



W.P(MD)No.2739 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2739 of 2015

Gaberial James Fernando

... Petitioner

Vs

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The President,
Kanyakulam Village Panchayat,
Kanyakulam,
Vetturanimadam Post,
Nagercoil,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order bearing no.C3/1261/2014 dated 30.01./2015 passed by the first respondent herein and quash the same.

For Petitioner : Mr.K.Samidurai



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For Respondents : Mr.N.GA.Nataraj
Government Advocate

ORDER

Heard both sides.

2. The petitioner claims to be a pastor who is conducting religious prayer meetings in a temporary shed in S.F.No.41/4, Vadasery Village, Kaniyakulam Panchayat in Kanyakumari District. The petitioner wants to put up a regular church building. He submitted an application in this regard before the first respondent. Since it was not considered, the petitioner filed W.P(MD)No.8942 of 2014. The writ petition was disposed of on 06.06.2014 by directing the District Collector, Kanyakumari District to pass order on the petitioner's representation. Pursuant to the said order, the impugned order dated 30.01.2015 came to be passed rejecting the petitioner's request. Challenging the same, the present writ petition came to be 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 Government Advocate appearing for the respondents submitted that the impugned order is well reasoned and that it does not warrant interference.

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

6. The District Collector has rejected the petitioner's application on the ground that he has not furnished the building plan approval. In my view, the first respondent has put the cart before the horse. The site is located within the limits of village Panchayat. Rule 4(1) and (2) of the Tamil Nadu Panchayats Buildings Rules, 1997 is as follows:

“4. Application for approval of sites for buildings and huts.-

(1) Every person who intends, to construct or reconstruct or alter or add to a building or to a hut shall submit an application to the executive authority for the approval of the site and for permission to execute the work, in the form specified in Appendix B, with such variations as circumstances may require which shall be accompanied by -

(a) a site plan (in triplicate) of the land on which the building or



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hut is to be constructed reconstructed or altered or added to as far as may be necessary, complying with the requirements specified in appendix-C,

(b) a plan or plans (in triplicate) of the building or hut to be constructed, reconstructed or altered or added to as for as may be necessary, complying with the requirements specified in Appendix-D;

(c) a specification (in triplicate) as far as may be necessary complying with the requirements specified in Appendix-E; and

(d) the information as to the purpose for which the building or hut is proposed to be constructed, reconstructed or altered or added to :

[Provided that the construction or reconstruction or addition or alteration to residential houses, all such other public buildings like commercial buildings, hotels, resorts and factory buildings exceeding a plinth area of 250 square meters in the Panchayats of Nilgiris district shall be approved by the Executive Authority after obtaining the permission of the Committee for Architectural and Aesthetic Aspects headed by the Collector of the Nilgiris district].

(2) The application as well as plan specifications and the information as required under items (a), (b), (c) and (d) of sub-rule (1) shall be signed by the owner of the site or accompanied by a letter of authority or consent from the owner of the site, if



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the applicant himself is not the owner.

Sub Rule 3 is as follows:

“(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.”

A reading of the aforesaid rule leads one to the conclusion that the prior approval of the District Collector must be enclosed along with the application submitted under Rule 4(1). In other words, unless the petitioner obtains prior approval of the District Collector, the petitioner cannot even submit his application before the concerned authority. The District Collector was under the impression that the building plan approval must be placed before he goes into the issue of granting prior approval under Sub Rule 3. The understanding of the District Collector is incorrect.

7. In this view of the matter, the order impugned in this writ petition is set aside. The matter is remitted to the file of the first respondent for fresh consideration. I make it clear that I have not gone into the merits of the matter. The District Collector will take into account all the relevant parameters including issues of law and order before passing final order.



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8. This writ petition is disposed of accordingly. There shall be no order as to costs.

16.08.2023

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

To

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The President,
Kanyakulam Village Panchayat,
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G.R.SWAMINATHAN, J.

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