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W.P.No.2914 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.2914 of 2015

A.K.Fazullaah Khan

...Petitioner

Vs.

1. The Standing Committee of Corporation or Council,
Corporation of Coimbatore,
Coimbatore.
 2. The District Collector,
Coimbatore.
 3. The Commissioner,
Corporation of Coimbatore,
Coimbatore.
 4. The Tamil Nadu Wakf Board,
Represented by its CEO,
1, Jaffar Shirang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.
- ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 and 3 to take appropriate action on the appeal dated 27.06.2012 under section 452 of the Coimbatore District Municipalities Act 1981, pending before the First Respondent in respect of granting permission for construction of the



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building for Muslims for religious purpose at the property spanning to an extent of 2450 square feet of land bearing plot number 6 in Karuppathal layout in survey number 264 / part in Telungupalayam village, P.N. Pudur, Coimbatore North Taluk, Coimbatore.

For Petitioner : Mr.H.Nazirudeen

For Respondents : Mr.K.Magesh, for R1 & R3
: Mr.R.P.MuruganRaja, GA, for R2
: Mr.Mohammed Fayaz Ali, for R4

ORDER

The petitioner has filed this writ petition seeking issuance of a Writ of Mandamus to direct the 1st respondent to dispose of the appeal dated 27.06.2012 filed by the petitioner.

2. The case of the petitioner is that he claims to be the owner of the property measuring an extent of 2520 ft, situated at Thelungapalayam, Coimbatore and in order to cater the needs of the Muslims in the said locality, the petitioner decided to construct a Mosque and made an application dated 21.07.2009 before the 2nd respondent, seeking necessary permission for construction of the same. On receipt of the said application, the 2nd respondent, vide proceedings dated 18.10.2010 & 06.05.2011,



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granted permission to the petitioner to construct the Mosque, on condition that, the petitioner should proceed with further construction after obtaining necessary permission from the Corporation. Therefore, the petitioner made an application dated 09.06.2011 before the 3rd respondent, seeking issuance of building plan license in his favour. When the same was pending, the 2nd respondent, vide subsequent proceedings dated 19.07.2011 in Na.Ka.No. 11574/2011/U3, recalled his earlier orders granting permission to the petitioner for construction of Mosque and rejected the petitioner's request, based on the alleged objections made by the local residents, without providing an opportunity of hearing to the petitioner. On the other hand, the application made by the petitioner, seeking building plan license was rejected by the 3rd respondent, vide order dated 15.08.2011, challenging same, the petitioner preferred an appeal dated 22.09.2011 before the Director, Town and Country Planning, and as the same was not considered by him, the petitioner filed a Writ petition in W.P.No.1084 of 2012 and this Court, vide order dated 06.06.2012, dismissed the said petition with a liberty to the petitioner to file appropriate appeal before the competent authority. In compliance with the order of this Court, the petitioner preferred an appeal dated 27.06.2012 before the 1st respondent, however,



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till date, no orders have been passed on the said appeal. Hence, this Writ petition.

3. Though very many grounds have been raised, learned counsel for the petitioner submitted that, it would suffice if this Court issues direction to the 1st respondent to consider the petitioner's appeal dated 27.06.2012 and dispose of the same as expeditiously as possible.

4. Learned Standing counsel appearing on behalf of the 1st and 3rd respondents submitted that as per Section 268 2(b) of the Coimbatore City Municipal Corporation Act, 1981, no site shall be used for construction of a building intended for public worship if the construction of the said building will wound the religious feelings of any class of persons. For better appreciation, the relevant portion is extracted as follows:

268. Buildings rules.

...

(2) Without prejudice to the generality of the power conferred by clause (a) of sub-section (1), rules made under that clause may provide —

(a) that no insanitary or dangerous site shall be used for building, and

(b) that no site shall be used for construction of a building intended for public worship if the



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construction, of the building thereon will wound the religious feelings of any class of persons.

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In the present case, as the people of the said locality made serious objections for construction of Mosque and there arose various law and order problems in the said locality, in order to maintain peace and particularly as the subject land is not an appropriate place to construct Mosque as the land is very small and the said place cannot accommodate 5000 people at a time and there is no sufficient space for parking of vehicles, the petitioner's request was rejected. When this Court expressed its view that the petitioner has to agitate his grievance before the 1st respondent, as against the orders passed by the 3rd respondent, learned counsel fairly submitted that, the petitioner's appeal dated 27.06.2012 may be disposed of by the 1st respondent in the manner known to law.

5. On the above said contentions, heard respective learned counsel for the 2nd and 4th respondents and perused the materials available on record.

6. Though the order of the District Collector, rejecting the petitioner's claim was not challenged in the manner known to law and the petitioner has only filed an appeal challenging the order passed by the Commissioner, as



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per the direction of this Court, however, in view of the limited request made by the learned counsel for the petitioner, this Court without expressing any opinion on the merits of the case, directs the 1st respondent to dispose of the appeal dated 27.06.2012 filed by the petitioner, if not disposed of already, within a period of eight weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner and the aggrieved person, if any.

7. With the above observations and directions, this Writ petition is accordingly disposed of. No costs.

09.06.2022

skt

Speaking Order : Yes/ No

Index : Yes/ No

To

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2. The District Collector,
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M.DHANDAPANI, J.

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