



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.12822 of 2021

Kumara Nesan

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
Nagercoil-1.

2. The Deputy Collector,
Kanyakumari District,
Nagercoil-1.

3. The Assistant Director,
Town and Country Planning,
Collectorate Campus,
Nagercoil, Kanyakumari District.

4. The Executive Officer,
Karungal Town Panchayat,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to consider the representation of the petitioner dated 08.07.2021 requesting the 3rd respondent to grant plan approval for the petitioner's premises at Survey No.591-16, Midalam Village, Vadalikoodal Village, Karungal Post, Kanyakumari District.

For Petitioner	: Mr.Justin
	For Mr.M.Ashok Padmaraj
For Respondents 1 to 3	: Mr.A.K.Manikkam
	Standing Counsel for Government
For Respondent No.4	: Mr.Shanmugavel

O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

With the consent on either side, the Writ Petition is taken up for final disposal.

2.Heard Mr.Justin for Mr.M.Ashok Padmaraj, learned Counsel appearing for the petitioner, Mr.A.K.Manikkam, learned Standing Counsel for Government appearing for the respondents 1 to 3 and



Mr. Shanmugavel, learned Counsel for the fourth respondent.

3. The petitioner seeks for a direction upon the first respondent to consider his representation dated 08.07.2021 for grant of approval to use the premises in Survey No.591-16, Midalam Village, Vadalikoodal Village, Karungal Post, Kanniyakumari District, as a place of worship / Church. Admittedly, without obtaining any such approval, the petitioner constructed the building and has started using it as a place of worship. This was objected to by the local persons and they moved this Court by way of a writ petition in W.P.[MD]No.6764 of 2021, which was disposed of by order dated 16.06.2021. The operative portion of the order reads as follows:

"5. Further, it is stated that no prior permission or approval has been obtained from the competent authority ie., from the District Collector as per the Tamil Nadu District Municipalities Building Rules, 1972. Further, it is stated that the sixth respondent was directed to stop the worship in the said building by notice dated 25.11.2019. In view of the proceedings issued to stop the prayer permitting the people other than his family members, the sixth respondent has stopped the prayer meeting in the said building. It is further submitted that an application was filed by the sixth respondent for permission to use the building as a prayer hall and that he is going to put up construction. The third respondent would state that no permission was granted for the construct and the application has been forwarded to the District Collector, Kanniyakumari District by proceedings dated 06.05.2019. Since, there is strong objection in the locality for conducting prayers permitting outsiders, the District administration has not granted any permission and if any permission is granted for religious worship, that may create law and order problem in the locality which may disturb the communal harmony. Hence, the third respondent has not recommended for any building approval to the sixth respondent except forwarding the application to the competent authority.

6. Learned Counsel for the sixth respondent submitted that the sixth respondent had been waiting for quite a long time and he has started construction.

7. If that is so, it is illegal. As stated by the competent authority now, the proposal is pending before the District Collector. Therefore, unless and until permission is granted and building plan approval is issued, no construction can be made. As



undertaken by the petitioner, pursuant to the notice issued by the Town Panchayat on 25.11.2019, the sixth respondent shall not permit any person other than the family members to come into for conducting any prayers. If the third respondent finds any unauthorised construction, the same can be removed after notice to the sixth respondent. The above direction be complied with within a period of two [2] weeks from the date of receipt of a copy of this order."

4.Pursuant to which, now the petitioner is appeared to have realised his mistake and approached the first respondent for getting approval. Much reliance has been made on the recommendation made by the Deputy Collector, Kanyakumari District, to the District Collector, Kanyakumari District, vide proceedings dated 16.03.2020. The said communication is in the nature of recommendation and may not bind the District Collector, who can take an independent decision. At best, the recommendation can be an assistance in the decision making process. In the communication dated 16.03.2020, the Deputy Collector notices that the building consists of ground plus two floors and in the second floor measuring an extent of 5000 sq. ft., a Church is functioning with air-conditioned rooms. If such is the factual position, it is not clear as to how the Deputy Collector can give a post-facto recommendation.

5.Be that as it may, it is for the District Collector to consider the representation given by the petitioner. Since the building has been put to use as a place of worship without obtaining approval and without obtaining appropriate building plan, the fourth respondent will be well justified in locking and sealing the building and also taking steps to demolish the building. However, since the petitioner has realised the mistake and filed an application to the District Collector, we direct that the building should not be used as a place of worship, except for any residential accommodation which is used by the petitioner. The learned Counsel for the respondent submitted that he will instruct his client that the building should not be used as a place of worship. This should be verified by the fourth respondent and a report should be submitted to the District Collector, Kanyakumari District.

6.In the light of the above, we direct the first respondent to take note of all the facts prevailing in the area, issue notice to the neighbouring persons including R.Thurairaj, who was the petitioner in W.P.[MD]No.6764 of 2021 and after hearing all the parties, a reasoned decision be taken on merits and in accordance with law as expeditiously as possible.



7. Accordingly, the Writ Petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (W)

// True Copy //

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/ /2021

Sub Assistant Registrar(CS)

MR

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,
Nagercoil-1.
2. The Deputy Collector,
Kanyakumari District,
Nagercoil-1.
3. The Assistant Director,
Town and Country Planning,
Collectorate Campus,
Nagercoil, Kanyakumari District.
4. The Executive Officer,
Karungal Town Panchayat,
Kanyakumari District.

+1 CC to M/s.SPL GP (SR-24389[F] dated 29/07/2021)

+1 CC to M/s.ASHOK PADMARAQJ, Advocate (SR-24295[F] dated 29/07/2021)

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KB(05.08.2021) 4P 7C