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W.P. No.318 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P. No.318 of 2024

and

W.M.P.Nos.383, 384 and 385 of 2024

M/s.Velatal Industries Private Limited,
Represented by its Managing Director,
P. Selvaraj,
115, Tiruchengode Road,
Pallipalayam, Erode 638 006.

... Petitioner

Vs

- 1.The Director Of Town and Country Planning,
Directorate Of Town and Country Planning,
2nd , 3rd and 4th Floors C and E Market Road,
Koyambedu, Chennai 600 107.
- 2.The Assistant Director / Member Secretary
Tiruppur District Town and Country Planning,
Kumaran Shopping Complex,
1st Floor Corporation Building,
Near Railway Station, Tiruppur 641 601.
- 3.The District Collector,
Tiruppur District
- 4.The Block Development Officer,
Pongalur Panchayat Union,
Pongalur, Palladam Taluk,
Tiruppur 641 667.



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5.V.Vavipalayam Village Panchayat,
Represented By Its President,
V. Vavipalayam Village,
Pongalur Panchayat Union,
Tiruppur District 641 671.

6.V.D.Raghupathi

7.G.Suresh Kumar

8.D.Loganathan

9.R.Subramaniam

10.A.Palanisamy

11.S.Gnanasivamoorthi

12.B.Nadaraj

13.P.Dineshkumar

14.C.Arunprasath

15.P.Muthusamy

*(R11 to R15 are impleaded as per
order dated 24.04.2024 in
W.M.P.No.987 of 2024 in W.P.No.318
of 2024 by VBSJ)*

16.Tamil Nadu Pollution Control
Board, Pallipalayam Erode.

... Respondents

*(R16-suo Motu impleaded as per order
dated 01.07.2024 in
W.P.No.318/2024 by VBSJ)*



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 5th respondent relating to the impugned proceedings dated 15.12.2023 and the impugned resolution of the 5th respondent bearing Resolution No. 671 dated 24.08.2023 and quash the same as arbitrary and illegal and consequently direct the 5th respondent to grant necessary building permit in pursuance to the technical clearance granted by the 2nd respondent dated 20.06.2023 in proceedings No. B.P / TCP(TD) No. 48/2023.

For Petitioner	: Mrs.Nalini Chidambaram, Senior Counsel for Mr.T.Saikrishnan
For Respondents	: Mr.P.Kumaresan, Additional Advocate General for R1 to R4 assisted by Mrs.S.Anitha, Special Government Pleader. Mr.P.Nethaji for R5. Mr.R.Gopinath for R6 to R10. M/s.Pramila for R11 to R15. M/s.Shanmugavalli Sekar, Standing counsel for R16.

ORDER

The writ petition is filed praying for Writ of Certiorarified Mandamus calling for the records on the file of the 5th respondent relating to the impugned proceedings dated 15.12.2023 and the impugned resolution of the 5th respondent bearing Resolution No. 671 dated 24.08.2023 and quash the same as arbitrary and illegal and consequently direct the 5th respondent to grant necessary building permit



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in pursuance to the technical clearance granted by the 2nd respondent dated 20.06.2023 in proceedings No. B.P / TCP(TD) No. 48/2023.

2. Brief facts:

The petitioner proposed to start a unit for manufacture of breathable thin PE Films specially designed for baby diapers, sanitary napkins, masks and surgical gowns. On 24.02.2023, the petitioner submitted an application for grant of planning and building permit through “Single Window” online portal of the 1st respondent. Subsequently, on 20.06.2023, the 2nd respondent herein issued technical clearance and forwarded it to the 5th respondent for the grant of building permission. On 04.07.2023, the petitioner submitted an application to the 5th respondent for carrying the preliminary works. On 24.08.2023, the 5th respondent passed the impugned resolution concerning the said application. However, the petitioner proceeded with the preliminary works on the basis of the approval and clearance obtained from the respondents 1 and 2. On 08.09.2023, the 3rd respondent passed an order for stoppage of work, which the petitioner challenged in W.P.No.30463 of 2023, before this Court. This court, on 30.11.2023, directed the parties to maintain *status quo* and instructed the petitioner not to proceed with any construction activities till the next hearing. The 5th respondent thereafter, passed the impugned



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order dated 15.12.2023 rejecting the petitioner's application for building permit.

The petitioner therefore filed the above writ petition for the aforesaid relief.

