

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
08.04.2019	19.09.2019

WEB COPY

CORAM:

**THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**WP. (MD) Nos.6493, 6494 and 6495 of 2019
and
WMP (MD) Nos.5190, 5191 and 5192 of 2019**

- 1.T.Sekar ... Petitioner
in W.P. (MD) No.6493 of 2019
- 2.M.N.Abdul Raheem ... Petitioner
in W.P. (MD) No.6494 of 2019
- 3.S.Velusamy ... Petitioner
in W.P. (MD) No.6495 of 2019

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Housing and Urban Development,
Fort. St.George, Chennai- 600 009.
- 2.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Municipal Administration and
Water Supply, Fort St.George, Chennai- 600 009.
- 3.The District Collector, Dindigul District, Dindigul.
- 4.The Member Secretary/ Commissioner,
Kodaikanal Municipality and
Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.
- 5.The Director,O/o. The Director,
Town and Country Planning,
Mount Road, Chennai.
- 6.The Deputy Director, O/o.The Deputy Director,
Town and Country Planning, Madurai.



7.The Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited(TANGEDCO),
Kodaikanal Municipality, Kodaikanal.

8.The Executive Engineer,
Vilpatti Panchayat, Kodaikanal Taluk,
Dindigul District.

... Respondents in all W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus prohibiting the respondents from proceeding with the lock and seal and demolition of religious institutions situated within Kodaikanal, Kodaikanal Taluk, Dindigul District.

For Petitioners : Ms.J.Anandhavalli
in all W.Ps
For Respondents : Mr.K.Chellapandian
in all W.Ps Additional Advocate General
assisted by Mr.A.K.Bhaskarapandian
Additional Government Pleader
(for R1 to R6)

Mr.S.M.S.Johny Basha (for R7)

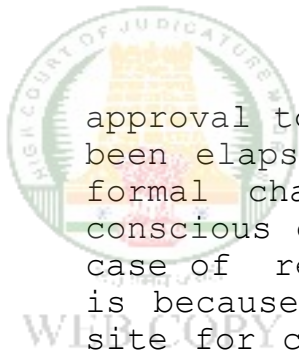
Mr.T.S.Mohamed Mohideen (for R8)

COMMON ORDER

(Order of the court was made by G.R.SWAMINATHAN, J.)

The writ petitioners represent the three major religions namely, Hinduism, Islam and Christianity. They have come together to make a common prayer. They want this Court to restrain the authorities from taking any action against the religious structures that have been put up in violation of the law of the land. The petitioners' counsel would plead that this Court must adopt a pragmatic approach. A new master plan had come into force and therefore the issue ought not to be approached in the light of the position that earlier prevailed.

2.We are conscious that after a gap of almost twenty six years, a new master plan has been notified for Kodaikanal. It is true that in the cases of buildings that have violated the zoning regulations, we permitted the applicants to submit a fresh application so that the same can be considered by the authorities in the light of the new master plan. That does not mean we have given our seal of



approval to the new master plan. Though more than three months have been elapsed after the new master plan was notified, there was no formal challenge to it at the instance of any environmentally conscious citizen. But, we cannot apply the same yardstick in the case of religious structures that have been illegally put up. This is because there is a specific prohibition against the use of any site for construction of a building intended for public worship or religious purposes without the prior approval of the District Collector.

3. Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972 reads as under :

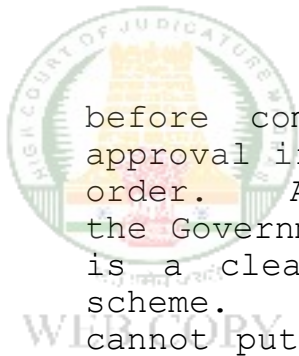
"(4) No site be used for the construction of a building intended for public worship or religious purposes, without the prior approval of the Collector of the district who may refuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order.

Provided that an appeal shall lie against the Collector's decision to the Government who may issue such orders as they deem fit."

4. The learned counsel appearing for the petitioners would contend that the requirement of obtaining prior approval is not mandatory but only directory. We are unable to accept the aforesaid submission. The Hon'ble Supreme Court quoting "Craies on Statute Law" in the decision reported in **(2005) 7 SCC 234 (Shin-Etsu Chemical Co.Ltd vs. Aksh Optifibre Ltd)** held that if the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, then those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding.

