



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.2595 of 2021

Roman Catholic Diocese of Palayamkottai,
Aayar Illam, Thoothukudi Road,
Palayamkottai,
Through its Procurator,
Rev.Fr.S.A.Antonysamy.

... Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Tenkasi.

2.The Block Development Officer,
Office of the Block Development Office,
Kadayanallur, Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the 2nd respondent in Na.Ka.A5/75/2020 dated 28.11.2020 and quash the same and consequently directing the respondents to grant plan approval for construction of the building in S.No.464/1 situated at Nainaragaram, Tenkasi District by considering petitioner representation dated 17.12.2020 within the time stipulated by this Court.

For Petitioner : Mr.Krishnan.S

For Respondents : Mr.V.Anand,

Government Advocate for R1.

Mr.A.Karthik,

Government Advocate for R2.

ORDER

Heard the learned counsel for the writ petitioner and the learned Government Advocate for the respondents.

2.The petitioner applied to the second respondent for constructing a tuition centre at the petition mentioned site. The petitioner's application was approved vide proceedings dated 11.11.2019. But contrary to the terms of the planning approval, it appears that the petitioner was putting up a church. This gave rise to law and order problem in the locality. The Superintendent of Police, Tenkasi District wrote a letter to the District Collector, Tenkasi in this regard. Thereupon, by order dated 20.03.2020, the



second respondent cancelled the permission earlier granted.

3.In the meanwhile, the petitioner's counsel submitted a petition to the District Collector seeking permission for the construction that is coming up now in the petition mentioned site as a meditation centre. That request was rejected vide order dated 28.11.2020. That is put to challenge in this writ petition.

4.When the matter was taken up for admission, I indicated that the impugned communication dated 28.11.2020 is mere intimation that the planning approval earlier granted in favour of the petitioner has been cancelled and that therefore, this intimation by itself is not amenable to challenge. Thereupon, the matter was adjourned to enable the respondents to serve a copy of the order dated 20.03.2020, whereby the planning approval was cancelled.

5.Today when the matter was taken up, copy of the said order has been served on the petitioner's counsel. The petitioner's counsel states that he may be given liberty to challenge the said order.

6.The question of granting liberty does not arise. If the petitioner is otherwise having a right in law to question an order, it is always open to him to challenge the same. But I cannot help observing that having applied for permission to construct a tuition centre, the petitioner appears to have diverted the purpose and had instead proceeded to put up a church. The relevant building rules clearly states that for putting up a place of public worship, one has to necessarily obtain prior approval. The Hon'ble Division Bench of this Court in W.P.(MD)Nos.6493, 6494 and 6495 of 2019 vide order dated 19.09.2019 held as follows:-

"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*

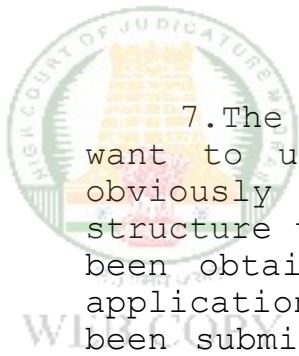


which something is to be done are expressed in negative language, then those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding.

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."



7.The petitioner is a congregation. When they state that they want to use the proposed construction as a meditation hall, it obviously means that they want to put the petition mentioned structure to religious use. Therefore, prior approval ought to have been obtained. Of course, it is to obtain such an approval, an application was submitted. But then, this application should have been submitted before putting up the construction. The petitioner cannot seek any post facto approval. These aspects have been clarified already in the order of the Division Bench.

8.With these observations, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (Records)

// 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,
Office of the District Collector,
Tenkasi.
- 2.The Block Development Officer,
Office of the Block Development Office,
Kadayanallur, Tenkasi District.

+1 CC to M/s.A.KARTHIK, Advocate (SR-5342[F] dated 16/02/2021)

+1 CC to M/s.SPL GP (SR-5312[F] dated 16/02/2021)

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SVN(CO)
KB(26.02.2021) 4P 5C