



W.P(MD)No.16226 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16226 of 2022

Eban Samuel

... Petitioner

Vs.

1.The District Collector,
Madurai District.

2.The Superintendent of Police,
Madurai District.

3.The Inspector of Police,
Othakadai Police Station,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents not to interfere with the rights of the petitioner to conduct prayer along with his family members, relatives, friends at the residence of the petitioner at Door No. 5/636, Ayyappan Nagar, 1st Street, Y.Othakadai, Madurai.

For Petitioner : Mr.R.Rajamohan

For Respondents : Mr.K.Balasubramani
Special Government Pleader



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ORDER

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Heard the learned counsel on either side.

2. The petitioner is residing at the petition mentioned house. He wants to conduct prayer meetings. The petitioner's counsel states that the prayer meetings are being conducted without use of any amplifier or loud speaker. He would add that there is no complaint from the neighbors or the residents of the locality.

3. His grievance is that the third respondent recently visited him and told him to discontinue the said practice of holding the prayer meetings.

4. According to the petitioner's counsel, this violates the fundamental rights guaranteed to him under Article 25 of the Constitution of India. As rightly pointed out by the learned Special Government Pleader, the house in question is meant to be used only for residential purposes. If a person wants to put up a place of religious worship, he must get prior approval from the District Collector. Rule 4(3) of the Tamil Nadu Panchayat Building Rules, 1997 is as follows:-

“4(3): No site shall 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.”



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5. 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



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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. In this case, the petitioner has not obtained any such prior approval. The house itself does not belong to him. Therefore, the petitioner cannot convert a residential house into a place for religious purposes. Therefore, action taken by the third respondent cannot be questioned. I do not find any merit in the writ petition. It stands dismissed. No costs.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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