



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.22242 of 2021

G.Devadasan

... Petitioner

-Vs-

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Superintendent of Police,
SP Office, Nagercoil,
Kanyakumari District.
- 3.The Deputy Superintendent of Police,
Thakkalai,
Kanyakumari District.
- 4.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.
- 5.The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the fifth respondent's order in his proceedings 99/T2PS/2021, dated 07.12.2021 his proceedings and quash the same as non application of mind and further direct the fifth respondent to grant permission to celebrate Christmas Festival from 24.12.2021 at 08.00 p.m., to 25.12.2021 at 08.00 pm., at community hall in survey No.169/4, door No.14/51, Nediyancode, Poolanthothuvilai, Kattathurai, Kanyakumari District.

For Petitioner : Mr.G.Radhakrishnan

For Respondents : Mr.M.Veeranthiran

Government Advocate

ORDER

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

2. The petitioner wants to conduct the Christmas festival at

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



the petition mentioned premises. I wanted to know from the petitioner as to whether prior approval was obtained before constructing the premises in question for using it as a place of worship or for any religious purposes. The petitioner frankly admitted that no such approval has been obtained. But an application appears to have now been given.

3. I am afraid that this request of the petitioner cannot be accepted. 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."

An approval cannot be obtained after putting up the construction. Therefore, the pendency of the enquiry cannot be of any assistance.

4. The learned Government Advocate also brought to my notice that the security proceedings have already been initiated in this regard. Since the petitioner had not obtained any statutory approval prior to the construction of the premises, the said premises cannot be used either as a prayer hall or as a place of worship or for any religious purposes.

5. This Writ Petition is dismissed. No costs.

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,
Nagercoil.



2.The Superintendent of Police,
SP Office, Nagercoil,
Kanyakumari District.

3.The Deputy Superintendent of Police,
Thakkalai,
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4.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.

5.The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.

6.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

W.P. (MD) No.22242 of 2021

15.12.2021

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