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W.A.No.2542 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2025

CORAM

THE HONOURABLE MR. JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE MR. JUSTICE **MOHAMMED SHAFFIQ**

W.A.No.2542 of 2023

and

C.M.P. No.21333 of 2025

The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam, Nilgiris.

... Appellant

Vs.

L.Loganathan

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 04.09.2020 in W.P.No.10262 of 2020.

For Appellant : Mr.P.Srinivas

For Respondent : Mr.M.K.Kabir,
Senior Counsel
for Mr.S.Ashok Kumar



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JUDGMENT

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(Judgment of the Court was delivered by S.M.SUBRAMANIAM, J.)

Under assail is writ order dated 04.09.2020 passed in W.P.No.10262 of 2012.

2. Commissioner, Udthagamandalam Municipality, Nilgiris District is the appellant. Respondent has instituted a writ proceedings seeking direction against the appellant to grant building plan permission/licence to respondent through Online Application dated 09.09.2019 in accordance with the Revised Master Plan 2011 issued vide G.O(Ms).No.50 Housing and Urban Development Department, dated 25.02.2011 and review approved master plan dated 01.04.2014 within a time frame fixed by High Court.

3. Since the application was not considered, writ of mandamus came to be instituted. Writ Court issued a direction to appellant to process the application in accordance with the Development Control Rules, prepared, sanctioned and notified along with Revised Master Plan 2011 that was issued in G.O(Ms).No. 50 dated 25.02.2011 and also review approved Master Plan



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dated 01.04.2014, and pass necessary orders within a period of eight weeks from the date of receipt of copy of order.

4. Mr.P.Srinivas, learned standing counsel for appellant would contend that writ Court has misapplied provisions of law and not considered the scope of Rule 7(2) of Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993 (hereinafter referred to as 'Rules'). Rule 7(2) in clear terms stipulates that no assignment of land shall be made for agricultural purpose or for any other purpose including residential purposes within 150 metres from the boundaries of reserve forest and wooded lands or areas of special interest as may be declared by Government from time to time. In the present case, an order, passed subsequently after writ order, by appellant/Commissioner would show that subject land is falling within the distance of 17 metres from the reserve forest. Therefore, building plan permission/licence cannot be granted under Rule 7(2) of Rules.

5. Mr.P.Srinivas would rely on judgment of Division bench of this Court in the case of **Srikanth Badruka v The Commissioner, Ooty**

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Municipality, wherein scope of Rule 7(2) of Rules was considered by the

Division bench and it was held that though the expression “assignment” has not been defined either under Act or Rules, it should not be given a restrictive meaning as if assignment is given by the Government but should be read to mean that assignment to include conveyance or transfer or part away with property etc., Thus, Rule 7(2) prohibits any residential activities within 150 metres from the boundaries of reserve forest and wooded land. In paragraph no.16 of judgment, Division Bench considered the spirit of Rule 7(2). Applying the ratio decidendi laid down by the Division Bench in the case cited supra, case of the respondent was not considered by appellant/Commissioner and therefore, writ order is liable to be set aside.

6. Learned Senior Counsel, Mr.M.K.Kabir appearing on behalf of respondent would oppose by stating that Rule 7(2) has no application since

¹ 2010 (5) LW 845



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the revised master plan has been approved by the Government. Revised master plan was prepared under the Development Control Rules. Therefore, Rule 7(2) cannot be applied for the purpose of rejecting the application seeking building plan permission/licence. Mr.M.K.Kabir relied on the findings of writ Court regarding Master Plan Scheme approved by the Government. Therefore, respondent is entitled to secure building plan permission based on master plan approved by the Government.

7. Learned Senior Counsel relied on the order passed by the learned single Judge in the case of ***B. Nagaraj v P.Egaraj, the Commissioner, Udhagamandalam Municipality, Hospital Road, Upper Bazaar, Ootacamund, Nilgiris – 643 001*** in Contempt Petition No.2865 of 2023 dated 14.12.2023 wherein, learned Additional Advocate General, has given an undertaking that the Commissioner, Udhagamandalam Municipality will not reject application on the ground of Rule 7(2). The said undertaking is recorded by learned single Judge. In view of the undertaking given by learned Additional Advocate General in a contempt proceedings, appellant is estopped from applying Rule 7(2), in the case of respondent and thus, writ

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appeal deserves to be rejected.

