

(2015) 05 MAD CK 0004
In the Madras High Court
Case No : Writ Petition No. 15391 of 2015

S. Gurushankar

APPELLANT

Vs

The Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Tamil Nadu Town and Country Planning Act, 1971 — Section 113, 32, 49, 56, 57

Citation : (2015) 05 MAD CK 0004

Hon'ble Judges : V. Dhanapalan, J;S. Vaidyanathan, J

Bench : Division Bench

Advocate : S. Silambannan, Senior Counsel for M.A. Abdul Wahab, for the Appellant; R. Vijayakumar, Additional Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V. Dhanapalan, J.—Heard Mr. S. Silambannan, learned Senior Counsel appearing for the petitioner, Mr. R. Vijayakumar, learned Additional Government Pleader, who takes notice on behalf of respondents 1 and 2 and Mr. V. Jayaprakash Narayanan, learned Special Government Pleader, who takes notice for respondents 3 and 4.

2. The Writ Petition is filed seeking to forbear the respondents from taking any coercive action as against the petitioner/Meenakshi Hospital, Thanjavur, pending final orders in the application for exemption, dated 15.10.2014, filed under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as the "Act").

3. The petitioner, Meenakshi Hospital is a Super Speciality Hospital at Thajavur set up in the year 2008-09 outside the Thanjavur Municipal Town in the Village of Neelagiri Therkku Thottam. The petitioner made a request for reclassification of the land in Survey No. 244/2. Thereafter, an application was made on 04.08.2010 for approval of the Hospital Building to the Director of Town and

Country Planning, Anna Salai, Chennai. Nearly after 3 1/2 years, since the Building Plan Approval was granted by the third respondent, a Notice dated 05.08.2014 under Sections 56 and 57 of the Act was issued by the third respondent to the petitioner to vacate from the building and to stop usage of the building. On 05.09.2014, a second notice was issued by the third respondent to the petitioner. Aggrieved by the same, the petitioner sent an exemption application on 16.10.2014 to all the respondents. Pending the said exemption application, the petitioner is before this Court.

4. A Division Bench of the Madurai Bench of Madras High Court, on an earlier occasion, in W.P.(MD) No. 17855 of 2014 (Dr. S. Gurushankar v. State of Tamil Nadu), wherein, one of us (V.DHANAPALAN,J.) was a member, has considered exhaustively the subject matter and directed the Government to take a decision on the application for exemption filed under Section 113 of the Act and it is seen that the matter has been placed before the Committee concerned and discussed in detail and a decision has been taken that the applicant should first obtain change of land use from the Government.

5. We have heard the learned counsel for the parties and perused the material documents available on record.

6. The only apprehension made by the learned counsel for the petitioner is that pending consideration of the exemption application, the respondents are taking steps to proceed further, which may cause serious prejudice and hardship to the petitioner.

7. However, learned Special Government Pleader would submit that as far as the Government's decision under Section 113 of the Act, if the required satisfaction is arrived by the petitioner, then the Government may take a decision and pass appropriate orders.

8. It is submitted that the petitioner has already moved the Government in this regard and therefore, pending decision by the Government, there cannot be any coercive action prejudicial to the interest of the petitioner Hospital, which is serving the public of that locality.

9. In the Writ Petition referred to supra, which was disposed of on 23.12.2014, the Madurai Bench of this Court passed the following order:

"13. The issue involved in this writ petition is as to whether the petitioner can avail the remedy under Section 113 of the Act before the first respondent, claiming exemption from the provisions of the Act.

14. From the pleadings, it could be seen that the petitioner is running a Multi-Speciality Hospital in the outskirts of Thanjavur Municipal Town in the village of Neelagiri Therkkku Thottam. The said Hospital building was constructed in the area of 4,150.30 sq. metres after obtaining necessary approval from the Director of Town and Country Planning, Chennai in No. 227/2010 dated 30.12.2010, Local Planning Authority, Thanjavur No. 01/2011, dated 12.01.2011 and from

Thanjavur, Nilagiri Panchayat No. 05/2011, dated 12.01.2011 and it started operating the services with effect from 05.01.2013.

