



W.P(MD)No.21027 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.21027 of 2017 and
WMP(MD) No.17268 of 2017

Sri Vivekananda Ashramam,
Vellimalai,
Rep by its President,
Thavathiru Swami Saidhanyananda Ji Maharaj,
Kalpadi Post,
Kanyakumari District – 629 204.

...Petitioner

Vs

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Revenue Divisional Officer,
Padmanabapuram,
Kanyakumari District.
- 3.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.
- 4.The Executive officer,
Attur Town Panchayat,



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Attur, Kalkulam Taluk,
Kanyakumari District.

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to grant permission for the construction of compound wall at Sri Dharma Sastha Kavu Temple, situated in Survey No.66/22, Pallikuzhivilai, Attur Village, Kalkulam Taluk, Kanyakumari District, based on the petitioner's application and representation dated 11.09.2017 within the period stipulated by this Court.

For Petitioner	: Mrs.Ananthi C.Rajesh
For R1 to R3	: Mr.A.Baskaran Additional Government Pleader
For R4	: No appearance

ORDER

The petitioner is a President of Sri Vivekananda Ashramam, Kanyakumari District. He has filed this writ petition in the year 2017 for a Mandamus, directing the respondents to grant permission for the construction of a compound wall at Sri Dharma Sastha Kavu Temple situated in Survey No.66/22, Pallikuzhivilai,



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Attur Village, Kalkulam Taluk, Kanyakumari District by considering his application, dated 11.09.2017.

2.The learned counsel appearing for the petitioner submits that Sri Dharma Sastha Kavu Temple is known as “Kavu”, which means a traditional natural sacred space seen near traditional homes in many parts of south India especially in Kerala. The site is believed to be inhabited by Nagaraja and other Naga Devetas, where offerings and rites are performed during special ceremonies. Sri Dharma Sastha Kavu Temple is one among ancient Kavus surrounding the Thiruvattar Adikesava Perumal Temple. There are 12 Kavus surrounding the Lord Perumal at Thiruvattar. One such Kav is the said Sri Dharma Sastha Kav in Pallikuzhivilai, which is in existence for more than three thousand years. The property in Survey No.66/22 to an extent of 3 ½ cents in which Sri Dharma Sastha Kav Temple is situated was gifted to Vellimalai Sri Vivekananda Ashramam and now the said temple is administered and maintained by the said Sri Vivekananda Ashramam. He further



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submits that one Raja a member of nearby Church has filed a suit as against this temple in O.S.No.307 of 2002 before the District Munsif Court, Padmanabapuram for restraining the petitioner trust from putting up any structure in the place, where, the temple is situated. The said suit was dismissed by the trial Court by its Judgment and decree dated 06.11.2004. The appeal filed in A.S.No.2 of 2005 was dismissed by Judgment dated 01.12.2005. However, the second appeal in S.A.No.849 of 2007 preferred by the said Raja was allowed by this Court on 18.06.2008, with a liberty to the defendant in the suit to approach the District Collector to obtain permission for construction, if any. One Gunaseelan, Secretary of the Ashramam, who was the defendant in the suit has preferred Special Leave Petition as against the judgment and decree in S.A.No. 849 of 2007 before the Honourable Supreme Court and the Honourable Supreme Court has disposed of that SLP holding that the High Court has not rejected the petitioner's claim for constructing a temple and the petitioner can obtain a required permission from the District Collector. Therefore, the petitioner has submitted an application on



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22.01.2016 and filed this writ petition. The learned counsel fairly submits that the District Collector, Kanyakumari District has already passed an order in ROC.No.C3/21797/15, dated 15.02.2016.

3.The learned Additional Government Pleader submits that the District Collector, Kanyakumari District has already rejected the request made on behalf of the petitioner on 15.02.2016 and this petitioner has not challenged the same in the manner known to law and therefore, this writ petition cannot be maintained.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The petitioner seeks permission for construction of a compound wall at Sri Dharma Sastha Kavu Temple Kanyakumari District. According to the learned counsel for the petitioner, he is not intending to put up any construction for the temple and he wants only compound wall to be constructed to protect his property. The



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request was also made on behalf of the petitioner Ashramam through its Secretary, namely, one Anil kumar on 11.06.2015, which was also considered by the District Collector, Kanyakumari District as under:-

“11.Actually the land-in-question is owned by Velimalai, Vivekananda Ashramam and it is not in anyway related to the petitioner. The petitioner is involved in this case as a secretary to the Kavukovil and he has only permitted to deal with Court cases and other administrations involved in the temple by an authorisation letter. This authorisation letter cannot be considered as a legal authorisation in dealing with the matters which can only be undertaken by land owner or his power of attorney.

12.As per Section 197 of the Tamil Nadu District Municipalities Act, 1920 application has to be filed with the executive authority for construction of any building including wall of fence with a site plan of the land.

13.As per Rule 6(4) of Tamil Nadu District Municipalities Building Rules, 1972, any construction of building for religious purpose needs prior approval of the Collector.

14.In this case, the request of the petitioner Thiru.K.P.Anilkumar does not holds the following criteria:



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- i. No sub-division record or definite plan of the land is produced
- ii. No application with site plan under section 197 of Tamil Nadu District Municipalities Act, 1920 and Rule 6(4) of Tamil Nadu District Municipalities Rules submitted to the Executive authority for forwarding the same to Collector of the District.
- iii. The application for construction was not made by the land owner or by his registered power holder.

15. Considering the points as discussed above, the request of the petitioner is hereby rejected.”

6. Neither the Secretary of the petitioner Ashramam by name Anilkumar nor the petitioner/ the President has challenged the above proceedings of the District Collector, dated 15.02.2016. It is also stated that the application made on behalf of the petitioner was without the basic required documents as per the provisions under the Municipalities Act.

7. In view of the above, this writ petition is disposed of with a liberty to the petitioner to submit a fresh representation along



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with the required documents to the Executive officer/Attur Town Panchayat/the fourth respondent within a period of two weeks from the date of receipt of a copy of this order and the same shall be considered as per the Tamil Nadu Urban Local Bodies Act, 2003 as expeditiously as possible preferably within a period of twelve weeks from thereon. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes/No
Index: Yes/No
Internet: Yes
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B.PUGALENDHI, J.

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