tirunelveli District.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus call for the



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records in respect of the impugned order passed in O.Mu.No. 827/A1/2022 dated 02.01.2023 by the fourth respondent and quash the same as illegal, consequently directing the respondents to grant permanent recognition to the petitioners middle school within a stipulated period as fixed by this Court.

For Petitioner	:Mr.S.Chellapandian
For R1 to R4	:Mr.M.Ramesh Government Advocate

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus, with respect to the records in O.Mu.No. 827/A1/2022, dated 02.01.2023, issued by the fourth respondent and to quash the same and consequently direct the respondents to grant permanent recognition to the petitioner's middle school.

2.In the affidavit filed in support of the writ petition, it had been stated that the petitioner's school was founded in the year 1986 as a Primary School and later upgraded as a middle school from the year 2012-13. There are 150 students are studying in the petitioner's school. It is run by a society called as “Sivasubramaniyapuram Sri Mutharamman Alaya Sivaga Sangam”. The petitioner had obtained a building plan approval from the President of



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Thanakkarkulam Panchayat for the school buildings on 17.8.2010 and 15.09.2011. He then constructed the school building in two blocks, consisting of 3013.89 and 2368.06 Sq.ft respectively. The petitioner seeks recognition from the competent authorities and made an application in the year 2021.

3.The third and fourth respondents had returned his application pointing out some deficiencies. Finally, on 26.09.2021, the petitioner had re-presented the application and the same was pending for more than two years, without passing any orders. On 02.01.2023, the third respondent had passed an order, rejecting the application of the petitioner stating that the building plan approval should be obtained from the Directorate of Town and Country Planning (DTCP) Department. Questioning that particular order, the present writ petition has been filed.

4.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5.The learned counsel for the petitioner placed reliance on the



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Judgment reported in **2015(2) LW 601, Kaviyan School, Rep. by its**

Correspondent C. Deenathayalapandian /vs/ Director of Matriculation

Schools, Directorate of Matriculation Schools, Chennai. In that case, the

Panchayat had granted building permission. Since DTCP had not given permission, recognition of the school was denied by the respondents therein.

The learned Single Judge had observed as follows:

“7.Challenging the rejection order, the petitioner filed WP No.5225 of 2013. The writ petition was disposed of on 28.02.2014 in the following terms :

“12.The facts of the case are very peculiar. This is a case where the petitioner school had land of an extent of more than 14 acres in one piece. Unfortunately, the land acquisition for the National Highways Authority of India commenced only after the trust became the lessee. The national highway is now located in such a manner that it cuts across the land of the petitioner and divides the same into two portions. This supervening event, over which, the petitioner had not control, is what has actually made the petitioner school ineligible in terms of the government order. On the one side of the national highway, the petitioner school has land of the extent of 2.29 acres. On the other side of the highway, the petitioner had the land of the extent of 10.14 acres. Therefore, this is a case where the respondents should actually consider the petitioner to have fulfilled the requirements.



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13. One more objection raised by the respondents is about the main entrance of the school. Today, the petitioner has shifted the main entrance to the side which is 180 degrees opposite to the National Highways. Therefore, in the peculiar facts and circumstances of the case, the request of the petitioner is justified.

14. In view of the above, the writ petition is disposed of, directing the first respondent to consider the case of the petitioner in the light of the peculiar facts narrated above and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order." Pursuant to the direction given by this Court, recognition was accorded by the first respondent vide proceedings Oo.Mu.No. 1972/A1/2014 dated 06.05.2014. It has subsequently been renewed also. The issue raised in the present writ petition was already dealt with and answered vide order dated 28.02.2014 made in WP No.5225 of 2013. This court did not call upon the authority to relax the land area requirement and grant approval. On the other hand, this Court rendered a finding that in view of the peculiar facts and circumstances obtaining in this case, the authority must actually consider the petitioner school to have fulfilled the requirements. This order was not challenged by the department. It had become final. The authorities have also complied with the direction. Hence, they cannot take a contra stand subsequently also. When the petitioner submitted application for starting classes upto 10 Std, this court had held that the petitioner should be taken to have fulfilled the land area requirement.



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That legal position cannot change when the petitioner submits another application for upgrading classes upto 12th Std.

8.Of course, the land area requirement differs from region to region. If it is corporation, it is enough if the school possesses six grounds. If it is within District Headquarters, it must be 8 grounds. In Municipality, it must be 10 grounds. If it is township, it must be one acre. If it is rural, it must be three acres. The requirement appears to have been fixed taking into account the difficulties of the school management to possess a given area of land. Here is a case where the trust wanted to fulfil the land area requirement in letter and spirit. It was because of acquisition by the State, there arose shortfall. A learned Judge of this Court had taken the view in the aforesaid writ petition that the petitioner ought not to suffer as a consequence. Declaration has been given that the petitioner should be taken to have fulfilled the land area requirement.

9.The Hon'ble Supreme Court in the decision reported in (2022) 5 SCC 210 ([Adani Gas Ltd. v. Union of India](#)), approvingly quoted G.P.Singh's principles of statutory interpretation to the effect that in interpreting a provision creating legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. The same approach can be adopted in the present case also. It is true that legal fictions are invariably created only by statutes. Declaration given in favour of the petitioner in WP No.5225 of 2013 is akin to creation of legal fiction. Once its existence is conceded, all the logical consequences flowing therefrom



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must also be accepted. On the earlier occasion, this Court had held that the petitioner must be taken to have fulfilled the land area requirement. When the petitioner applied for opening classes upto 10 to 12th Std, the authority cannot be heard to say that the land area requirement is not fulfilled.”

6.The reasoning of the learned Single Judge was that since the Panchayat President is the competent authority to grant approval for the construction, the only other aspect required was consultation with the concerned Joint Director or Deputy Director of Town and Country Planning, which is only an internal arrangement between the Panchayat President and the Joint Director or Deputy Director of Town and Country Planning.

7.Another learned Single Judge placing reliance on the said Judgment, had also passed a similar order in WP(MD)No.9713 of 2019, dated 30.04.2019. It is thus seen that a consistent view has been taken by this Court about the grant of recognition, if the building plan had been approved by the Panchayat President. As stated, the respondents are always at liberty to conduct an inspection and if there any deficiencies are found, they may point out the same and direct the School authorities/petitioner to rectify the same.



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8. In view of the above facts, the impugned order is set aside. The respondents are directed to grant recognition to the petitioner's middle school, within a period of twelve weeks, from the date of receipt of a copy of this order.

9. With the above directions, this Writ Petition is stands disposed.

No costs.

31.03.2023

NCS : Yes/No
Index : Yes/No
Internet: Yes/No
PNM

To

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2. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
3. The District Elementary Educational Officer,
Valliyoor Educational District,
Tirunelveli.
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ORDER IN
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