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8. In the context of Division Bench judgment relied on by appellant in the case of **Srikanth Badruka** (cited supra), learned Senior Counsel would submit that present case is not a case of assignment by the Government but respondent is an absolute owner of the property. Primarily, it is a residential zone and, therefore, the Division Bench judgment has no application.

9. This Court considered the rival submissions made between the parties to the *lis* on hand.

10. The case on hand relates to grant of building plan permission/licence in hill station i.e., Udthagamandalam. Environment, ecology and preservation of forest in hill stations are of paramount importance and a constitutional mandate. Article 51A (g) of the Constitution of India enumerates that it shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. In order to protect forest areas and hilly



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stations, several enactments are made and Rules are framed thereunder.

These enactments are special Acts and Rules framed are exclusively applicable to hill stations and will prevail over the general law. Thus, the special enactments governing the subject will prevail over general law. Thus, present case is to be examined in the context of Acts and Rules applicable to hill stations.

11. Udthagamandalam is declared as a municipality and Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as the Act) would apply. In the said Act, Chapter X-A was inserted by the Tamil Nadu District Municipalities (Amendment) Act, 1992 (Tamil Nadu Act 58 of 1992) with effect from 9th December 1992. As per Section 217-A, this Chapter shall apply only to hill stations. The scheme of the Act under Chapter X-A would show that there is prohibition of construction or reconstruction of buildings etc., without licence under Section 217-B which reads as under:

***'217-B. Prohibition of construction or reconstruction
of buildings, etc., without licence (1) No person other than***



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the Central or State Government or local authority, shall —

- (a) construct or reconstruct a building on any land ; or*
- (b) put to use any agricultural land to any non-agricultural purpose ; or*
- (c) carry out any engineering, mining or other allied operations on any land, within the area of the hill station without a licence granted by the State Government and except in accordance with the terms and conditions specified in such licence.*

Explanation.— For the purpose of the provisions of this Chapter, "agriculture" includes, horticulture, fruit growing, seed growing, animal husbandry (including breeding of livestock), apiculture, pisciculture and sericulture and "agriculture" shall be construed accordingly.'

12. Section 217-C speaks about application for licence and reads as under:-

'217-C. Application for licence .— (1) *Every application for a licence under Section 217B shall be in such form, contain such particulars and be accompanied by such plans and fee as may be prescribed and shall*



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be submitted to the Executive Authority.

(2) On receipt of an application under sub-section (1), the Executive Authority shall, within such time as may be prescribed, examine the application with reference to such building rules as may be prescribed for the purpose of this Chapter and forward the same to the Committee.

(3) (a) For the purpose of this Chapter, the State Government may constitute a Committee called the Committee for Architectural and Aesthetic Aspects for all the hill stations in the State of Tamil Nadu, with such number of officials and non-officials and. having such qualifications as may be prescribed.

(b) The term of office of the non-official members of the Committee and other matters relating to the conduct of the meeting of the said Committee including the allowances payable to the non-official members shall be such as may be prescribed.

(4) The Committee shall examine every application received from the Executive Authority in all aspects and forward the same to the State Government with its remarks.



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(5) *The Committee shall, while examining the applications under sub-section (4), shall have regard to the following matters, namely :*

(a) the application for grant of a licence complies with the provisions of this Chapter and rules made thereunder ;

(b) the proposed construction or reconstruction of the building or the purpose for which the land is proposed to be used will not be detrimental to the scenic beauty and natural environment of the hill station ; (c) the proposed construction or reconstruction of a building will aesthetically and architecturally harmonize with the landscape of the hill station ;

(d) the possibility of the construction or reconstruction of building, the nonagricultural purpose for which the land is to be used or the carrying out of any engineering, mining or other allied operations,—

(i) creating unfavourable conditions upon the scenic beauty and natural environment of the hill station ; or (ii) resulting in concentration of population in and around the hill station ;

(e) that the proposed use of land will not lead to deforestation and soil erosion ;



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(f) that the proposed use of land will preserve the special characteristics of the hill station as regards landscape, vegetative cover and climate of the hill station;

(g) the free, passage or way to be left in front of the building as may be prescribed ;

(h) the open space to be left about the building to secure free circulation of air and the prevention of fire and to facilitate scavenging ;

(i) the ventilation of the building, the minimum cubic area of the rooms and the number and height of the storeys of which the building may exists.

