



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.21442 of 2022

and

W.M.P. (MD) Nos.15591, 15592 and 15595 of 2022

WEB COPY

T.Dominic Marshall

.. Petitioner

Versus

1.The District Collector,
Collectorate,
Thoothukudi District.

2.The Panchayat President,
Ayan Pommayapuram Village,
Vilathikulam Taluk,
Thoothukudi District.

3.The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order, dated 19.08.2022, on the file of the second respondent, quash the same as illegal and consequently, to issue a direction, directing the respondents not to disturb the petitioner, for constructing his dwelling house in Survey No.60/2A1, situated at Ayan Pommaiypuram Village, Vilathikulam Taluk, Thoothukudi District, within a time frame to be fixed by this Court.

For Petitioner : Mr.T.Lajapathi Roy
for Mr.I.Pinaygash

For 1st Respondent : Mr.D.Gandhiraj
Special Government Pleader

For 2nd Respondent : Mr.A.K.Manickam
Special Government Pleader

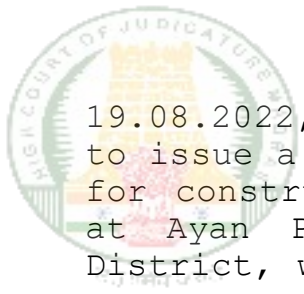
For 3rd Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

Advocate Commissioner: Mrs.K.Vidya

ORDER

The petitioner has prayed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated

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19.08.2022, on the file of the second respondent, and consequently, to issue a direction, directing the respondents not to disturb him, for constructing his dwelling house in Survey No.60/2A1, situated at Ayan Pommaiypuram Village, Vilathikulam Taluk, Thoothukudi District, within a time frame to be fixed by this Court.

WEB COPY

2. According to the petitioner, he purchased a property in S.No.60/2A1, situated at Ayan Pommaiypuram Village, Vilathipuram Taluk, Thoothukudi District and Patta No.1276 has also been issued in his name. On 02.02.2022 the petitioner obtained building plan approval for constructing a dwelling house in the said property from the second respondent for the period from 02.02.2022 to 01.02.2023. After obtaining plan approval, the petitioner started house construction and now, the same is partially completed. In the said circumstances, on 19.08.2022 the second respondent straightaway passed the impugned order stating that he has been constructing a Church instead of dwelling house, based on the complaint made by the Hindu Munnani Party and cancelled the plan approval without notice to the petitioner. Due to the act of the second respondent, the petitioner's construction work was forcibly stopped and all the constructions materials namely, sand, gravel and cement packs will be dilapidated and damaged in rain and shine. As per Section 13 of the Tamil Nadu Combined Development and Building Rules, 2019, planning permission or building permit will be cancelled after issuing a show cause notice only. Hence, the impugned order of the second respondent is liable to be set aside.

3. The learned Special Government Pleader appearing for the second respondent submitted that the said house has to be constructed with hall, bed room, toilet and kitchen, but, the petitioner has not constructed the said portions and only one hall has been constructed in the total area with big windows and for dwelling house, windows need not be in such a big size and it only constructed for usage as a Church.

4. The petitioner submitted that he is not going to use it as a Church or a prayer house and as per the suggestion of this Court he also given an undertaking to that effect.

5. Considering the aforesaid facts and circumstances of the case, this Court, by order dated 08.09.2022, appointed Mrs.K.Vidya, learned counsel, as Advocate Commissioner, directing her to note down the physical features of the property in question and file her report before this Court on or before 13.10.2022. Accordingly, she filed a report stating that the construction of the building is not fully completed and in the entire space, only a hall has been constructed and there is no separation for bedroom and kitchen area. Since the building is not fully completed, it is not possible to find out whether the petitioner is constructing a Church or prayer house. However, the learned counsel appearing for the

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petitioner will partition the same by way of constructing rooms.

6.The petitioner has filed an affidavit of undertaking, dated 15.10.2022, before this Court that he would confine the construction as dwelling house as per the building plan approval. Neither the petitioner nor his family members or any other persons will not use the said premises as Church or private prayer house, but, it will be used only as residence and there will not be any deviation.

7.Recording the abovesaid affidavit of undertaking filed by the petitioner, dated 15.10.2022, this Court directs him to complete the construction work with kitchen, bedroom and toilet as per the building plan approval and on such completion of the said construction work, the second respondent would inspect the said premises and give completion certificate and if there is any violation, the authorities concerned are directed to take action against the petitioner in accordance with law. It is made clear that the said building should be used as only a dwelling house and it should not be used as Church or Prayer House by anyone in order to maintain communal harmony.

8.This Writ Petition stands disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

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/11/2022

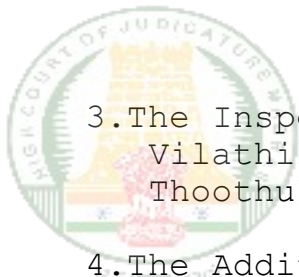
Sub Assistant Registrar(CS)

smn2

To

1.The District Collector,
Collectorate,
Thoothukudi District.

2.The Panchayat President,
Ayan Pommayapuram Village,
Vilathikulam Taluk,
Thoothukudi District.



3.The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.I.PINAYGASH, Advocate (SR-50410[F] dated 19/10/2022)

+1 CC to M/s.SPL.GP (SR-50628[F] dated 20/10/2022)

Copy to

Mrs.K.Vidya,
Advocate,
Plot NO.2,
West Rajiv Gandhi Nagar,
Main Road, Ulaganeri,
Madurai-625 023.

W.P. (MD) No.21442 of 2022
18.10.2022

AMS (31.10.2022) 4P 8C