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W.P.No.24643 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.24643 of 2017

V.Madhavan

...Petitioner

Vs.

The Chief Executive Officer
Wellington Cantonment Board
Wellington
The Nilgiris-643 232

... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records in Madhavan/338/Engg dated 24.05.2017 on the file of the respondent and quash the same as illegal and consequently direct the respondent to consider the petitioner's application dated 30.09.2015 and grant the approval for his building plan.

For Petitioner : Mr.J.Bharathiraja

For Respondent : Mr.M.Vijayan
for
M/s. King and Patridge

ORDER



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Writ Petition is filed seeking a Writ of Certiorarified mandamus calling for the records in Madhavan/338/Engg dated 24.05.2017 on the file of the respondent and quash the same as illegal and consequently direct the respondent to consider the petitioner's application dated 30.09.2015 and grant the approval for his building plan.

2. The petitioner has applied for a planning permission for construction of shops. By impugned order the Wellington Cantonment Board has not accorded sanction on the ground that the proposed plan is adjoining to the existing building and if the appeal is disposed of in favour of the Cantonment Board the removal of the existing building will damage the proposed construction since both are inter connected. The proposed plan is for the purpose of constructing shops. Hence, the sanctions other than dwelling and agricultural purposes cannot be allowed. While holding so, instead of rejection, it is typed as plan is returned.

3. The grievance of the Writ Petitioner is that as per Sec.238 of the Cantonments Act, 2006, the Board cannot return the plan. Board has to either refuse to sanction or grant the sanction. There is no power to return the



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application. According to the petitioner, as the plan has been returned his right of appeal could not be exercised before the concerned authorities.

4. I have perused the impugned order.

5. On perusal of the impugned order, this Court is of the view that the plan has not been sanctioned on two grounds. The first one is that the removal of the existing building will damage the proposed construction. Secondly, the plan for construction of shops cannot be permitted. At the most, permission can be granted only for the dwelling and agricultural purpose. By holding so, instead of rejection it is typed as plan is returned. This Court is of the view that merely the typographical error crept in the impugned order, it cannot be said that the plan is only returned.

6. In such view of the matter, the impugned order in all aspect deemed to be a rejection order. As the appeal remedy is also available under the Act, Schedule V of the Cantonment Act, in Sl.No.12 to whom the appeal lie also is set out.

7. In such view of the matter, this Court is of the view that the



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petitioner is directed to file an appeal within 30 days from the date of receipt of a copy of this order to the appropriate authorities as mentioned in the Schedule V of the Act. The authorities may receive the appeal and exclude the limitation considering the fact that there is some discrepancy in the impugned order as to rejection and admit the appeal and decide the appeal on merits.

8. With the above directions, the Writ Petition is disposed of. No Costs.

21.12.2022

kpr

Internet: Yes

Speaking/non-speaking order

To

The Chief Executive Officer
Wellington Cantonment Board
Wellington
The Nilgiris-643 232



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N. SATHISH KUMAR, J.

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