



W.P.(MD) No.10552 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.(MD) No.10552 of 2023
and
W.M.P(MD)No.9368 of 2023**

A.Francis

: Petitioner

-vs-

1.The President,
Sarugani Panchayat,
Sarugani, Sivagangai District.

2.The Block Development officer,
Devakottai Panchayat Union,
Devakottai, Sivagangai District.

3.The Assistant Director (Panchayat),
District Rural Development Office,
Sivagangai District.

4.The District Collector,
Sivagangai District.

5.The Assistant Executive Engineer,
TANGEDCO,
Kalayarkoil, Sivagangai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.01/2023-24 dated 01.04.2023 of the first respondent and quash the same and further, direct the first respondent to



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grant permission for the construction of the sales room on the application of the petitioner dated 03.02.2023 and the fifth respondent to provide 3 phase electricity connection to the Petrol Bunk situated in S.No.59/1A1 at Marani Sarugani Village, Devakottai Taluk, Sivagangai District.

For Petitioner : Mr.G.Prabhu Rajadurai
For R1 : Mr.N.S.Karthikeyan
For R2 to R4 : Mr.T.Villavankothai
Additional Government Pleader
For R5 : Mr.S.Deenadhayalan

ORDER

[Order of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

The petitioner challenges the order of the first respondent herein namely the President, Sarugani Panchayat, Sivagangai District, dated 01.04.2023 in and by which the application dated 31.12.2022 submitted by the petitioner for approval of the building which is the office room for the petrol bunk was refused on the ground that already constructions have been carried out and that first all the constructions have to be demolished and removed even for consideration of the application.

2. The case of the petitioner is that he is the owner of the land in S.No.51/1A1 measuring about 61 cents. He applied for dealership and the



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Indian Oil Corporation selected him and found that he had the necessary qualifications and infrastructure. The District Collector by his proceedings, dated 21.06.2019 granted No Objection Certificate for development of the said land as a petrol bunk. The District Revenue Officer granted license dated 27.09.2022 for establishment of a petrol bunk. The Government of India through the Petroleum and Explosive Safety Organization also granted permission on 27.10.2022. Even while establishing the bunk by making the necessary infrastructures of sinking the petrol tank, establishing the dispensers etc., it was necessary to construct sales office to an extent of 250 sq. ft., and therefore for the said building approval, an application was submitted along with plans. The petitioner was called upon to pay the fees and he also paid the fees on 11.02.2023. Thereafter, on account of a Public Interest Litigation, the commencement of the petrol bunk work was delayed. Thereafter, now the impugned order is passed refusing the permission and on account of the refusal, the electricity connection for the building is also not given.

3. The writ petition is resisted by filing of a counter affidavit. In the counter affidavit, apart from the reasons mentioned in the impugned order in Paragraph 5, it was averred that there is also a odai and other channels and the petrol bunk is put up by encroaching into the said water channels. Since apart from the reasons contained in the original impugned order, it



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was submitted before this Court that there are water bodies, this Court appointed Mr.K.R.Laxman, as Advocate Commissioner, who was directed to inspect the site and submit a report after detailed survey. The Advocate Commissioner has filed his report dated 21.08.2023. None of the parties have filed any objections to the said Commissioner report. It can be seen from the Advocate Commissioner's report that while there are channels which are passing through the petitioner's property, as far as the site in which, the petrol bunk is located, there is no water channel which runs across or which has been erased on the ground of the establishment of the petrol bunk. But however, it can be seen that on one side of the compound wall, marginally the water channel comes closely abutting the compound wall. Therefore, the action if any to restore those water channels, can be made *de hors* the establishment of petrol bunk. Therefore, we reject the said contention raised on behalf of the first respondent, while giving the first respondent and the appropriate authorities liberty to take such action so as to restore the water channels.

4. As far as the order impugned in the writ petition is concerned, it can be seen that what is being put up is only the office space which is required for the petrol bunk and not on the entire site of the petrol bunk. There is absolutely no other violation or disablement which is brought to the notice of this Court. When all the authorities have given no



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objection/license after detailed inspection, the same cannot indirectly stopped by refusing permission for the construction of the office building alone. The petitioner has given an explanation that since there was no response for application for approval for a long time, it had commenced construction. Be that as it may, even under Section 56 of the Town and Country Planning Act, 1971, any person who has constructed the building even before the approval, can apply for retention of the building, if the same is not in violation of the development control regulations. In this case, construction is only to an extent of 300 sq.ft. which is in progress and therefore, the same cannot constitute a reason for rejection of the approval in the special facts and circumstances of the instant case.

5. In the result, the Writ Petition is allowed on the following directions:

(i) The impugned order dated 01.04.2023 bearing Na.Ka.No. 01/2023-24 stands quashed.

(ii) The first respondent is directed to grant planning approval to the construction of the petitioner;



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(iii) Based on such approval, the fifth respondent also consider providing of three phase electricity connection to the petrol bunk in accordance with law.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Block Development officer,
Devakottai Panchayat Union,
Devakottai, Sivagangai District.
- 2.The Assistant Director (Panchayat),
District Rural Development Office,
Sivagangai District.
- 3.The District Collector,
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