(j) the provision and position of drains, latrines, urinals and cesspools or-other receptacles for rubbish or filth ;

(k) the level and width of the foundation, the level of the lowest floor and the stability, of the structure ; (1) the line of frontage, with neighbouring buildings if the building abuts on a street ;

(m) the means of egress from the building in case of fire ;

(n) the materials to be used for, and the method of construction of, external and partition walls, rooms, floors, fireplaces and chimneys;

(o) the height and slope of the roof above the upper-most floor on which human beings are to live or cooking



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is to be done;

(p) any other matter affecting the ventilation and sanitation of the building; and

(q) such other matters as may be prescribed.'

13. Section 217-D speaks about Grant of Licence as hereunder:-

'217-D. Grant of licence .— On receipt of an application from the Committee with its remarks, the State Government, if satisfied that the grant of a licence will not result in the deterioration of scenic beauty or destruction of the environment and ecosystem of the hill station, may, grant a licence subject to such terms and conditions as they may think fit to impose, or refuse to grant a licence : Provided that a licence shall not be refused unless the applicant has been given an opportunity of making his representation.'

14. Section 217-O speaks about Chapter to override other laws, reads as under:-



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'217-O. Chapter to override other laws .— (1)

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law, custom, usage or contract. (2) Save as otherwise provided in sub-section (1), the provisions of this Chapter shall, be in addition to, and not in derogation of, any other provisions of this Act.'

15. Non-obstante clause provides that it is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment (***South India Corporation (P) Ltd. Vs. Secy., Board of Revenue, Trivandrum***²). Thus a non obstante clause may be used as a legislative device to modify the ambit of the provision of law mentioned in the non obstante clause to override it in specified circumstances (***Pannalal Bansilal Patil Vs. State of Andhra Pradesh***³). Section 217-O employs non obstante clause. Hence non obstante clause is significant as has been found

² AIR 1964 SC 207

³ 1996 (1) Scale 405



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by Hon' ble Supreme Court and this Court consistently.

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16. In exercise of powers conferred by Section 217-C read with sub-Section (1) of Section 303 of Act, Rules are framed viz., Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993. Rule 1(2) states that they shall apply to all Hill Stations specified in Schedule II to the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) and to all other local bodies in hill areas to which Chapters IX, X and X-A of the said Act are extended.

17. Rule 7 provides location of building and reads as under:

'7. Location of Building.- (1) Every person who constructs, reconstructs or alters or adds to the building, shall wherever the site is within 15 metres of any tank, reservoir, water course, river, fresh water channel or well, carryout such measures as may be necessary or as the Government may direct for the purpose of preventing any contamination of or any risk of the drainage of the building passing into such tank, reservoir, water-course, river fresh –water channel, or well.

(2) No assignment of land shall be made for agricultural



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purpose or only other purpose including residential purpose within 150 metres from the boundaries of reserve forest and wooded lands or areas of special interest as may be declared by the Government from time to time.'

18. Holistic reading of the provisions of Chapter X-A of Act and the Rules framed thereunder viz., Tamil Nadu District Municipalities (Hill Station) Building Rules, 1993, this Court is of the considered view that the said Chapter, Act and the Rules framed thereunder alone would apply for the purpose of grant of building plan permission/licence in hill stations.

19. Regarding the scope of master plan, as argued on behalf of the respondent, master plans are approved by the Government under the provisions of Town and Country Planning Act, 1971. Section 17 deals with master plan. Section 217-O of Chapter X-A provides to override other laws. Thus, question of applying the provisions of other laws inconsistent with Chapter X-A of Act would have no application. Special Act and the Rules framed thereunder would prevail over. Even after approval of master plan by the Government under the provisions of Town and Country Planning Act, while

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considering the application for grant of building plan permission/licence, authorities are bound to apply the provisions under Chapter X-A of Act and the Rules. These provisions are exclusively applicable and governing hill stations, to protect hilly areas, reserve forests, environment and ecology in forest areas. Thus, special Rules alone would apply and the general Rules cannot be applied for the purpose of grant of building plan permission/licence in hill stations.

