



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Second day of February Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.MANIKUMAR
and
The Hon`ble Mr.Justice C.T.SELVAM

CMP(MD) No.1866 of 2016
IN
WA(MD) No.SR4219 of 2016

REV.C.SIMON

..PETITIONER IN CMP(MD) No.1866 of 2016
IN WA(MD) No.SR4219 of 2016

Vs.

1 K.P.ANIL KUMAR

2 THE DISTRICT COLLECTOR,
KANYAKUMARI DISTRICT, NAGERCOIL.

3 THE REVENUE DIVISIONAL OFFICER
PADMANABHAPURAM, KANYAKUMARI DISTRICT.

4 THE TAHSILDAR,
KALKULAM TALUK,
KANYAKUMARI DISTRICT.

..RESPONDENTS IN CMP(MD) No.1866 of 2016
IN WA(MD) No.SR4219 of 2016

Prayer in CMP(MD)No.1866 of 2016 : Civil Miscellaneous Petition filed under Section 151 of C.P.C. that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to pass an order of granting leave to file Writ Appeal as against the order passed in WP(MD)No.19640 of 2015 dated 29/10/2015.

WA(MD)SR.No.4219 of 2016 : Writ Appeal filed under clause 15 of the Letters Patent Act, against the order passed in WP(MD)No.19640 of 2015 dated 29/10/2015.

Prayer in WP(MD)No.19640 of 2015 : This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondents to grant permission for the construction of compound wall at Sri Dharma Sastha Kavu Temple, situated in Survey No.66/22 Pallikuzhivilai, Attur Village, Kalkulam Taluk, Kanyakumari District based on the petitioner's application and

[https://hcservices.mca/hcservices/](https://hcservices.mca/hcservices/https://hcservices.mca/hcservices/) dated 12.06.2015 within the period stipulated by this Court.



ORDER : This Civil Miscellaneous Petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.C.HEROLD SINGH, Advocate for the petitioner and of MR.A.K.BASKARA PANDIAN, Special Government Pleader for the 2 to 4 respondents and this court made the following order:-

(Order of this Court was made by S.MANIKUMAR, J.)

Not satisfied with the order impugned in W.P.(MD)No.19640 of 2015, dated 29.10.2015, Rev.C.Simon, Senior Pastor of Assembly of God Church, Kanyakumari District, has filed CMP.(MD)No.1866 of 2016 in W.A.(MD)Sr.No.4219 of 2016, seeking Leave of the Court to file an appeal.

2.Inviting the attention of this Court to the cause title made in W.A.(MD)Sr.No.4219 of 2016 and referring to certain provisions of the District Municipalities Act, Mr.S.C.Herold Singh, learned counsel appearing for the petitioner / appellant submitted that without impleading the Assembly of God Church, Kanyakumari District, the Writ Court has directed consideration of the representation of the respondent / writ petitioner, dated 12.06.2015. He also submitted that, when the writ petition itself is not maintainable, such a direction ought not to have been issued.

3. We have heard learned counsel for the petitioner / appellant and perused the materials on record.

4.After extracting the averments made in the supporting affidavit of the prayer sought for, the Writ Court has only directed the representation of the petitioner, dated 12.06.2015 and to pass order with regard to granting permission for the construction of compound wall at Sri Dharma Sastha Kavu Temple, situated in Survey No.66/22, Pallikuzhivilai, Attur Village, Kalkulam Taluk, Kanyakumari District, on merits and in accordance with law, by affording an opportunity of hearing to all the necessary parties, within a period of four weeks from the date of receipt of a copy of the order made in the Writ Petition. The Writ Court has not expressed any opinion on the merits of the claim of the writ petitioner.

5. First of all, no adverse order is passed against the petitioner / proposed appellant. All that has been directed by the Writ Court is to consider the representation of the writ petitioner



on merits. Having known the orders of this Court made in W.P.(MD) No.19640 of 2015, dated 29.10.2015, it is always open to the petitioner / proposed appellant, to make a representation / petition to the District Collector, Kanyakumari District and to raise all the grounds available to the petitioner, under the Provisions of the District Municipalities Act or any other act applicable, in relation to the construction of any temple / church etc., and if such representation / petition is made, the District Collector, Kanyakumari District, is bound to provide an opportunity of hearing to all the necessary parties, as ordered by this Court.

6. As observed earlier, no adverse order has been passed against the respondent. Whether the writ petitioner had any constitutional / statutory or other rights sought to be vindicated in the Writ Petition, is not required to be adjudicated at this juncture, when the writ petitioner has only sought for his representation to be considered.

7. In the light of the above discussion, we are of the considered view that there is no need to grant leave to the petitioner / appellant to file an appeal, as the right of the petitioner / proposed appellant are already protected by the Writ Court. Accordingly, this petition is dismissed.

Sd/-

Assistant Registrar(C.O.) (I/C)

/True Copy/

Sub Assistant Registrar

TO

- 1 THE DISTRICT COLLECTOR, KANYAKUMARI DISTRICT, NAGERCOIL.
- 2 THE REVENUE DIVISIONAL OFFICER, PADMANABHAPURAM, KANYAKUMARI DIST.
- 3 THE TAHSILDAR, KALKULAM TALUK, KANYAKUMARI DISTRICT.

Akm/03.03.2016/3p-4c/GSV/PM/SAR-I

DATED : 22/02/2016

ORDER

CMP(MD) No.1866 of 2016

IN

WA(MD) No.SR4219 of 2016

Giving directions etc., as stated within.