



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2021

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No.17342 of 2019

S.Paul Raj

... Petitioner

Vs.

1. The Executive Officer,
Thalakkudi Panchayat,
Kanyakumari District.

2. The Inspector of Police,
Aralvaimozhi police station,
Kanyakumari District.
(R-2 is suo motu impleaded
vide order dated 12.02.2021)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent herein by considering the petitioner's representation dated 25.05.2018 to assess and assign a door number for the dwelling house constructed by him based on the approved building plan dated 01.06.2018 in Approval No.32/2018-2019 and pass appropriate order within a time stipulated by this Court.

For Petitioner : Mr.V.Meenakshisundaram,
for Mr.D.Nallathambi.

For Respondents : Mr.M.Rajarajan,
Standing Counsel.

* * *

O R D E R

The Inspector of Police, Aralvaimozhi police station, Kanyakumari District, is *suo motu* impleaded as the second respondent.

2. Mr.M.Rajarajan, learned Additional Government Pleader takes notice for the impleaded second respondent.

3. Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondents.

4. The case of the petitioner is that he purchased a vacant land from one Sathyanathan and others vide registered sale deed dated 10.01.2005. He planned to construct a dwelling house and he approached the local body along with the building plan. The building



plan was approved on 18.08.2011 and the petitioner had almost completed the construction. The grievance of the petitioner is that the local body is not assessing the property to property tax. He is also aggrieved that no door number has been assigned for the dwelling house.

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5. When the matter was taken up for hearing, it is submitted by the respondents that even though the petitioner wanted to put up only a residential construction, the petitioner has attempted to convert the same into a place of worship and that is why, the local body has declined to assess the property to property tax. There can be no dispute that as per the relevant statutory rules for putting up a place of worship or even using the site for religious purposes, the prior approval of the District Collector will have to be obtained. The expression "prior" is of significant import. 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."

6. Whatever be the character of local body, whether it is village panchayat, town panchayat, municipality or corporation, the same approach must be adopted. In this case, the petitioner wanted to put up only a residential construction. He was granted permission only to put up a dwelling house. Therefore, it is not open to the petitioner herein to convert such a building for religious purpose. The petitioner is of course entitled to offer his worship along with his family members. But in the guise of exercising his right of worship, the petitioner cannot have a congregation in this regard. The word "family members" means the petitioner's wife, children and immediate relatives. This cannot by any stretch of imagination, be converted into a congregation. Therefore even while directing the first respondent to assess the petition mentioned house to property tax and to assign door number therein, the respondents will ensure



that the petitioner does not utilise the said house as a public place of religious worship.

7. I make it clear that if this direction is violated, the petitioner will be visited the consequence of Contempt of Court. This writ petition stands allowed on these terms. No costs.

Sd/-

Assistant Registrar (CS III)

// 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 Executive Officer,
Thalakkudi Panchayat,
Kanyakumari District.
2. The Inspector of Police,
Aralvaimozhi police station,
Kanyakumari District.

W.P. (MD) No.17342 of 2019

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