3. The respondents 1 to 6 filed counters before this Court. The sum and substance of the counters are as follows:

i.Counter of respondents 1 and 2:

As per the Government order, the Department issued concurrence which is applicable for both technical clearance and change of land use from agriculture to non- agriculture purposes. The respondent highlighted that, as per the Act and norms, the local body had the power to collect relevant / necessary fees and to issue orders of conversion of land from agriculture to non-agriculture purposes and to issue building permit after getting concurrence from the Directorate of Town and Country Planning.

ii. Counter of respondents 3 and 4:

The respondent stated that the petitioner had not submitted any application before the local authority for the construction of the petitioner's factory. The respondents asserted that the local body was the concerned authority responsible for granting permission for developments in non-planning areas but with the concurrence of the Director. The respondent pointed out that the petitioner failed to comply with the procedural requirements outlined in G.O.Ms.No.79 of 2017



resulting in procedural violations.

iii. Counter of 5th respondent:

The respondents stated that the petitioner failed to obtain necessary land conversion permission from the competent authority for changing the land use from agriculture to non-agriculture. The 5th respondent relied on the Tamil Nadu Change of Land Use (From Agriculture to Non Agriculture Purposes in Non Planning Areas) Rules 2017 and Town and Country Planning Act 1971 and stated that the petitioner's failure to secure the required land conversion permission from the competent authority invalidated the application for building permission, thereby validating the impugned order.

iv. Counter of 6th respondent:

iv.a. The respondent stated that originally the consent for Establishment of the Unit was issued to the petitioner on the following grounds:

“a. The unit site is located Non-Planned Area as per DTCP web portal.

b. The Joint Director, Agriculture, Tiruppur has been certified that no crops production has been carried out for the past three years and hence the land may be utilised other than agricultural activities vide its letter dated 21.03.2023.

c. The unit has obtained technical clearance for building



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plan approval from the Assistant Director, DTCP, Tiruppur vide its letter dated 20.06.2023.

d.The unit site is surrounded with vacant land and coconut farms in east side, vacant land in west side and north side, approach road in south side followed by coconuts farm.

e. The habitation of vavipalayam village is located at about distance of 1.380 Kms.

f. No trade effluent and specific point source emission are envisaged from its activities.

g. The unit has proposed to draw water from the bore well located within the premises for its domestic activities alone and no any other process activity is required water.

h. The unit has proposed to install the following machines

i. Polymer extruded machines -1 No.

ii. 8 – Colour Central Impression Flexo graphic
printing press machine 1- No

iii. Hot Melt Adhesive Coating Machine - 1 No.

iv. Duplex Slitter Machine – 1 No

i. The product is used as health hygiene and surgical
purpose



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j. Further, there is no siting criteria prescribed for this

type of industrial activities by the TNPC Board.”

iv.b. Thereafter on complaint against the petitioner’s Unit, the unit was inspected on 28.10.2023. During inspection, the following were observed:

“i. The construction activities have been stopped.

ii. The unit has obtained Consent for Establishment (CTE)

vide this office proceedings dated:16.10.2023 under Water and Air Acts.”

iv.c. Subsequently, a peace committee meeting was conducted on 05.12.2023 by the Revenue Divisional Officer, Tiruppur along with representatives from industries, Vavipalayam Village Pachayat as well as Public and Government Officials. During the Peace Committee meeting, the RDO instructed the unit to refrain from any construction activities until it obtains the necessary permission from the District Administration. The respondent stated that the unit was categorized under “Orange Category”.

4.Submission of the petitioner:

4.1.The learned Senior counsel submitted that the grant of planning



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permission has to be determined in accordance with the Tamil Nadu Combined Development and Building Rules, 2019 and in view of Rule 32 of the said Rules, there is no necessity to obtain permission for conversion of land use when approval for building construction is sought. The learned counsel therefore submitted that the impugned order deserve to be quashed.

4.2. The learned Senior counsel further submitted that the 1st and 2nd respondents gave technical clearance and change of land conversion approval on 09.06.2023 and on that basis, the petitioner proceeded with preliminary works.

5. Submission of the respondents:

5.1. The learned counsel for the 5th respondent relying on G.O.Ms.No.79 dated 04.05.2017 and submitted that the procedure under TNANA Rules would have to be followed for conversion of agricultural land into non-agricultural land for the purpose of development and merely because the petitioner obtained planning permission directly from the Directorate of Town and Country Planning would not bind the local authority viz., fifth respondent. The application for planning permission would have to be routed through the local body as per the aforesaid Rules. The counsel therefore submitted that there were no merits in the writ petition.



5.2. The learned counsel for the respondents 11 to 15 reiterated the contentions raised in the counters filed by the respondents 1 to 4.

6. Heard all the learned counsels. Perused the materials available on record.

7. To address the issue in question, it is essential to examine the specific guidelines outlined in G.O.Ms.No.79, dated 04.05.2017. The said Government Order was issued under clause (k), sub-section (2) of section 133 read with Section 47-A of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) and it provides a comprehensive framework for conversion of land use. The relevant provisions of this Government Order are as follows:"

“.....

3. Application for permission.- Any person intending to carry out any development in the non-planning area shall apply to the local authority in Form-I. The applicant shall pay a non-refundable scrutiny fee of Rs.1,000/- (Rupees one thousand only) per plot to the local authority.

4. Processing of application.- The local authority, before according permission for carrying out the development, shall obtain the prior concurrence of the Director.

