
(2015) 04 MAD CK 0116

In the Madras High Court

Case No : Writ Petition (MD) No. 20329 of 2014 and M.P. (MD) No. 1 of 2015

Kaviyan School

APPELLANT

Vs

The Director of Matriculation Schools

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2015) 2 LW 601 : (2015) 3 MLJ 792

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : Viraraghavan and K. Saravanan, for the Appellant; J. Gunaseelan Muthiah, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Vaidyanathan, J.

1. This writ petition has been filed by the petitioner for quashing the impugned order passed by the respondent in NA.Ka. No. 6570/A1/2014 dated 18.11.2014, requiring the petitioner school to fulfill three conditions for granting temporary recognition with a consequential prayer to direct the respondent to grant permanent recognition to the petitioner School from LKG to X standards. The case of the petitioner school in nutshell is as follows:

i) The petitioner (hereinafter referred to as the "petitioner school") is a Trust, which has acquired 14.88 acres of land in Indira Nagar, Malayakoundanpatti under a 30 year lease. As the Trust decided to run a School, a building plan approval was obtained from the President, Malayagoundanpatti Panchayat in the year 2009 as required under the Tamil Nadu Panchayats Buildings Rules, 1997 (framed under the Tamil Nadu Panchayat Acts, 1994) for construction of the ground floor of the school building.

ii) On 28.08.2009, the respondent granted permission to the petitioner school to open classes from LKG to VI Standards and subsequently, in the year 2010,

granted temporary recognition for a period of three years from June, 2009 to May, 2012, to the petitioner school for LKG to VI standards. Thereafter, the petitioner school submitted an application for renewable of the recognition and also sought permission to open additional standards from Class VII to IX. Since no decision was taken thereon, the petitioner school was constrained to file W.P. No. 5225 of 2013 for grant of permanent recognition and also for permission to open additional standards.

iii) This Court, by way of an interim order dated 26.04.2013, directed the respondent to renew the temporary recognition of the petitioner school and subsequently, on 28.02.2014, a final order in the said writ petition was also passed, directing the respondent to consider the request of the petitioner school. Based on the same, respondent officers inspected the petitioner school and having satisfied with the compliance of requirements by the petitioner school, the respondent permitted the petitioner school to open additional classes from VII to X standard.

iv) In the year 2014, the petitioner school again sent a reminder to the respondent to grant permanent recognition to its school. Though on 30.07.2014, the petitioner school had got the renewal of license, but strangely, on 18.11.2014, the respondent passed an order, which is impugned in the present writ petition, requiring the petitioner school to fulfill three conditions for granting temporary recognition with a threat of imposition of penalty. One of such conditions is to get a building approval for its school building from the Director of Town and Country Planning.

v) In response to the same, on 10.12.2014, the petitioner school wrote a letter to the respondent stating that the appropriate authority for its school building plan approval is only the President of Malayakoundampatti Panchayat under the Tamil Nadu Panchayat Act, 1994 therein. Aggrieved by the impugned order, the petitioner school is before this Court seeking for the above relief.

2. Learned counsel for the petitioner submits that there is no need to obtain approval from the Director of Town and Country Planning, as the school is situated within the boundary of Malayakoundanpatti Panchayat and the competent authority for such approval therein is the President of the said Panchayat. He also drew the attention of this Court to the Tamil Nadu Panchayats Buildings Rules, 1997 and the relevant provisions are extracted hereunder:

"2(e) "executive authority" means the President of the Village Panchayat 2(g) "Public building" means any building to which the public or any class or section of the public are granted access or any building which is open to the public or any class or section of the public and includes any building-

(a) used as a

(i) Educational institution including school or college.:

25. Multi-storeyed and public buildings:-

Every person intending to construct, reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public Building Rules, 1973 issued under the Tamil Nadu District Municipalities Act, 1920.

Provided that the Executive Authority shall not grant approval for construction, reconstruction, addition or alteration of any such building without consulting the concerned Joint Director or Deputy Director of Town and Country Planning."

Learned counsel for the petitioner also drew the attention of this Court to the provisions of Section 114 of the Indian Evidence Act and contended that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Therefore, it is the contention of the learned counsel for the petitioner that since the competent authority in terms of the provisions stated supra, is the President of the Panchayat, who has duly granted approval in this case, the petitioner school has not violated any of the laws of the land.

3. Per contra, learned Government Advocate, appearing for the respondent contends that in terms of the Rule 25, which has been referred to above by the petitioner, the competent authority is only the Joint Director or Deputy Director of Town and Country Planning. Even assuming that no approval is required from the Joint Director or Deputy Director of Town and Country Planning, at least there should be a consultation by the authority with the concerned Joint Director or Deputy Director of Town and Country Planning and therefore, the act of the petitioner, in absence of such consultation, is erroneous and the relief sought for by the petitioner should not be granted. Learned Government Advocate drew the attention of this Court to G.O.(Ms) No. 270 School Education (X2) Department dated 22.10.2012, wherein it has been stated as under:

4. To controvert the same, learned counsel for the petitioner submits that the said Government Order is no way helpful to the petitioner, as it merely stipulates that for construction of school building, prior approval should be obtained from the appropriate authority and in nowhere, it is mentioned that Joint Director or Deputy Director of Town and Country Planning is the only authority to grant permission for construction of school building. He further submits that in terms of the letter dated 18.11.2014, which is impugned herein, the contention of the respondent that no prior approval has been obtained from the Joint Director or Deputy Director of Town and Country Planning, is not correct. In this case, only a consultation is warranted under the Rules and not the approval and the consultation is also an internal arrangement, which the petitioner is not aware of. He also submits that the Panchayat President, who is the competent authority in that area, is empowered to grant approval and it is pertinent to state here that no enquiry has been conducted against the Panchayat President till date. The final submission of the learned counsel for the petitioner is that the Director, who has issued the impugned order dated 18.11.2014, is a third party and he cannot

question the action of the petitioner nor is he the authority, who has sanctioned the building plan.

5. Heard both sides.

6. From the reading of the Rules extracted supra, it is seen that the Executive Authority under the Tamil Nadu Panchayats Buildings Rules, 1997, is the Village President, who is competent to grant approval for construction. What is required is only a consultation with the concerned Joint Director or Deputy Director of Town and Country Planning, in which the petitioner school has no role to play, since it is an internal arrangement between the Panchayat President and the Joint Director or Deputy Director of Town and Country Planning.

7. Admittedly, no action has been initiated against the said Panchayat President, on account of his competency under the Rules to grant such approval. That apart, the petitioner is a Matriculation school, being run within the Malayakoundanpatti Panchayat and the G.O.(Ms) No. 270 School Education (X2) Department dated 22.10.2012 does not insist upon the building plan to be approved by the Joint Director or Deputy Director of Town and Country Planning. Since the executive authority, namely, Panchayat President has approved the building the plan, the act of the petitioner cannot be faulted with in any manner, more particularly, it cannot be said that it is against the provisions of law. Admittedly, the petitioner has fulfilled all the requirements and the only issue raised by the respondent that prior approval of the Joint Director or Deputy Director of Town and Country Planning is mandatory, cannot be accepted, in view of the Rules extracted supra. Hence, this writ petition is allowed. The impugned order dated 18.11.2014 is set aside. In case the respondent finds any violation in the construction of the school building, the same can be brought to the notice of the petitioner school either to modify or change the structure/superstructure of the school building. The respondent shall consider granting permanent recognition to the petitioner School from LKG to X standards, on fulfilling all the requirements, pointed out by them. No costs. Consequently, connected miscellaneous petition is closed.