20. Regarding Rule 7(2) and its scope, Division Bench of this Court has considered in the case of **Srikanth Badruka** (cited supra) that Rule cannot be given restrictive meaning and the word 'assignment' since not defined either under the Act or Rules etc., read to mean assignment to include conveyance or transfer or part away with property etc., Paragraphs 14 and 16 of the Division Bench judgment read as under:

'14. We are unable to agree with the learned Senior Counsel for the Appellant for the simple reason that the embargo under Rule 7(2) of the Rules is with



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regard to the agricultural activities and residential purpose within the distance of 150 mtrs. from the Reserve Forest. Though the expression "assignment" has not been defined either under the Act or Rules, we are of the view that it should not be given a restrictive meaning to mean as if assignment given by the Government but should be read to mean assignment to include conveyance or transfer or part away with property etc. Thus, the Rule clearly prohibits any residential activities within 150 mtrs from the boundaries of reserve forest and wooded land.

X X X

16. We have seen Rule 7(2) of the Rules, which prohibits construction within a distance of 150 mtrs. The reason for rejection of the planning permission is due to the fact that the site in question is within 150 mtrs of the reserve forest. Therefore, when there is a prohibition from putting up construction within such distance, the Appellant cannot insist that the Respondent Municipality are bound to give planning permission in view of the no objection certificate given at the time of registration of the sale deed. Thus, the mere issuance of the no



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objection certificate dated 14.5.2007 does not entitle the Appellant for planning permission as a matter of right.'

21. Therefore, the argument that 'assignment' will not include 'conveyance' deserves no merit consideration. Any restrictive interpretation of the term 'assignment' would defeat the very purpose and objectives of Chapter X-A of Act and the Rules framed thereunder. That apart, Division Bench in unambiguous terms interpreted the scope of Rule 7(2) of Rules. Therefore, the findings of learned Single Judge in the impugned order is running counter to the scope of the provisions of Chapter X-A of Act and the Rules framed thereunder and the ratio laid down by the Division Bench of this Court in the case of *Srikanth Badruka* (cited supra).

22. Strong reliance has been placed by the learned counsel for respondent that learned Additional Advocate General, has given an undertaking in writing that in future, no application seeking building plan permission/licence will be rejected on the ground of Rule 7(2). Validity of such undertaking given by learned Additional Advocate General or authorities



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before the Court in contravention to the provisions of the special enactment and Rules framed thereunder is to be tested.

23. In the case of **Director of Elementary Education, Odisha & Ors**

v Pramod Kumar Sahoo⁴, Hon'ble Supreme Court held as under:

'8.Therefore, the concession given by the State counsel is erroneous concession in law and, does not bind the appellant. Reference was made to Himalayan Coop. Group Housing Society v. Balwan Singh & Ors. wherein, this Court held as under:

“32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make.

⁴ (2019) 10 SCC 674



A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions...."

(Emphasis supplied)'

24. Therefore, any undertaking of the law officer running counter to the Act or Rules cannot be relied on by the Courts for the purpose of considering the issues. That apart, undertaking given by learned Additional Advocate General is not only running counter to the law but would take away the objectives of Chapter X-A of Act and Rules framed thereunder. Any such undertaking cannot be relied upon for the purpose of grant of building plan permission/licence in hill stations.



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25. Since any construction of building in violation of Act and Rules

would cause damage to the environment, ecology and forest in hill stations, the competent authorities in hill stations are expected to be cautious and follow the applicable provisions scrupulously. In the event of any lapses, negligence or dereliction in implementing the provisions of law, the said authorities must not only be held responsible and accountable but must be prosecuted and subjected to departmental disciplinary proceedings.

26. Hill stations if not preserved, consequences would be disastrous and this exactly is the reason why constitutional Courts have time and again reiterated that hill stations and forest areas are to be protected. It is a constitutional mandate on the part of State and Centre and duty mandated on the citizens of India.

27. In view of the factum and the legal position discussed in the aforementioned paragraphs, impugned writ order dated 04.09.2020 in W.P.No. 10262 of 2020 is set aside and the writ appeal is allowed. The appellant is directed to initiate all appropriate actions to set right the illegalities



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and irregularities, in the manner known to law. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28. Registry is directed to communicate this order to the Chief Secretary to Government of Tamil Nadu, Fort St. George, Chennai – 600 009 to issue necessary directions/instructions to all the competent authorities in hill stations to ensure that Special provisions of the Act and Rules applicable are implemented scrupulously.

[S.M.S., J.]

[M.S.Q., J.]

12.11.2025

Index:Yes/No

Neutral Citation:Yes/No

mmi

To



The Chief Secretary to Government,
Fort St. George, Chennai – 600 009.

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**S.M.SUBRAMANIAM, J.
AND
MOHAMMED SHAFFIQ, J.**

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