



W.P(MD)No.6555 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.03.2024

Delivered on : 12.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.6555 of 2021

Kanyakumari Cable TC Diginet (P) Ltd.,
Rep.by its Managing Director,
S.Radhakrishnan

... Petitioner

Vs.

1.The Commissioner,
Nagercoil Corporation,
Kanyakumari District.

2.The Member Secretary,
Nagercoil Local Planning Authority,
Nagercoil Planning Area,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari filed Mandamus, to call for the records relating to the impugned order in proceeding Ka.Vi. No.79/2021/F2/150/CP/20-21/0002418, dated 24.02.2021 issued by the first respondent and quash the same and consequently, direct the respondents 1 and 2 to accept the building plan submitted by the petitioner company for SF.No.E3/68(pt) Kesari Street, Water Tank Road, Nagercoil and grant planning permission in accordance with law.



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For Petitioner : Mr.P.Prasanna Vinodh
For Respondents : Mr.K.Christy Theboral,
Additional Government Pleader, for R1
: Mr.A.Athimoola Pandian, for R2.

ORDER

This Writ Petition is directed against the order, dated 24.02.2021 issued by the first respondent and for direction to the respondents 1 and 2 to accept the building plan submitted by the petitioner company to grant planning permission in accordance with law.

2. The case of the petitioner is that the petitioner's company is a limited company and is a Multi System Operator (MSO) running the business of providing cable signals to the local cable TV operators in and around Kanyakumari District and Tirunelveli District; that the petitioner company has purchased a vacant site to an extent of 285.424 sq.mt in S.F.No.3/68 of Vadaseri South Village, Agasteeswaram Taluk, Kanyakumari District vide sale deed, dated 14.11.2019; that the petitioner after purchase had decided to construct residential building for the company; that the petitioner has applied through online to obtain building plan permission for construction of building on 04.09.2020 and he has also paid necessary fees



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through online; that the petitioner has already uploaded all the documents in the Corporation Website on 22.10.2020; that the petitioner has approached the second respondent Office in person to submit the original documents to get the building plan permission; that though the petitioner had again approached the Office twice, the second respondent Office has refused to accept the same by giving a reason orally that there was arrears of track rent to the Corporation; that the petitioner/S.Radhakrishnan, Managing Director is running Tri Star Cable Network as a local cable TV Operator at Nagercoil, for which, Cable TV signals were distributed to consumers in which, there was a demand by the Corporation for track rent; that the said demand was challenged by the petitioner before this Court in W.P(MD)No.16640 of 2020 and when the petition came up for admission, interim order was given that the respondents should not collect track rent from the cable TV operators and posted along with batch; that the building plan permission was sought for is for a private limited company, which does not have any nexus with the Tri Star Cable Network run by the said Radhakrishnan; that there is no provision in the Corporation Act to withhold the building plan permission submitted with all necessary documents and charges; that the respondents were misusing their official capacity to help their rival competitors in the business; that the petitioner



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has filed a writ petition in W.P.(MD)No.755 of 2021 before this Court and this Court has directed the first respondent to pass final orders on merits and in accordance with law within a period of four weeks from the date of receipt of copy of that order; that the petitioner has made a representation, dated 12.02.2021 to the first respondent along with necessary documents; that the first respondent has blindly rejected the building plan approval, vide order, dated 24.02.2021, stating that there was arrears of track rent to the Corporation and that therefore, the petitioner company was constrained to approach this Court.

3.The learned counsel for the petitioner would mainly contend that there is no provision in the Corporation Act or in Town and Country Planning Act to refuse approval for building plan for any pending arrears; that the first respondent has failed to see that track rent arrears, which is under question before this Court cannot be enforced in the above manner and that the impugned order, which is legally unsustainable, is liable to be quashed.

4. It is evident from the impugned order that the building plan approval was rejected only on the ground that the said Radhakrishnan,



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Managing Director of the petitioner company has to pay the arrears of track rent at Rs.1,54,740/- and that in case of annexing a challan or receipt for payment of the said amount, their application for building plan approval would be considered.

