



W.P.No.613 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.08.2024

Pronounced on : 01.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.613 of 2022 and
WMP.No.663 of 2022

S.Kuppusamy

... Petitioner

Vs.

- 1.The Directorate,
Town and Country Planning,
Salem
 - 2.The District Collector,
Namakkal District
 - 3.The Deputy Director of Health Service,
Department of Health Service,
Namakkal District
 - 4.The Block Development Officer,
Village Panchayath, Panchayath Union Office,
Mohanur Taluk,
Namakkal District
 - 5.The President,
K. Pudhupalayam Panchayath,
Mohanur Taluk,
Namakkal District
 - 6.P.Pappathi
 - 7.P.Selvaraj
 - 8.The Regional Joint Director,
Animal Husbandry Department,
Mohanur Road, Namakkal District
- (8th respondent impleaded as per order dated
23.07.2024 in WMP.No.22339 of 2024 in



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WP.No.613 of 2022)

... Respondents

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PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 5 forbearing the respondents 6 & 7 to operate the Poultry farm in SF.No.256/2 in K Pudhupalayam, Kuttalambarai Village, Mohanur Taluk, Namakkal District, without obtaining the necessary permission from the competent authority by considering the petitioner's representation dated 06.12.2021.

For Petitioner : Mr.T.Mohan,
Senior Counsel
for Mr.MA.P.Thangavel

For Respondents
For R1 to 3 : Mr.V.Manoharan,
Additional Government Pleader

For R4 & 5 : Mr.M.Alagu Goutham

For R6 & 7 : Mr.Mohammed Riyaz
for Mr.S.Senthil

ORDER

This writ petition has been filed for direction directing the respondents 1 to 5 to forbear respondents 6 & 7 to run the poultry farm



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situated at SF.No.256/2 in K Pudhupalayam, Kuttalambarai Village, Mohanur Taluk, Namakkal District.

A) FACTUAL DETAILS

2. The petitioner owns agricultural lands comprised in SF.Nos.140/4C-4B, 167/1A2-1A1, 167/5C2-5C1 in Madakasampatty Village and SF.Nos.308/2, 255/2A-3A-3B, 257/3A1-3A2-2B1-2B2 in Kuttalambarai Village in Mohanur Taluk, Namakkal District. For the said lands, the petitioner was issued patta and constructed house after obtaining planning permission to an extent of 1157 sq.ft. While being so, respondents 6 and 7 are being neighbours, cultivating agriculture crops in SF.No.256/2. They also started construction for poultry farms without obtaining necessary permission from the Government authorities i.e. Planning Permission, No Objection Certificate, Licence and Consent from the Government authorities for forming poultry farms. They failed to maintain hygienic atmosphere which is against Rules 32 and 34 of Tamil Nadu Panchayat Rules, 1997 and also against Tamil Nadu Panchayat Act, 1994. In fact, the fifth respondent issued statutory notice to the



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seventh respondent and thereby directed them to adhere Rules and Regulations by the proceedings dated 30.11.2022. However, the respondents 6 and 7 failed to obey the Rules and continued with construction. After completion of the entire construction, they started to operate poultry farm by handling the birds in SF.No.256/2 which is abutting the petitioner's agricultural land. It was constructed without even maintaining the distance of 500 meters away from the residential area. They also caused nuisance due to odour and flies. They also violated the Rule that poultry farm should not be located within 100 meters from major water course like rivers, lakes, canals and drinking water sources like wells, summer storage tanks. Therefore, the petitioner submitted representation to take appropriate action as against the sixth and seventh respondents.

B) SUBMISSIONS

3. The learned Senior Counsel for the petitioner would submit that as per the Section 2(1-A) of Tamil Nadu Panchayats Act, 1994 defines "building" includes a house, out-house, tent, stable, latrine, shed,



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hut, wall (other than a boundary wall not exceeding 2.5 metres in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other materials whatsoever. It requires planning and building permission from the authority concerned. Section 257 of Tamil Nadu Panchayats Act, 1994 provides power, authority and responsibilities of Panchayats. Accordingly, for constructions coming under Schedule-IV of Tamil Nadu Panchayats Act, the Government delegated power to the fifth respondent and responsibilities with respect to the preparation of plans for economic development and social justice and also with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them. However, the fifth respondent failed to take appropriate action as against the petitioner for illegal construction of poultry farm and to run the poultry farm without any licence.

3.1 He further submitted that as per Rule 33 of the Tamil Nadu Combined Development and Building Rules, 2019, the Zoning Regulations shall comprise of Residential use zone, Commercial use zone,



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Industrial use zone, Special and Hazardous use zone, Institutional use zone, Open Space and Recreational use zone, Urbanisable use zone and Agricultural use zone and the activities permissible in each zone are provided in Annexure-XVIII . However, Rules 71 and 72 say about exemptions as follows:

71. Exemptions from these rules:

The following buildings are subject to the provisions of the sub-rule (2) to (4) of rule 6, exempted from the operation of other provisions of these rules:-

(i) Any building which is the property of the State or Central Government.

