



W.A.(MD)Nos.1022 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.1022 of 2024

and

C.M.P.(MD)Nos.7424 & 7425 of 2024

Kumaranesan

: Appellant

Vs.

1.The District Collector,
Kanyakumari District, at Nagercoil.

2.The Assistant Director,
Town & Country Planning,
Collectorate Campus,
Kanyakumari District at Nagercoil.

3.The Executive Officer,
Karungal Town Panchayat,
Kanyakumari District.

4.R.Thurairaj

: Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order passed in W.P.(MD)No.17475 of 2022, dated 26.06.2023.



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For Appellant : Mr.K.Ragatheesh Kumar,
for M/s.Isaac Chambers
For R1 to R3 : Mr.A.Kannan,
Additional Government Pleader
For R4 : Mr.N.Sudhagar Nagarj

JUDGMENT

[Judgment of the Court was delivered by **R.SURESH KUMAR, J.**]

In survey No.591/16 at Midalam Village, Vadalikudavilai, Melasundhavilai, Karungal Post, Kanyakumari District, there has already been a building, which was used for religious purpose for the past 40 years. Since the said building has become dilapidated, the appellant wanted to demolish the building and construct a new building for religious worshipping or prayer.

2.In this regard, on 07.06.2019, the application has been submitted to the third respondent i.e., Executive Officer, Karungal Town, who is the authority to consider the said application for planning and building permission, seeking such permission for construction of a building for religious and prayer purposes.



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3. When the said application was under consideration before the respondents, especially, the third respondent, the appellant has commenced the construction and the same was brought to the notice of the third respondent, who issued notice on 25.11.2019 not to continue with the construction and to stop the construction, as the application, seeking for planning approval, is yet to be decided.

4. In the meanwhile, the construction has been concluded and building has been made in full shape for the religious purposes and prayers. In order to remove such unauthorized construction made by the appellant, the fourth respondent, belonged to the same place, had approached this Court and filed a Writ Petition in W.P.(MD)No.6764 of 2019, seeking for Writ of Mandamus. The Division Bench of this Court considered the said Writ Petition and disposed of the same on 16.06.2021.

5. Subsequently, the appellant approached the first respondent / District Collector, seeking permission to conduct prayer meetings in the said building pending approval order to be passed by the third respondent.



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6.The said request made by the appellant having been considered, an order was passed by the first respondent / District Collector on 23.12.2021, wherein temporary permission had been given by the District Collector to the appellant to go ahead with the usage of the building for prayer purpose, of-course, by imposing certain conditions. One of such conditions was that, the appellant shall get the building approval from the local authorities.

7.Challenging the said order dated 23.12.2021 passed by the District Collector, one Thuraiaraj / 4th respondent in this Writ Appeal, filed a Writ Petition in W.P.(MD)No.13195 of 2022 and the appellant also filed another Writ Petition in W.P.(MD)No.17475 of 2022, seeking Writ of Mandamus, directing the first respondent / District Collector to forward the petitioner's application dated 07.06.2019 along with building plan to the second respondent for necessary action to get planning approval for the building.

8.The said Writ Petition in W.P.(MD)No.17475 of 2022 and the Writ Petition filed by the fourth respondent / Thurariraj in W.P.



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(MD)No.13195 of 2022 were heard by the learned Single Judge and the same were disposed of by separate orders on 26.06.2023. The learned Single Judge, by order dated 26.06.2023, allowed the Writ Petition in W.P.(MD)No.13195 of 2022 filed by the 4th respondent / Thuraiaraj, thereby, the order passed by the District Collector dated 23.12.2021, permitting the appellant to make use of the building in question for religious purpose, has been set aside.

9.Since the said Writ Petition in W.P.(MD)No.13195 of 2022 was allowed, the learned Single Judge, on the same date i.e., on 26.06.2023, disposed of the Writ Petition filed by the appellant also in W.P.(MD)No.17475 of 2022. In the said order, the learned Single Judge even though had given a direction to the official respondents, namely, District Collector, Assistant Director of Town and Country Planning as well as the Executive Officer of Karungal Town Panchayat to proceed with the application, that was submitted by the appellant/petitioner on 07.06.2019 for grant of building plan approval, a rider has been put in, stating that such consideration for grant of building plan approval for the building concerned, is only for residential purpose and not for any prayer purpose or religious worshipping.



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10.Challenging the said order dated 26.06.2023, the present appeal has been filed.

11.Heard the learned counsel for the appellant and the learned Additional Government Pleader for the respondents 1 to 3 and perused the materials placed on record.

12.The learned counsel for the appellant would submit that though the learned Single Judge has given a direction to the official respondents to consider the application submitted by the appellant and to pass orders on merits, he has placed a rider, stating that such consideration for planning permission of the building is only for residential purpose and not for any other religious or prayer purpose. However, the very application itself had been submitted by the petitioner to get approval for the said building for religious purpose alone. Therefore, to that extent, the appellant is aggrieved over the order passed by the learned Single Judge, which is impugned herein. Therefore, it becomes necessitated for the appellant to file this appeal, he contended.



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13.Insofar as the building in question is concerned, though the said application, seeking approval, had been made by the appellant on 07.06.2019, when it was pending consideration, the appellant had constructed the building, that may be a violation, for which, necessary action to be taken by the planning authorities by virtue of the provisions of law both under Town and Country Planning Act as well as Urban Local Bodies Act. Such kind of buildings unauthorizedly made without planning approval or such construction that has been made during the pendency of the planning approval application before the authorities concerned, however it is constructed, whether can be ratified or orders to be passed to erase the building is ultimately the matter to be decided by the planning authorities in accordance with law.

14.In this context, though the learned Single Judge has given directions to the official respondents to consider the application submitted by the appellant / writ petitioner on 07.06.2019 and to pass orders, a condition has been imposed by the learned Single Judge, stating that such a consideration of the building concerned is only for residential purpose and not for religious purpose. Whether that kind of



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condition can be imposed by this Court is the question, that has been raised in this intra-Court appeal.

15.Insofar as the purpose, for which such a building permission sought for by the petitioner, is concerned, it is only for religious purpose and accordingly, the building might have been designed and constructed. Whether such construction made by the appellant / writ petitioner is correct or not and such construction made without even getting a planning approval, whether can be ratified by imposing any conditions as well as penalty under the provisions of the Rule, which we have herein mentioned above, are all the matters to be decided by the planning authorities.

16.Therefore, the authorities under these legislations shall not be restricted by passing a judicial order that the application submitted by any planning or building approval seeker shall be considered only in a particular manner by thus, power vested with the authorities cannot be denuded or restricted by passing a judicial order. To that extent, the condition imposed by the learned Single Judge through the impugned order, restricting the consideration of the application of the petitioner



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only for residential purpose and not for religious purpose may not be justifiable. Therefore, to that extent the order impugned passed by the learned Single Judge is liable to be modified.

17. Therefore, the order passed by the learned Single Judge, which is impugned herein dated 26.06.2023, is to be sustained in all respects, except the direction given by the learned Single Judge to the official respondents to consider the application submitted by the appellant / writ petitioner, dated 07.06.2019 only for residential building and not for religious building or the building meant for religious purposes or prayer purposes, which is to be modified by eschewing the same and the order passed by the learned Single Judge can be complied with by the official respondents.

18. With these modifications, the order impugned in this Writ Appeal passed by the learned Single Judge in all other aspects shall remain the same and to be complied with by the official respondents in accordance with law.



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19.Resultantly, this Writ Appeal is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

[R.S.K.,J.] & [G.A.M.,J.]

19.06.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

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To

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