



WEB COPY

W.P.(MD)No.886 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.886 of 2021

and

W.M.P. (MD)Nos.747 & 745 of 2021

P.Bison

... Petitioner

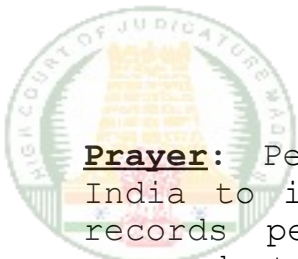
-Vs-

- 1.The District Collector,
Kanyakumari District,
at Nagercoil.
- 2.The Superintendent of Police,
Office of the Superintendent of Police,
Nagercoil,
Kanyakumari District.
- 3.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Nagercoil,
Kanyakumari District.
- 4.The Tahsildar,
Agastheeswaram Taluk,
Agastheeswaram,
Kanyakumari District.
- 5.The Commissioner,
Nagercoil City Municipal Corporation,
Nagercoil,
Kanyakumari District.
- 6.The Deputy Superintendent of Police,
O/o. Deputy Superintendent of Police,
Nagercoil,
Kanyakumari District.
- 7.The Inspector of Police,
Vadasery Police Station,
Vadasery,
Kanyakumari District.
- 8.Paulraj

9.Manikandan

<https://hcservices.ecourts.gov.in/hcservices/>

... Respondents.



Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice issued by the fifth respondent vide his Letter in Na.Ka.No.10716/2020/F1, dated 28.12.2020 and consequential impugned order passed by the third respondent vide his proceedings in A3/4730/2020, dated 02.01.2021 and quash the same as illegal and consequently, forbearing the respondents 1 to 7 from interfering into the prayer sessions and performance of the religious rituals conducted in the petitioner's building situated at JCC, Good News Mission Sabai, No.105/C2, Gown Street, Vathiyarvillai, Nagercoil, Kanyakumari District within the time stipulated by this Court and for other reliefs.

For Petitioner: Mr.G.Anto Prince

For R1 to R6 : Mr.C.Ramesh

Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for R1 to R6.

2.The petitioner is a priest affiliated to one of the Christian denominations. The petitioner states that he conducts prayer sessions and other activities for the promotion of Christian religion. He would further state that these activities are being conducted in the petition mentioned premises. It is further claimed that these activities are going on for the last 23 years. Whiles, the petitioner wanted to renovate the premises. He therefore applied to Commissioner, Nagercoil City Municipal Corporation for permission. The fifth respondent informed the petitioner vide Communication bearing Na.Ka.No.10716/2020/F1, dated 28.12.2020 that it is not open to the Corporation to grant the permission sought for. The petitioner was also issued with another communication dated 02.01.2021 issued by the RDO, Nagercoil, restraining the petitioner from carrying on with any religious activities in the petition mentioned premises. The petitioner had also been directed not to proceed with any construction activity. Questioning these communications, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His claim is that his fundamental right guaranteed under Article 25 of the Constitution of India has been infringed by the aforesaid refusals and denial of permission. The petitioner also would refer to some of the Judgments pronounced by the Madras High Court on earlier occasions. In support of his contention that there is no need to get prior permission from any authority for carrying on with the aforementioned religious activities, the



learned counsel wanted this Court to quash the impugned orders and restrain the respondents from interfering with the religious activities of the petitioner at the petition mentioned premises.

4.The learned Special Government Pleader appearing for the respondents 1 to 6 submitted that the orders impugned in the writ petition are strictly in conformity with the statutory provisions and that, therefore, no interference is called for.

5.I carefully considered the rival contentions and went through the materials on record.

6.Nagercoil was a Municipality till it became a Corporation. Tamil Nadu District Municipalities Building Rules, 1972, governed the field till recently. Rule 6(4) of the said Rules clearly states as follows:-

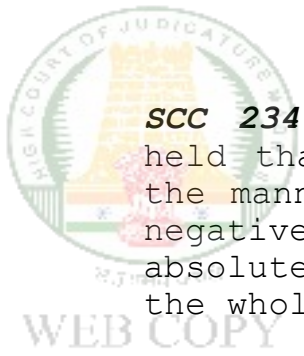
"(4)No site be used for the construction of a building intended for public worship or religious purposes, without the prior approval of the Collector of the district who may refuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order.