(ii) Any building constructed, reconstructed, altered or added to or intended to be constructed, reconstructed, altered or added to by the Government in accordance with such plan and in such manner as may be approved or directed in pursuance of any statutory provisions in that behalf.

(iii) Any building constructed, reconstructed, altered or added to or intended to be constructed, reconstructed, altered, or added to, to function solely as a temporary hospital for the reception and theatre for persons suffering from infectious disease.

72. Grant of exemptions:

(1) (a) The Government or any other authority empowered by the Government by a notification published in



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the Tamil Nadu Government Gazette, may either suo motu or on application exempt from the operation of all or any of the provision of these rules, for reasons to be recorded in writing, any building or any specified class of buildings provided that such application is made within sixty days from the date of receipt of the order of the executive authority against which such application is made to the Government or the authority empowered by the Government, as the case may be.

(b) The Government, may either suo motu or on appeal against any orders of the authority empowered by them, pass such orders, as deemed fit, provided such an appeal is made within thirty days from the date of receipt of the order of the authority empowered by the Government: Provided that it is open to the Government or the authority empowered by the Government, as the case may be, to condone any delay for reasons to be recorded in writing, if applications under the rule (a) above or appeals under this clause are not made to Government or the authority empowered by the Government, as the case may be, within the prescribed time.

(2) Any exemption granted under this rule shall not be deemed to be approval or permission for construction or reconstruction of any building required by or under the Act and the appellant after getting the exemption shall obtain building permit by submitting required plans and paying fees, charges, and deposits applicable for the development.



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However, the poultry farm is not coming under any of these exceptions and the fifth respondent failed to act in accordance with law.

3.2 He further submitted that the poultry farm is located near the petitioner's house and it is clear violation of Rule 33 of the Tamil Nadu Combined Development and Building Rules, 2019 - the Zoning Regulations.

4. Respondents 6 & 7 filed counter and Mr.Mohammed Riyaz appearing for respondents 6 & 7 submitted that respondents 6 and 7 have no obligation under any law to obtain any permission for the purpose of doing poultry farming in their land and construction of farm. They are doing agriculture in their lands and also constructed ACC shed admeasuring 45.5 feet x 200 feet for housing 12,000 number of eggs laying poultry birds whose life span is averaging 105 weeks. The petitioner is the neighbouring agricultural land owner and he is cultivating agricultural crops in his lands. He further submitted that there is absolutely no violation of Rules 32 and 34 of Tamil Nadu Panchayat



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Rules, 1997 and also under Panchayats Act, 1994. Both the Act and Rules have no application or relevance to the facts of the present case. The entire lands are agricultural lands and their respective owners are cultivating crops. Likewise, the petitioner and respondents 6 and 7 are doing agriculture in their respective lands. The sixth and seventh respondents had put up poultry farm and it is situated in the middle of their lands and the house of the petitioner is situated faraway. The poultry farm is a part of agricultural activity and it does not require planning permission under Town and Country Planning Act by adverting to Government letter dated 26.02.2019.

4.1 He further submitted that as per Sections 2(1) and 2 (13) of the Town and Country Planning Act, there is a specific Zoning Regulations under the Tamil Nadu Combined Development and Building Rules, 2019 permitting buildings for the purpose of poultry farming under Annexure XVIII in accordance with Rule 33. Therefore, planning permission is required when there is a development of land. However, the poultry farm and allied activities have been exempted from requiring any



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permission under the Tamil Nadu Town and Country Planning Act. He also pointed out that the counter filed by the first respondent revealed that the agriculture shall not be deemed to involve development of land to obtain permission for poultry and related constructions under Tamil Nadu Town and Country Planning Act, 1971 is not necessary.

5. The fifth respondent filed counter and Mr.M.Alagu Goutham appearing for respondents 4 & 5 revealed that there are no clear specific guidelines in respect of taking penal action and regulating poultry farm activities. After passing resolution, the fifth respondent forwarded the communication to the fourth respondent about the resolution. However, the fifth respondent is unable to regulate the poultry farms on the ground that there is no specific mandatory provisions or guidelines for regulating erstwhile farms.

6. The fourth respondent filed counter stating that on receipt of the complaint from the petitioner, the fifth respondent was directed to submit report. On verification of the report, it was found that the poultry



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farm is run without obtaining any necessary permission and no objection certificates from the authorities. Therefore, direction was issued to take appropriate action.

7. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

C) CONSIDERATION OF SUBMISSIONS

8. On perusal of the documents submitted before this Court and on hearing the submissions made by the learned counsel appearing on either side, the following points arise for consideration in this writ petitions:

(i) whether the poultry farming is coming under the activity of agriculture or not?

(ii) whether the petitioner is required to obtain planning and building permission to construct poultry farm and liable to pay any licence fee?

9. It is relevant to extract the provisions under Section 2(1) of the Tamil Nadu Town and Country Planning Act, 1971 hereunder:



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2. Definitions – In this Act, unless the context otherwise requires,-

(1) “agriculture” includes horticulture, fruit-growing, seed growing, dairyfarming, livestock-breeding, the use of land as grazing land, or any other use of land where such other use is ancillary to any agricultural purposes; but does not include the use of any land attached to a building for the purpose of a garden to be used along with such building; and “agricultural” shall be construed accordingly;

10. Thus the poultry farm is coming under 'dairy farm and livestock breeding'. As such, the poultry farm is also one of the agricultural activity. When the construction of poultry farm requires building and planning permission under Tamil Nadu Panchayats Act, Section 113A of Tamil Nadu Town and Country Planning Act, 1971 says as follows:

113-A. Exemption in respect of development of certain lands or buildings.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Government or any officer or authority authorised by the Government, by notification, in this behalf may, on



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application, by order, exempt any land or building or class of lands or buildings developed on or before 31st day of March 2002 in the Chennai Metropolitan Planning Area from all or any of the provisions of this Act or any rule or regulation made thereunder, by collecting regularisation fee at such rate not exceeding twenty thousand rupees per square metre, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the Chennai Metropolitan Area.

(2) The application under sub-section (1) shall be made on or before 30th day of June 2002 in such form containing such particulars and with such documents and such application fee, as may be prescribed.

(3) Upon the issue of the order under sub-section (1), permission shall be deemed to have been granted under this Act for such development of land or building.

(4) Nothing contained in sub-section (1) shall apply to any application made by any person who does not have any right over the land or building referred to in subsection (1).

(5) Save as otherwise provided in this section, the provisions of this Act, or other laws for the time being in force and rules or regulations made thereunder, shall



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apply to the development of land or building referred to in sub-section (1).

(6) Any person aggrieved by any order passed under sub-section (1) by any officer or authority may prefer an appeal to the Government within thirty days from the date of receipt of the order.

(7) The fee collected under this section shall be credited to Government account in such manner as may be prescribed.

Therefore, agriculture cannot be deemed to be development of land.

Building and planning permission is required only for development of land.

11. 'Development' is defined under Section 2(13) of Tamilnadu Town and Country Planning Act, 1971 as follows:

(13) 'development' means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land:



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12. Therefore, the agricultural activity is not coming under any of the development of land. Further, as per the Government letter No.9985 / UD4(3)2018-3 dated 26.02.2019, the livestock breeding has been included under the definition of the term 'agriculture'. Livestock breeding includes poultry. The Government order in GO.Ms.No.18 dated 04.02.2019, the Tamilnadu Combined Development and Building Rules, 2019 in Annexure-XVIII and as per Rule 33 (Zoning Regulations), in the agricultural use zone buildings or premises shall be normally permitted for the purpose of piggeries and poultry farms. Therefore, the poultry farm constructed by the petitioner does not require any planning and building permission.

13. The learned Senior Counsel specifically contended that Section 2(1-A) of Tamil Nadu Panchayats Act, 1994 defines "building" as 'any shed, hut, wall and any other such structure' and building and planning approval is required. Further, he also produced photographs of the poultry farm.



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14. However, Section 111(3) of Tamilnadu Town and Country Planning Act, 1971 says subject to provisions of Sub Section (1), but notwithstanding anything contained in any other law. The provisions of Tamil Nadu Town and Country Planning Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, custom, usage or contract. Therefore, the Town and Country Planning Act overrided the Panchayats Act and accordingly, the poultry farm does not require any planning and building permission from any of the authority. Further, the Government letter dated 26.02.2019 also clarified that live-stock breeding has been included under the definition of the term 'agriculture' as per Sub Section 1 of Section 2 of Tamil Nadu Town and Country Planning Act, 1971. Livestock breeding includes poultry also. Since clause (e) of the proviso to sub-section 13 of Section 2 of Town and Country Planning Act, 1971 provides that the use of any land for the purpose of agriculture shall not be deemed to involve development of land and therefore obtaining permission for construction of sheds / buildings for the use of poultry under Tamil Nadu Town and Country Planning Act, 1971 is not necessary.



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15. In view of the above, this Court finds no merits in this writ petition to consider the request of the petitioner. As such, this writ petition fails and the same is liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

01.10.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

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Town and Country Planning,
Salem
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Namakkal District
3. The Deputy Director of Health Service,
Department of Health Service,
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G.K.ILANTHIRAIYAN, J.

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