



W.P(MD)No.4798 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4798 of 2015

and

M.P.(MD)No.1 of 2015

and

W.M.P.(MD)No.1707 of 2016

The Secretary,
The Malankara Catholic College,
Mariagiri,
Kanyakumari District.

... Petitioner

Vs.

- 1.The Director of Town & Country Planning,
Directorate of Town & Country Planning,
No. 807, Anna Salai, Chennai – 600 002.
- 2.The Deputy Director of Town & Country Planning,
Tirunelveli Region, 108, Trivandrum Road,
Tirunelveli, Tirunelveli District – 627 002.
- 3.The President / District Collector,
Kanyakumari Local Planning Authority,
Kanyakumari District.
- 4.The Member Secretary,
Kanyakumari Local Planning Authority,
Kanyakumari District.



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5.The Methukummel Panchayat,
Methukummel, Kanyakumari District,
Rep. by its Executive Officer.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to Impugned Notice issued by the 2nd Respondent Deputy Director of Town and Country Planning in Na.Ka.No.230/2015 Thi.Li.Ma 3(50) dated 26.02.2015, quash the same.

For Petitioner : Mr.Ragatheesh Kumar,
For Mr.T.Cibi Chakraborty.

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

ORDER

Heard the learned counsel on either side.

2.The petitioner is a christian minority institution. The second respondent issued the impugned notice dated 26.02.2015 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act,



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1971. The second respondent proposed to lock and seal the premises on the ground that the petitioner has not obtained permission from the competent authority under Section 47-A(2) of the Act. The petitioner points out that the buildings in question were put up during 1998 – 2009. The petitioner had obtained approval from the local body on various dates and the details have been given in paragraph No.10 of the affidavit filed in support of the writ petition. The first approval was obtained on 10.02.1998 while the last approval was obtained on 04.11.2009. Section 47-A of the Act was introduced into the Act and made applicable to non-planning areas with effect from 01.01.2011. Inasmuch as the petitioner had put the buildings even before the introduction of the provision, the second respondent was not justified in taking threatening actions under Sections 56 and 57 of the Act. It has been held that Section 47-A of the Act will have only prospective effect. It is true that the Tamil Nadu Panchayat Building Rules, 1997 governed the field. Under the said rules, the executive officer of the local body was to grant approval after consultation with the Joint Director of Town and Country Planning. This requirement of having prior consultation before issuing planning approval was an interdepartmental affair. The petitioner cannot



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be blamed if the local body failed to obtain clearance from the Joint Director of Town and Country Planning.

3.In the impugned order, it is pointed out that the petitioner has not obtained clearance from Hill Areas Conservation Authority. It is true that Vilavancode Taluk where the petitioner had put up construction has been classified as a hill village. However, G.O.(Ms)No.44, dated 02.04.1990 as well as G.O.(Ms)No.49, dated 24.03.2003 talk of consultation with HACA. The learned counsel for the petitioner relies on the order dated 01.03.2023 made in W.P.(MD)No.28033 of 2022. The petitioner is an educational institution. They are running an arts and science college. It is not as if the buildings were unauthorizedly put up without getting approval from the any authority. During the relevant time, it was only from the local body, the approval had to be obtained. The petitioner had obtained approval from the local body. If the local body failed to consult with HACA or the Joint Director of Town and Country Planning, the consequence cannot fall on the petitioner. Considering the fact that the buildings were put up before the introduction of Section 47-A of the Act, the order impugned in this writ petition is set aside and the writ petition



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is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

22.08.2023

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