15. Further, based on the request made by the petitioner for reclassification of 3443.60 sq. metres of land in the above Survey No. 244/2 in Nilagiri Therkku Thortam Village, Thanjavur Local Planning Area, from Mixed Residential Use Zone into Public and Semi Public Use Zone in the approved Master Plan for the Thanjavur Local Planning Area, pursuant to which, the first respondent passed G.O.(2D) No. 427 dated 02.08.2010 changing the use of zone from Mixed Residential Zone into Public and Semi Public Use Zone. Thereafter, on 04.08.2010, he submitted an application in Form No. 1 U/s 49 of the Tamil Nadu Town and Country Planning Act, 1971, seeking approval of the Hospital Building Plan was submitted to the Director of Town and Country Planning, Anna Salai, Chennai-600 002, the second respondent herein, along with the Plan.

16. Pursuant to G.O.(2D) No. 427 of Housing and Urban Development (UD4-1) Department dated 02.08.2010, the third respondent, by exercising the powers conferred under Sub-section (4) of Section 32 of the Act, issued a Notification dated 18.08.2010 whereby he approved the relevant variations made in the Master Plan for Thanjavur Local Planning Area. Only thereafter, on 02.09.2010, he submitted the application for planning permission to the third respondent and accordingly, on 30.12.2010, the building permission was granted by the second respondent herein. On 12.01.2011, the planning approval was granted by the third respondent herein and on 12.01.2011, Panchayat Approval for the Building Plan was granted by the fourth respondent herein. The Hospital Building was constructed and the services were commenced with effect from 05.01.2013 after the Building Completion Certificate was issued by the Nilagiri Panchayat.

17. The specific contention raised by the petitioner is that alleging that the original approval plan must be sent to their office for verification and that if the construction has been carried out as against the conditions imposed along with the approval plan, the construction of work should be stopped and the premises should not be used, the third respondent issued a notice dated 05.08.2014, under Sections 56 and 57 of the Act, for the stoppage of work, to vacate from the building and to stop usage of the building and according to the petitioner, the said notices which were issued by the third respondent after a long lapse of three years, would cause great prejudice to the petitioner and therefore, the petitioner approached the first respondent seeking to invoke its power under Section 113 of the Act, as the said Hospital is situated within the Panchayat limits of Nilagiri Village in Thanjavur Panchayat Union and the purport of the Act appears to be to allow the lands for development in public interest. Since the said application seeking exemption under Section 113 of the Act is still pending, the petitioner moved before this Court for the relief stated supra.

18. It is just and necessary to refer to Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 and the same reads as hereunder:- "113. Exemptions -Notwithstanding anything contained in this Act, the Government

may, subject to such conditions as they deem fit, by notification, exempt any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made thereunder."

19. A mere reading of the aforesaid provision would make it clear that the Government may exempt any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made thereunder, however, subject to such conditions as they deem fit, by way of a notification.

20. Here, in the case on hand, the petitioner has sought for such exemption from the first respondent and he has also made an application before the first respondent claiming exemption under Section 113 of the Act in this regard and admittedly, it is pending consideration. The petitioner has moved before this Court for a direction to the first respondent to consider and pass orders on the said application filed by the petitioner.

21. We find that the petitioner has constructed the said Hospital in the outskirts of Thanjavur Municipal Town in order to cater the medical needs of the people in that locality. Now-a-days, the role of Hospitals, in particular, Multi-Speciality Hospitals, is of paramount importance as it paves the way for saving every lives in the critical hours. The distance of which the Hospital is situated, is a criteria, to bring the patients there in order to afford emergent medical assistance and it is also an undisputed fact that in a minute or two, a life could be saved if proper medical assistance is given and failure thereto, would result in loss of valuable human lives.

22. At this juncture, we would like to refer to the relevant NABH Norms hereunder:

"NATIONAL ACCREDITATION BOARD FOR HOSPITALS and HEALTH CARE PROVIDERS (NABH) NABH is a constituent board of Quality Council of India, set up to establish and operate accreditation and allied programs for healthcare organizations. The board is structured to cater to much desired needs of the patients and to set benchmarks for the progress of health industry.

Participation in NABH accreditation program is on a voluntary basis. Healthcare organization apply to participate in a program run by NABH. The health care organization signs a general Accreditation Agreement stating rights and obligations of all parties concerned. The assessment process is performed using standards and assessment procedures as per policy and procedures made beforehand."