5. Concurrence of the Director.- The Director, after the receipt of the application from the local authority, shall obtain the prior concurrence of the Collector in the case of wet lands and a report from the Joint Director of Agriculture in case of dry lands.

6. Guidelines to be followed by the Collector for giving his prior



concurrency.-(1) *The Collector shall satisfy himself that the land in which development is proposed does not fall in any of the following categories, namely:-*

- (a) Public water body like channel, canal, tank, lake, river, etc.*
- (b) Government Poromboke land, temple lands, wakf properties and other lands belonging to religious/charitable institutions.*
- (c) Vacant lands with any encroachment on a public road or street or on any other land over which the applicant does not possess ownership right.*
- (d) Lands below the alignment of high tension and extra high voltage electric line including tower lines.*
- (e) Land which is fit for continuing the cultivation.*

(2) The Collector shall inspect the site with Deputy Director of Town and Country Planning and other officials of the relevant departments as he deems necessary and satisfy himself to the following, namely:-

- (i) The status of land as in revenue records;*
- (ii) The existing development around the proposed site is compatible with the proposed development;*
- (iii) Details of assured irrigation source/ayacut;*
- (iv) Present status of cultivation and how long the cultivation was not carried out and the reasons therefor;*
- (v) Impact on the overall agricultural productivity and the necessity to continue agricultural production;*
- (vi) Problems of sanitation and waste water disposal and the possibility to realign the canals/ channels/ drains.*

(3) The Collector shall ensure that due to the proposed development, the irrigation canals and distribution channels or the natural storm water drains or channels are not obstructed or affected and shall not lead to



depletion of ground water level of the area or inundation of nearby areas.

7. Guidelines to be followed by the Director for giving his prior concurrence.- (1) *The Director shall satisfy himself the following, namely:-*

(a) The proposed development in part or whole is not in public water body like channel, canal, tank, lake, river, etc.

(b) The proposed development in part or whole is not in Government Poromboke land, temple lands, wakf properties and other lands belonging to religious/charitable institutions.

(c) The proposed development is not made in vacant lands blocking access to surrounding lands which do not have any other means of access.

(d) The proposed development in part or whole is not lying in the lands affected by the alignments of proposed road or rail corridors.

(e) The proposed development does not encroach any public road or street or other land over which the applicant does not possess ownership right.

(f) The proposed development in part or whole is not lying in the lands below the alignment of high tension and extra high voltage electric line including tower lines.

(g) The Director shall ensure that the proposed development possesses proper drainage system and pattern wherein all the waste water and excess rain water from the development area flows in the nearest higher order drainage system or some alternate arrangement created for the same so as to arrest water logging in the development area.

(2) The Director shall consider the prior concurrence given by the Collector in respect of wet lands and the report of Joint Director of Agriculture in respect of dry agriculture lands for taking a decision to issue his prior concurrence.

(3) In order to satisfy himself before granting his concurrence, the



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Director may cause inspection or seek report from such officials as he deems fit.

8. Prior concurrence of the Director.-

The Director, if satisfied that prior concurrence may be given, then, he shall give his prior concurrence for the proposed development.

9. Land use conversion charge.-

The local authority, on receipt of the prior concurrence of the Director for the development shall collect land use conversion charge at the rate of 3% of the market value fixed under section 47-AA of the Indian Stamp Act, 1899 (Central Act 2 of 1899) and deposit the amount in Government head of account and grant permission for carrying out the development.”

7.1. From a reading of the G.O.Ms.No.79, it is evident that under Section 3, an application to carry out any development in non-planning area shall be made to the local authority under Section 4. The local authority should obtain prior concurrence of the Director who in turn shall obtain prior concurrence of the Collector in case of wet lands and a report of the Joint Director of Agriculture in case of dry lands for according his prior concurrence. If the Director is satisfied that prior concurrence may be given, he shall give it for the proposed development. On receipt of the prior concurrence, the local authority shall collect a land use conversion charge at the rate of 3% of the market value fixed under Section 47-AA of the Indian Stamp Act, 1899 (Central Act 2 of 1899), deposit the amount into the



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Government Head of Account and thereafter grant permission for the development.

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8. Admittedly, the petitioner has not submitted his application for development to the local authority and therefore the procedure under G.O.Ms.No.79 has not been followed. However, without embarking on the merits of the rival claims, considering that the 1st and 2nd respondents have provided both technical clearance and land use conversion approval and the Joint Director of Agriculture also recommended for the land conversion, the petitioner is directed to make an application to the 5th respondent under Section 3 of the aforesaid Government Order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the 5th respondent, on the basis of the concurrence given by the Director of Town and Country Planning and the report of the Joint Director Agriculture, shall pass appropriate orders, in accordance with law and on merits, within a period of six weeks thereafter.

9. With the aforesaid direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2024

Speaking (or) Non Speaking Order



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Index : Yes/ No

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N.MALA, J.

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