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W.P.(MD)NO.10040 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.10040 of 2015 AND
M.P.(MD)No.2 of 2015

Chandy College of Education,
No.2/45, North Street,
Muthiahpuram, Tuticorin-5,
Rep. by its Vice Chairman.

... Petitioner

Vs.

The Member Secretary,
Local Planning Committee,
Tuticorin,
Tuticorin District.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the respondent in Na.Ka.No.579/2012 ThuVuThiKu dated 28.07.2014, quash the same and consequently forbear the respondent herein from in any way invoking the provisions of the Tamil Nadu Town and Country Planning Act for the existing building of the petitioner college.

For Petitioner : Mr.S.Srinivasa Raghavan

For Respondents: Mr.N.Satheesh Kumar,
Additional Government Pleader.

* * *

**ORDER**

Heard the learned counsel on either side.

2. The writ petitioner is an educational institution. They received lock and seal notice from the respondent in the year 2014. The respondent wanted to initiate coercive action under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act on account of the construction put up by the petitioner in violation of the statutory provisions.

3. Challenging the same, the present writ petition came to be filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

5. The respondent has filed counter affidavit and the



learned Additional Government Pleader took me through its contents and called upon this Court to sustain the impugned order.

6. I carefully considered the rival contentions and went through the materials on record.

7. It is obvious that the impugned action has been taken only by invoking Section 47A of the Act. The said provision was introduced in the statute book only in the year 2010. It is beyond dispute that the petitioner put up construction even earlier. During the relevant point of time, it is the local body that used to grant approval. The petitioner had obtained such an approval from the local body. The rules mandated that the local body should get the concurrence of the Deputy Director of Town and Country Planning for granting approval. But it has been consistently held that this is an inter-departmental affair and that for failure of the local body to obtain concurrence of the Town and Country Planning authority, the applicant cannot be visited with any adverse consequence. Such an approach has to be adopted in the



present case. The petitioner had put up construction before the introduction of Section 47 of the Act and that too after obtaining approval from the local body.

8. The learned Additional Government Pleader pointed out that the petitioner had subsequently presented application for regularising the construction and that it was returned and that thereafter it was not resubmitted. Merely because the petitioner without being unaware of his legal right had approached the respondent, the same cannot be put against him. The impugned communication is set aside. This writ petition stands allowed.

9. It is of course open to the respondent to take action against the petitioner as per law if according to the respondent, the construction put up by the petitioner was not in consonance with the approval granted by the local body. No costs. Consequently, connected MP. is closed.

15.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU



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To:

The Member Secretary,
Local Planning Committee,
Tuticorin,
Tuticorin District.



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G.R.SWAMINATHAN,J.

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