What we achieve:

? Better quality of care;

? Better patient safety e.g. reduced medication errors, reduced transfusion errors;

? Minimized costs e.g. effective utilization of resources; Efficient administrative

processes e.g. lesser waiting time, streamlined process flows;

? Improved outcomes of patient care e.g. reduced mortality rates, reduces infection rates;

? Better employee safety e.g. Vaccination against Hepatitis B. Continuous quality improvement e.g. incident reports, Root Cause Analysis (RCA) and Corrective Action and Preventive Action (CAPA).

NABH is an Institutional Member of the International Society for Quality in Health Care (ISQua).

The award of NABH Accreditation to the healthcare organization means that the organization ensures-

1.Commitment to create a culture of quality, patient safety, efficiency and accountability towards patient care;

2.Establishment of Protocols and Policies as per National/International Standards for patient care, medication management, consent process, patient safety, clinical outcomes, medical records, infection control and staffing;

3.Patients are treated with respect, dignity and courtesy at all times;

4.Patients are involved in care planning and decision making;

5.Patients are being treated by qualified and traced staff;

6.Feedback from patients is sought and complaints (if any) are addressed.

7.Transparency in billing and availability of tariff list;

8.Continuous monitoring of its services for improvement;

9.Commitment to prevent adverse events that may occur." According to the petitioner, the said Hospital is running by adhering to the above NABH norms.

23. It is also seen that if the respondents would proceed further with the notices issued by them under Sections 56 and 57 of the Act, then, it definitely reflects on the inmates of the Hospital, which had recently been commenced its medical services to the people therein. In the Act itself, the power has been given to the Government under Section 113 of the Act, to consider the claim for exemptions from the provisions of the Act and in this case, the petitioner has also submitted an application before the first respondent as well.

24. This Court, while admitting the writ petition on 06.11.2014, has granted an interim order, directing the third respondent not to take any coercive action against the petitioner, on the ground that if any action is allowed to proceed, a lot of prejudice would be caused to the petitioner Hospital, including the patients and the general public.

25. We also find that the prayer sought for by the petitioner is only for a

direction to the first respondent to consider and pass orders on the application filed under Section 113 of the Act to exempt the petitioner from the provisions of the Act. In our considered opinion, a direction could be given to the first respondent to pass orders on the application filed by the petitioner in this regard, keeping in mind the dictum laid down by the Honourable Supreme Court in *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, AIR 2000 SC 3060 : (2000) 4 CTC 181 : (2000) 9 JT 272 : (2000) 6 SCALE 1 : (2000) 7 SCC 425 : (2000) 2 SCR 523 Supp : (2000) AIRSCW 3357 : (2000) 5 Supreme 602 .

26. Considering the facts and circumstances of the case and also taking into account the fact that the petitioner Hospital is providing valuable medical assistance to the inmates of the Hospital and the public at large and also catering the social needs of the rural people in and around the historical District of Thanjavur, we feel it appropriate to direct the first respondent to consider and pass appropriate orders on the application for exemption under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971, sent by the petitioner on 15.10.2014, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Till such time, the third respondent shall not take any coercive action as against the petitioner Hospital as indicated in the interim order passed by this Court on 06.11.2014. However, it is made clear that depending upon the outcome of the application filed by the petitioner under Section 113 of the Act, the authority concerned shall act in accordance with the provisions of the Act.

27. With the above observations and directions, this writ petition stands disposed of, accordingly. Consequently, the connected miscellaneous petition is closed. However, there will be no order as to costs."

10. In the light of the above stated position, as it is informed by the learned counsel for the parties that the matter was placed before the Committee and the Committee has instructed the applicant to go for change of land use and as it is also informed that the petitioner has already moved the concerned authority for consideration, we are of the considered opinion that pending decision by the 1st respondent, there cannot be any action coercive in nature, which may cause serious prejudice to the petitioner Hospital and to the service of the common people.

11. Therefore, we direct the 1st respondent to take a decision on the petitioner's exemption application dated 15.10.2014 filed under Section 113 of the Act and pass appropriate orders within a period of six (6) months from the date of receipt of a copy of this order. Keeping in mind there cannot be any disturbance in running the Hospital and in the facts and circumstances of the case, we consider it necessary to pass an appropriate interim order and accordingly, we direct the respondents to maintain status quo as on date.

With the above direction and observation, this Writ Petition is disposed of. No

costs. Consequently, connected Miscellaneous Petition is closed.