



W.P(MD)No.22445 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22445 of 2015
and
M.P.(MD)No.1 of 2015

N.Spurgeon Raja

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Kanyakumari District.

2.The Superintendent of Police,
O/o. the Superintendent of Police,
Nagercoil, Kanyakumari District.

3.The Revenue Divisional Officer,
O/o. the Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

4.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the Respondents Nos.1 to 4 from interfering into the prayer sessions and performance of the religious rituals conducted in the Petitioner's building in Door No.31/56.B1, Survey No.A2/24/2D, Padmanabapuram Village, Kalkulam Taluk, Kanyakumari District within the time stipulated by this Court.

For Petitioners : Mr.S.Rajasekar

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader for R1 to R3.
Mr.Albert James,
Government Advocate (Crl. Side) for R4.

ORDER

Heard both sides.

2.The petitioner through his counsel wanted to withdraw this writ petition. After going through the averments set out in the affidavit filed



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in support of the writ petition, I wanted the respondents to file status report.

3.The stand of the District Collector, Kanyakumari is as follows:-

The petition mentioned land is registered in the name of the writ petitioner and it is assessed to tax as a residential house. The petitioner obtained permission only for putting up a residential building. But on 25.10.2015, he proposed to conduct a religious convention. This gave rise to strong objection from the local people and Crime No.960 of 2015 was registered by Thuckalay Police Station under Section 107 of Cr.P.C. Thereafter, the prayer meeting was stopped. The petitioner is conducting prayers in the premises every Sunday and Friday and about 30 members are participating in the prayer meeting and they use box type loudspeakers during prayer meetings. The District Collector wants this Court to permit him to deal with the issue as per law.

4.The Inspector of Police, Thuckalay Police Station has filed status report. After stating that without getting prior approval from the District



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Collector, the petitioner is putting the site to religious use, the final paragraph reads as follows:-

“I, respectfully submit that in spite of the fact that anyone of the local people are not against the prayer meetings and if permitted there will not be a possibility of Law and Order problem.”

5.The learned counsel for the petitioner relies on the order dated 14.06.2019 made in W.P.No.2149 of 2018. Paragraph No.6 of the said order reads as follows:-

“6.In the light of the aforesaid settled legal principles, the question of requiring the Petitioner to get prior permission from any authority for assembling and conducting any prayers in his dwelling place per se, without causing nuisance or disturbance to others and without causing hindrance to the general public of the locality, does not arise. Consequently, the directions issued by the Second Respondent in the impugned order calling the Petitioner to attend the peace talks with the Hindu Munnani Party, who had lodged objections, and restraining the Petitioner from conducting prayers till such peace talks are concluded, which is without any authority of law, cannot be sustained. However, the Petitioner is



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bound to ensure that while conducting such prayers in his residential premises, no hindrance or disturbance is caused to the general public and for that purpose, it is certainly open to the concerned authorities on the basis of subjective satisfaction with concrete evidence to take necessary action under the provisions of the relevant statutes in accordance with law in the event of any nuisance being caused due to noise pollution or for violation of any statutory provisions or for any bonafide reasons.”

6. With utmost respect to the learned Judge, I am not in a position to adopt the same approach. Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972 reads as follows:-

“6.(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. Provided that an appeal shall lie against the Collector’s decision to the Government who may issue such orders as they deem fit.”

A residential house in the very nature of things cannot be put to use for congregational purposes. In any event, installing box type or horn type



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loudspeakers runs counter to the statutory provisions. Vide order dated 19.09.2019 in W.P.(MD) Nos.6493, 6494 and 6495 of 2019, the Hon'ble

Division Bench had 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



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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.”

7.However, the Hon'ble Judge in this writ petition has passed the following order on 05.03.2020:-

“The First Respondent shall inspect the building in which the Petitioner claims to be conducting prayers in order to



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ascertain as to whether that premises is a place of worship or used for religious purpose, which requires prior permission of the District Collector, under Section 6(4) of the Tamil Nadu District Municipalities Buildings Rules, 1972, before its construction and file a report before 16.06.2020 in that regard.

Post the matter on 16.06.2020.”

Pursuant to the aforesaid direction, the District Collector filed the status report as mentioned above.

8.Kanyakumari is a sensitive district. It is surprising that the Inspector of Police, Thuckalay Police Station after stating that the petitioner has not obtained prior permission from the District Collector had ambiguously taken a stand as mentioned above in the final paragraph. In any event, the stand of the Inspector of Police cannot run counter to the stand taken by the District Collector. The police authority should not be waiting for formal complaints to be received from the general public. If it is found that the conduct of a person is in contravention of law, action must be taken then and there. The prayer of the writ petitioner is for forbearing the respondents from interfering in



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the prayer sessions and performance of rituals in the petition mentioned premises cannot be accepted. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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