



W.P.(MD)No.13195 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 17.08.2022

PRONOUNCED ON : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13195 of 2022

and

W.M.P(MD)No.9374 of 2022

R.Thurairaj

... Petitioner

Vs

- 1.The Secretary to Government,
Home Department,
Fort St.George,
Chennai – 600 009.
- 2.The District Collector,
Kanyakumari District,
At Nagercoil.
- 3.The Assistant Director,
Town & Country Planning,
Collectorate Campus,
Kanyakumari District,
At Nagercoil.
- 4.The Executive Officer,
Karungal Town Panchayat,
Kanyakumari District.



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5.Kumaranesan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the second respondent dated 23.12.2021 in Pa.Mu.(C3)/18481/2019 and Quash the same and consequently direct the second respondent to conduct enquiry before granting extension of time for conducting prayers by the fifth respondent herein.

For Petitioner : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.M.Prakash
Additional Government Pleader
for R.1 to R.3

Mr.M.Lingadurai
Special Government Pleader for R.4

Mr.G.Justin for R.5

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 3, the learned Special Government Pleader appearing for the fourth respondent and the learned counsel appearing for the fifth respondent.

2.The petitioner is a resident of Vadalikoodalvilai, Melasundavilai, Karungal, Kanyakumari District. He challenges the approval granted by the



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second respondent in favour of the fifth respondent. This is the second round of litigation. The petitioner had earlier filed W.P(MD)No.6764 of 2019 for directing the authorities to remove the unauthorized construction put up by the fifth respondent herein. The said writ petition was disposed of on 16.06.2021 in the following terms:

“7.If that is so, it is illegal. As stated by the competent authority now, the proposal is pending before the District Collector. Therefore, unless and until permission is granted and building plan approval is issued, no construction can be made. As undertaken by the petitioner, pursuant to the notice issued by the Town Panchayat on 25.11.2019, the sixth respondent shall not permit any person other than the family members to come into for conducting any prayers. If the third respondent finds any unauthorised construction, the same can be removed after notice to the sixth respondent. The above direction be complied with within a period of two [2] weeks from the date of receipt of a copy of this order.”

Thereafter, the fifth respondent herein filed W.P(MD)No.12822 of 2021. The prayer in the writ petition was for directing the District Collector to consider his representation requesting the planning authority to grant plan approval for the premises in Survey No.591-16, Midalam Village, Vadalikoodal Village, Karungal Post, Kanyakumari District. The said writ petition was disposed of



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on 28.07.2021. The earlier direction was referred to. Paragraphs 4, 5 and 6

read as follows:

“4.Pursuant to which, now the petitioner is appeared to have realised his mistake and approached the first respondent for getting approval. Much reliance has been made on the recommendation made by the Deputy Collector, Kanyakumari District, to the District Collector, Kanyakumari District, vide proceedings dated 16.03.2020. The said communication is in the nature of recommendation and may not bind the District Collector, who can take an independent decision. At best, the recommendation can be an assistance in the decision making process. In the communication dated 16.03.2020, the Deputy Collector notices that the building consists of ground plus two floors and in the second floor measuring an extent of 5000 sq. ft., a Church is functioning with air-conditioned rooms. If such is the factual position, it is not clear as to how the Deputy Collector can give a post-facto recommendation.

5.Be that as it may, it is for the District Collector to consider the representation given by the petitioner. Since the building has been put to use as a place of worship without obtaining approval and without obtaining appropriate building plan, the fourth respondent will be well justified in locking and sealing the building and also taking steps to demolish the building. However, since the petitioner has realised the mistake and filed an application to the District



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Collector, we direct that the building should not be used as a place of worship, except for any residential accommodation which is used by the petitioner. The learned Counsel for the respondent submitted that he will instruct his client that the building should not be used as a place of worship. This should be verified by the fourth respondent and a report should be submitted to the District Collector, Kanyakumari District.

6.In the light of the above, we direct the first respondent to take note of all the facts prevailing in the area, issue notice to the neighbouring persons including R.Thurairaj, who was the petitioner in W.P.(MD)No.6764 of 2021 and after hearing all the parties, a reasoned decision be taken on merits and in accordance with law as expeditiously as possible. ”

Pursuant to the said direction, the impugned proceeding dated 23.12.2021 has been issued by the District Collector, Kanyakumari permitting the use of the petition-mentioned premises for religious purposes. Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order.



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4.The learned Additional Government Pleader as well as the learned Special Government Pleader submitted that the impugned order does not call for any interference.

5.The contesting respondent submitted that he had also filed W.P(MD)No.17475 of 2022 and this Court may consider both writ petitions together. His core argument is that as per the statutory rule, before the planning authority grants approval, the District Collector's clearance must be obtained for using the site for religious purpose. In the case on hand, the place was used as Church for 40 years. Even though the petitioner submitted his application before commencing construction, the authorities did not look into the matter. That is why the fifth respondent herein was constrained to put up the construction. Now that the District Collector has granted his approval, the statutory requirements stood fulfilled and therefore no interference was warranted. The District Collector has also recommended the case of the fifth respondent. If the writ petitioner felt aggrieved, he should prefer an appeal and filing writ petition straightaway is not justified. He also would submit that the fundamental right of the fifth respondent to propagate religion is involved. He pressed for dismissal of the writ petition.



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6.I carefully considered the rival contentions and went through the materials on record.

7.The Hon'ble Division Bench vide order dated 28.07.2021 had categorically observed that the conduct of the fifth respondent herein is illegal. It further directed that the building should not used as a place of worship and that it can be used as any residential accommodation. Thereafter, a direction has been given to the District Collector to take note of all the facts prevailing in the area, issue notice to the neighboring persons including the writ petitioner herein and after hearing all the parties, a reasoned decision was to be taken up on merits and in accordance with law. The expression “in accordance with law” is significant.

8.Rule 6(4) of the Tamil Nadu District Municipalities Rules, 1972 reads as follows:

“(4) No site be used for the construction of a building intended for public worship or religious purpose, without the prior approval of the Collector of the district who may effuse 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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What is contemplated in the Rule is that there cannot be construction of a building intended for public worship or religious purpose, without the prior approval of the Collector. This Rule has already been interpreted by the Hon'ble Division Bench of this Court in W.P(MD)No.6493 of 2019 etc batch dated 19.09.2019. It 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



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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.”

The approval by the District collector must precede the construction. The cart cannot be put before the horse. After completing the construction and after putting the building for religious use, the applicant cannot legitimise his



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conduct by approaching the District Collector thereafter. That would be contrary to law. Earlier the Hon'ble Division Bench had mandated that the District Collector must consider the fifth respondent's application in accordance with law. The law laid down by the Hon'ble Division Bench was clearly binding on the District Collector. He ought to have noted that since the applicant had failed to obtain prior approval, he must be non-suited on that ground. Since this aspect of the matter has not been taken note of, the order impugned in this writ petition is liable to be interfered with and accordingly set aside.

9.This writ petition is allowed accordingly. There shall be no order as to costs.

26.06.2023

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA

To

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Home Department,
Fort St.George,
Chennai – 600 009.



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G.R.SWAMINATHAN, J.

MGA

Pre-delivery Order made in
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26.06.2023