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

7.The building rules contemplate "prior approval" of the District Collector. The petitioner has nowhere pleaded that he had obtained the prior permission of the District Collector for putting up the existing premises which are used for public worship and religious purposes. The Rule is very clear and categorical. It states that without prior permission of the District Collector, no site can be used for construction of any building intended for public worship or religious purposes. The petitioner further admits that he is engaged in activities meant for promotion of Christian religion. Therefore, for putting up or renovating the premises, in which, such activities are being conducted or proposed to be conducted, the prior approval of the District Collector is necessary and if such approval has not been obtained, then, premises cannot be allowed to be used for such religious activities.

8.The aforesaid Rule and in particular, the expression "prior approval" has already been dealt with by the Division Bench of the Madurai Bench of Madras High Court in *W.P.(MD)Nos.6493, 6494 & 6495 of 2019, vide order dated 19.09.2019*. The Division Bench (to which I was a party) held as follows:-

"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."

9. Kanyakumari is a communally sensitive region. It witnessed clashes in the early 80's on communal lines. The Government of

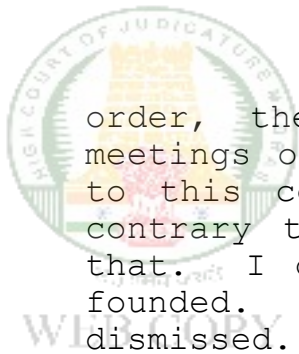


Tamil Nadu set up Justice P.Venugopal Commission to enquire into the incident. The report of the Commission was accepted and to prevent future clashes, the Government of Tamil Nadu issued G.O.Ms.No.916, dated 29.04.1986. The said G.O contemplates that for putting up any structure intended for religious use, prior permission of the District Collector must be obtained. The said requirement is still holding good.

10.The foremost contention of the petitioner's counsel is that the fundamental right guaranteed under Article 25 of the Constitution of India have been violated. But this right is not an absolute right. In fact, no right can be absolute. The Constitution has specifically made these rights subject to public order. Scope for judicial review in matters having law and order implications is rather limited. The Hon'ble First Bench, in the decision reported in 2004 5CTC 554 (***Rama Muthuramalingam, Vs. The Deputy Superintendent of Police***) held that in administrative matters, the Court should ordinarily defer to the decision of the administrators, unless the decision is illegal or shockingly arbitrary.

11. In ***State of Karnataka and Ors. vs. Praveen Bhai Thogadia, (2004) 4 SCC 684***, it was observed that Courts should not normally interfere with matters relating to law and order. They fall primarily within the domain of the concerned administrative authorities who are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities, within their special knowledge. It was further observed that in such matters, court cannot act as an appellate authority over the decision of the official concerned. Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimization by those in power, normally interference should be the exception and not the rule. The Court cannot in such matters substitute its view for that of the competent authority.

12.In the typed set of papers, the petitioner has not enclosed any permission obtained from the District Collector before putting up the premises in question. Even according to the petitioner, "Good Newses Mission Church" was registered only in 2001. As already pointed out, the Building Rules are in force right from 1972. The petitioner has only given a representation on 04.12.2020. It cannot be called as a statutory or a formal application. The RDO, Nagercoil, is the executive Magistrate under Cr.P.C. and he has to maintain law and order. He had stated that there is opposition from the local public against the petitioner's activities. The expression "considerable opposition is found in the impugned communication". The Tahsildar as well as the local police have also advised that the petitioner should not proceed with the construction activity. The RDO had only stated that since there is scope for breach of law and



order, the petitioner can put up construction or hold prayer meetings only after getting permission. No exception can be taken to this communication of the RDO. No Court can issue Mandamus contrary to law. The petitioner wants this Court to do exactly that. I decline to do so. The impugned communications are well founded. They do not call for interference. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The District Collector,
Kanyakumari District,
at Nagercoil.
- 2.The Superintendent of Police,
Office of the Superintendent of Police,
Nagercoil,
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O/o. Deputy Superintendent of Police,
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Kanyakumari District.

7.The Inspector of Police,
Vadasery Police Station,
Vadasery,
Kanyakumari District.

+1 CC to M/s.GP (SR-1832[F] dated 22/01/2021)

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-1563[F] dated 21/01/2021)

W.P.(MD)No.886 of 2021
and
W.M.P.(MD)Nos.747 & 745 of 2021

21.01.2021

RK (23.04.2021) 7P 10C