
(2011) 07 MAD CK 0273
In the Madras High Court
Case No : Appeal (MD) No. 255 of 2011

The Member Secretary Local Planning Authority	APPELLANT
Vs	
JVS Educational Trust	RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0273

Hon'ble Judges : P. Jyothimani, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : K. Mahendran, Special Government Pleader, for the Appellant; G. Prabhu Rajadurai, for the Respondent

Judgement

P. Jyothimani, J.—The Writ Appeal is directed against the order of the learned Single Judge in W.P.(MD) No. 10281 of 2009 dated 26.04.2010.

2. The issue involved relates to the claim of the writ Petitioner, who is a first Respondent herein for modification of lay out for converting a place, which was earmarked for Children School, for public purpose, to that of housing unit. The writ Petitioner has filed the writ petition on the basis that the institution was a lessee, in which it was conducting the School. The writ Petitioner has also challenged the order of the Member Secretary, Local Planning Authority, refusing to grant such permission. During the course of argument in the writ petition, the learned Government Advocate has accepted that on the writ Petitioner paying developmental charges, the required order would be passed permitting the Petitioner to convert the plot from Children School to housing.

3. Under these circumstances, the learned Judge has disposed of the writ petition with a direction to the first Respondent in the writ petition, who is the Appellant herein, to pass suitable orders converting the property purchased by the writ Petitioner from Children School to that of housing on payment of the required developmental charges. The operative portion of the order in that regard is as follows:

3. Though a lengthy counter affidavit is filed on behalf of the first Respondent, the learned Government Advocate submitted that if the Petitioner pays the developmental charges, the required order would be passed permitting the Petitioner to convert the plot from children school to housing.

4. The first Respondent in the writ petition has filed the present appeal on the ground that neither the first Respondent nor the Government has any power to convert any place allotted for public purposes to that of housing sites by relying upon the Division Bench judgment of this Court in K. Rajamani, R.M. Chinna Alamu rep. by Power Agent V. Ramasamy and R.M. Meenakshi rep. by Power Agent V. Ramasamy Vs. Alamunagar Residents Welfare Association, The State of Tamil Nadu and The Special Commissioner Town and Country Planning Department, , wherein by referring the various provisions of the Tamil Nadu Town and Country Planning Act, the Division Bench has held that neither the Government nor the planning authority have any power to exempt the land for being put to use for any other public purpose other than one for which, it was earmarked. It is also the case of the Appellant as submitted by Mr. K.Mahendran, Special Government Pleader, that the writ Petitioner being a lessee cannot claim as a matter of right a right to put up construction as housing unit.

5. On the other hand, it is the contention of the learned Counsel for the first Respondent/writ Petitioner that the order having been passed by consent of the learned Government Advocate, it is not open to the Appellant to file an appeal, which according to the learned Counsel, is not maintainable.

6. We have heard the learned Special Government Pleader for the Appellant and the learned Counsel for the first Respondent/writ Petitioner.

7. On the basis of the consent given by the learned Government Advocate, the order came to be passed by the learned Single Judge. However, whether to grant permission for conversion of a Children School to that of a housing unit is ultimately for the Appellant to decide in the manner known to law, especially, by applying the provisions of the Tamil Nadu Town and Country Planning Act. While deciding the same, the authority can always consider the latest legal proposition in that regard including the Division Bench judgment relied upon by the Appellant reported in 2011 (1) CTC 257. But, as far as the contention raised by the learned Special Government Pleader now that the first Respondent/writ Petitioner being a lessee cannot claim as a matter of right for the purpose of converting the Children School to that of housing plot, the same, in our considered view, cannot be raised for this reason that the writ Petitioner himself has come to this Court on the specific ground that for modification of lay out for converting the Children School to that of housing as a lessee, it is not as if the Petitioner has suppressed all the facts and thereafter only the order came to be passed.

8. In these circumstances, we are of the considered view that there is No. scope for interfering with the order of the learned Judge, except to modify the order to the effect that the Appellant shall pass appropriate orders in the manner known

to law by applying the provisions of the Tamil Nadu Town and Country Planning Act, by taking away the positive directions issued by the learned Judge directing to convert the Children School to that of housing unit. It is brought to the notice of this Court that the present Appellant, who is a Member Secretary, Local Planning Authority, can only forward the proposal and ultimately the second Respondent in the writ appeal, namely, the Director of Town Planning, Town and Country Planning Department, who alone is the appropriate authority to pass orders. Accordingly, the Writ Appeal is ordered with a direction to the second Respondent to pass appropriate orders by applying the provisions of the said Act in respect of the request made by the first Respondent/writ Petitioner for conversion of the Children School to that of the housing plot. While considering the same, it is for the second Respondent herein to follow the provisions of the Act as well as judgment. The said order shall be passed within a period of twelve weeks from the date of receipt of a copy of this order. No. costs.