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WP(MD)No.16817 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.16817 of 2014
and
WMP(MD)Nos.2 and 3 of 2014

K.Vedanayagam ... Petitioner
Vs

- 1.The District Collector,
Kanyakumari District
@ Nagercoil.
 - 2.The Superintendent of Police,
Kanyakumari District
@ Nagercoil.
 - 3.The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay Post,
Kanyakumari District.
 - 4.The Executive Officer,
Tirparappu Town Panchayat,
Kalkulam Taluk,
Kanyakumari District.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the order of the 1st respondent in D.Dis.C3/11590/2013, dated 03.09.2014 and quash the same and consequently direct the 1st respondent to change the permit of the building



WP(MD)No.16817 of 2014

bearing Door No.14/180 R.S.No.142/10B, Thunpacode Village, Kalkulam, Kanyakumari District from dwelling house to prayer hall.

For Petitioner : Mr.CKM.Appaji
For Respondents : Mr.

ORDER

This writ petition is filed as against the order of the 1st respondent in D.Dis.No.C3/11590/2013, dated 03.09.2014, rejecting the request of the petitioner for conducting the prayer in Door No.14/180 situated in RS.No.412/10B of Thumbacode Village, Kalkulam Taluk, Kanyakumari District.

2.The petitioner is the owner of the property in Door No.14/180 Thumbacode Village and he is said to have purchased it in the year 1986 and built a house by obtaining necessary building permission from the 4th respondent Town panchayat. The petitioner claims that he was conducting regular prayers in his house and the 4th respondent has suggested him to obtain change of building approval in the name of church and therefore,



WP(MD)No.16817 of 2014

he applied for grant of permission before the 1st respondent for conducting prayer in his house building in Door No. 14/180. However, the request of the petitioner was rejected by the order impugned and therefore, the petitioner has preferred this writ petition.

3.The learned Counsel for the petitioner submits that the prayer has been conducted in the building at Door No.14/180 from the year 1986 and there is no breach of peace as alleged by the 1st respondent. Since the building has been used for religious purpose for the past 28 years and when there is no breach of peace, the petitioner's request for change of approval of the building from dwelling house to a prayer hall ought to have been considered by the 1st respondent. The 2nd respondent by citing the temple, which is 200 feet away from the church has wrongly presumed that the conversion of the approval from dwelling house into a prayer hall would create law and order problem, when there is no such an incident in the past 28 years. The 1st respondent has rejected his request by referring the Mandaikad incident, which took place in



WP(MD)No.16817 of 2014

the year 1982 without independently considering that this church has been in existence for the past 28 years and there is no issue with regard to the petitioner's church.

4.The learned Government Pleader appearing for the respondents submits that the 1st respondent has passed the order as per Rule 6(4) of the Tamil Nadu District Municipalities Rules and this petitioner is having the appeal remedy before the Government, instead of invoking the appeal remedy, the petitioner invoked the writ jurisdiction and on this ground of alternative remedy alone, this writ petition is liable to be dismissed.

5.This Court considered the rival submissions and perused the materials placed on record.

6.The petitioner has applied to the 1st respondent District Collector for converting his dwelling house into a prayer hall. Admittedly the building at Door No.14/180 in S.No.142/10B was constructed with the approval of the 4th respondent as dwelling house. However, the petitioner



WP(MD)No.16817 of 2014

claims that he has conducted prayer in his house and therefore, on the advice of the 4th respondent, he has applied to the 1st respondent for converting the dwelling house into a prayer hall. But the request of the petitioner was rejected by the 1st respondent, based on the report of the Superintendent of Police, Nagercoil. The Superintendent of Police, Nagercoil by citing the ancient Hindu Temple, viz. Achaneeswarar temple, which situated at a distance of 200 feet from the petitioner's building, opined that there are objections from the villagers for conducting prayer in the said place and if any permission is granted to construct the church in the said place, it will lead to communal clash and law and order problem.

7.The 1st respondent has also considered the previous incident of communal clash between different religious groups at Mandaikadu and also the Government Order in GO.Ms.No.916 Public (Law and Order) Department dated 29.04.1986 issued pursuant to the findings of the report of Justice Mr.P.Venugopal's Commission and also by referring the decision rendered by this Court in WP.No.1190 of 2003



WP(MD)No.16817 of 2014

and WP(MD)No.6302 of 2009, wherein this Court has held that the right to perform the religious activities is not an absolute right subject to public order, morality and health.

8.It is relevant to refer to the judgment of this Court in W.P.(MD).No.11780 of 2012 dated 10.08.2022, wherein this court has held as follows:

"13.The Government of Tamil Nadu has issued G.O.Ms.No.916 dated 23.04.1986. In the said report, Thiru.Jusitice P.Venugopal's Commission has made many recommendations to preserve communal harmony in the Kanyakumari District. As per recommendation No.2, the Government should take steps to avoid construction of religious places very nearby each other. The said recommendation has been accepted by the Government under the above said G.O. In the present case, as per the report of the Tahsildar, two other churches are located within 200 meters and a Hindu temple is located within 250 meters. The said fact has also been confirmed by the report of the Revenue Divisional Officer dated 07.04.2010. The Superintendent of Police, in his report dated 29.06.2010 has stated that the Hindu temple is located at about 300 meters north of the



proposed prayer hall. In his report, he has also recorded that 80% of the surrounding people are against the prayer hall. They did not like to convert the existing building into a prayer hall. The superintendent of Police has further recorded that if it is allowed, the law and order problem would arise.

15.A perusal of Rule 6 (4) of the Tamil Nadu District Municipalities Building Rules 1972 clearly reveals that before construction of a building intended for public worship or religious purposes, permission has to be obtained from the District Collector. In the present case, a residential building has already been constructed prior to 1996 and the same is attempted to be converted into a prayer hall. Hence, the question of invoking powers of the District Collector under Rule 6(4) of the Tamil Nadu District Municipalities Building Rules 1972 would not arise. There is no provision under the District Municipalities Building Rules to convert one type of building into a another type of building.

18A. In the light of the above said facts, Building Rules do not permit conversion of a residential building into a Prayer Hall. The first respondent after considering the sensitive nature of the locality and the wishes of the 80%



WP(MD)No.16817 of 2014

WEB COPY

of the local people has arrived at an opinion to reject the request of the petitioner. This Court does not find any infirmity or illegality in the impugned order. In the light of the above said facts, Building Rules do not permit conversion of a residential building into a Prayer Hall. The first respondent after considering the sensitive nature of the locality and the wishes of the 80% of the local people has arrived at an opinion to reject the request of the petitioner. This Court does not find any infirmity or illegality in the impugned order."

9. In view of the above ratio, this Court is not inclined to interfere with the impugned order and accordingly, this writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are also dismissed.

28.04.2023

Internet : Yes / No

dsk



WP (MD) No.16817 of 2014

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WP (MD) No.16817 of 2014

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