5. In the case on hand also, the statute has expressed the requirement in a negative language. The Rule starts with the expression "No site be used". It is also well settled that if penal consequences have been prescribed for not adhering to a requirement, then it shall be construed as a mandatory requirement. Section 317 of the Tamil Nadu District Municipalities Act, 1920 levies penalty if the construction or reconstruction of any building is carried on or completed in contravention of any lawful order or in breach of any provision contained in the Act or in the Rule made thereunder. Thus, a violation of Rule 6(4) will invite penal action in terms of Section 317 of the parent Act. That apart, an illegally put up building will invite demolition also.

6. The expression used in the Rule is "prior approval". The term "prior" has been defined in Black's Law Dictionary, (Eighth Edition) as "preceding in time or order". Therefore, a person intending to use a site for putting up a building for religious purposes will have to take the approval of the District Collector



before commencing the construction. The Collector can refuse approval if in his opinion it is likely to endanger public peace and order. An appeal shall lie against the Collector's decision to the Government. The fact that an appeal is provided in the statute is a clear indicator of the importance attached to the entire scheme. The provision does not talk of "post approval". One cannot put up a temple in violation of this Rule and then present the authority with a fait accompli.

7.If the law prescribes that something is to be done in a certain manner, it shall be done in that manner and not in any other manner. The consequence has been clearly, categorically and unambiguously laid down. One must take the prior approval of the District Collector for the construction of a building intended for public worship and religious purposes and only thereafter start construction. The meaning of the Rule is simple and plain. It only requires strict implementation and application. If a building for public worship or religious purpose has been constructed without the prior approval of the District Collector, then law will have to take its own course.

8.The prayer made in the writ petition is rather sweeping and omnibus in nature. The writ petitioners' case is not that they have put up the structures in question in conformity with law. They are not even praying that the procedure laid down in the law will have to be followed before coercive action is taken. Instead what the petitioners are asking is that the authorities should be prohibited from proceeding with the exercise of locking and sealing and demolishing the illegally put up religious structures. If this Court issues a mandamus as prayed for by the petitioners, it would be calling upon the authorities not to enforce the law. The Hon'ble Supreme Court in the decision reported in **(1996) 9 SCC 309 (State of U. P. and others vs. Harish Chandra and others)** held as follows :

"10.....Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law."

9.Therefore, the prayer made by the petitioners is clearly not maintainable. The learned counsel for the petitioners tried to paint a scary scenario. She submitted that Kurinji Andavar Temple and Saleth Matha Shrine were built more than hundred years ago and that they cannot obviously produce any planning permission and that



they cannot be made to face the wrath of law. We are afraid that the arguments advanced by the petitioners' counsel is rather extreme. The Tamil Nadu Town and Country Planning Act came into force in the year 1971. The Tamil Nadu District Municipalities Building Rules came into force in the year 1972. Those constructions that were put up prior to the implementation of these action Rules will obviously not be targeted. But structures that were put up later obviously are vulnerable and this Court will not insulate them from action at the hands of the authorities.

10. We find no merit in these writ petitions. They stand dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

To

1. The Principal Secretary,
Department of Housing and Urban Development,
Fort. St. George, Chennai- 600 009.
2. The Principal Secretary,
Department of Municipal Administration and
Water Supply, Fort St. George, Chennai- 600 009.
3. The District Collector,
Dindigul District, Dindigul.
4. The Member Secretary/ Commissioner,
Kodaikanal Municipality and
Kodaikanal Local Planning Authority,
Kodaikanal, Dindigul District.
5. The Director, O/o. The Director,
Town and Country Planning,
Mount Road, Chennai.
6. The Deputy Director, O/o. The Deputy Director,
Town and Country Planning, Madurai.
7. The Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Kodaikanal Municipality, Kodaikanal.



8.The Executive Engineer,
Vilpatti Panchayat, Kodaikanal Taluk,
Dindgul District.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate
(SR-87788[F] dated 19/09/2019)
+2 CC to M/s.J.ANANDHAVALLI, Advocate
(SR-87792[F] dated 19/09/2019)
(SR-87791[F] dated 19/09/2019)

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