5. The learned counsel appearing for the first respondent would fairly admit that there is no provision in the Corporation Act or any other Act for refusing to grant approval for the building plan on the ground of pending arrears of track rent or any other charges. But, he would submit that there is a Circular provides for rejection of building plan on the ground that the property tax is pending.

6. When the matter is taken up for enquiry, the first respondent has produced a Circular in R.O.C.No.16407/2020/R1, dated 06.01.2021, whereunder instructions were issued that the outstanding property tax dues should be realized at the time of receipt of application for name transfer, building plan approval, 'D' & 'O' trade license etc. No doubt, as per the provisions of the Tamil Nadu District Municipalities Act and Corporation Acts, property tax is made as a first charge upon the property.



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7. It is pertinent to note that the said Radhakrishnan has already filed a writ petition in W.P.(MD)no.16640 of 2020, challenging the impugned demand notice, dated 05.02.2020 issued by the Commissioner, Nagercoil Corporation along with G.O.Ms.No.80, Municipal Administration and Water Supply, dated 30.06.2014 and this Court after granting interim orders, has posted with batch of similar writ petitions.

8. It is also not in dispute that the petitioner company has earlier filed a writ petition in W.P.(MD)No.755 of 2021, directing the respondents to accept the building plan proposal documents and approve the building plan in accordance with law and the learned Single Judge of this Court, vide order, dated 05.02.2021, directed the first respondent ie., The Commissioner, Nagercoil Corporation to pass final orders on merits and in accordance with law within a period of four weeks from the date of receipt of copy of that order and the petitioner was also directed to submit all the papers including the sketch in person to the first respondent. In pursuance of the same, the petitioner company has submitted a requisition, dated 12.02.2021 including the copies of land documents, building plan and the order of the High Court, but the first respondent has passed the impugned



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order, rejecting the claim of the petitioner on the ground that there is arrears of track rent.

9. At the time of arguments, the learned counsel for the petitioner would submit that subsequent to the filing of the writ petition, the Government of Tamil Nadu has issued Tamil Nadu Telecom Infrastructure Policy, 2022, an annexure to G.O.Ms.No.4 Information Technology (E1) Department, dated 25.01.2022.

10. As rightly pointed out by the learned counsel for the petitioner Chapter III deals with Establishment and Maintenance of Overground Telegraph Infrastructure, in which Rule 12(2)(d) reads as follows :

“12) (2)(d) The Appropriate Authority shall not charge any fee in any form including annual track rent except those mentioned under Section 15 as applicable, from the applicant for establishing, maintaining, working, repairing, transferring, or shifting or Overgound Telegraph Infrastructure.”

11. Chapter-IV deals with Fee and other charges in respect of Installation/Laying Telegraph Infrastructure and and Section 15 (6) is extracted hereunder:



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“ In line with the Indian Telegraph Right of Way Rules, 2016, no track rent (one-time or annually) shall be charged by any District Nodal Officer or Appropriate Authority for grant of any permission under any existing Government Orders of annual track rent issued by Revenue & Disaster Management/Rural Development & Panchayat Raj or Municipal Administration & Water Supply Departments.”

12. The learned counsel for the respondents have not disputed the issuance of Tamil Nadu Telecom Infrastructure Policy and the above rules with regard to the track rent. Moreover, in the absence of any provision or Rule prohibiting grant of building plan approval in case, if the applicant is in arrears of track rent, the impugned order cannot be legally be sustained. Hence, this Court has no hesitation to hold that the impugned order is liable to be quashed.

13. In the result, the Writ Petition is allowed and the impugned proceeding Ka.Vi.No.79/2021/F2/150/CP/20-21/0002418, dated 24.02.2021 issued by the first respondent is quashed. The respondents are directed to consider the petitioner's representation and to grant planning



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permission in accordance with law within a period of six weeks from the date of receipt of copy of this order. No costs.

12.04.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

- 1.The Commissioner,
Nagercoil Corporation,
Kanyakumari District.
- 2.The Member Secretary,
Nagercoil Local Planning Authority,
Nagercoil Planning Area,
Nagercoil,
Kanyakumari District.



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K.MURALI SHANKAR, J.

das

Pre-delivery Order made in
W.P(MD)No.6555 of 2021

Dated : 12.04.2024