

W.P.(MD).No.11780 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 04.08.2022

ORDER PRONOUNDED ON : 10 .08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.11780 of 2012

Pastor V.Mariya Arockiam

....Petitioner

Vs

1.The District Collector
Kanyakumari District
At Nagercoil
Kanyakumari

2.The Superintendent of Police
Kanyakumari District
Kanyakumari at Nagercoil

3.The Revenue Divisional Officer
Padmanabhapuram District
Thuckalai
Kanyakumari District

4.The Inspector of Police
Eraniel Police Station
Neyyoor Post
Kanyakumari District

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the first respondent bearing No.C3/10233/2010 dated 31.07.2012 and quash the same and consequently direct the first



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respondent to grant permission to convert his building bearing Door No. 10/90B-1 of Thingal Nagar Town Panchayat located in R.S.No.283/13A1B of Thalakulam Revenue Village into a Church.

For Petitioner : Mr.K.Samidurai
For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The writ petition has been filed challenging an order passed by the first respondent herein under which the request of the petitioner for grant of permission to convert his house property into a Prayer Hall has been rejected.

2.According to the petitioner, he is conducting Christian prayer activities from the year 1996 onwards in his own building located in survey No.183/13A-1B, Thalakulam Village of Thingal Nagar Town Panchayat. The petitioner has further contended that since he was informed that he should get prior permission from the first respondent for conducting prayer, he gave a representation on 19.10.2009 for converting the building into a prayer hall. The general public of the locality of around 93 persons have given no objection for the said conversion of building into a prayer hall.



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3.The petitioner had further contended that the Tahsildar had recommended for the said prayer hall by his proceedings dated 04.03.2010.

The Revenue Divisional Officer has also recommended to the District Collector by his proceedings dated 07.04.2010. However, the District Collector by way of his impugned order dated 31.07.2012 has rejected the said request relying upon the report of the Superintendent of Police. The said order is under challenge in the present writ petition.

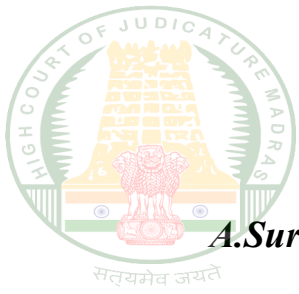
4.The learned counsel for the petitioner had contended that there is no restriction with regard to the distance between two religious places as far as the District of Kanyakumari is concerned. He had further contended that the first respondent herein in his proceedings has relied upon G.O.Ms.No.916 Public (Law and Order) Department dated 29.04.1986 to reject the permission for a prayer hall. However, in the said G.O. also there is no reference about the distance to be maintained between two place of worship. He had further contended that the Revenue Authorities namely the Tahsildar and the Revenue Divisional Officer have recommended for conversion of the building into a prayer hall. The Tahsildar has specifically stated that around 400 family members are residing in the said limit and there is no religious issue among them.



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5.The learned counsel for the petitioner had further pointed out that the Revenue Divisional Officer has also recommended for the same on the ground that one R.C. Church is located at a distance of 150 meters and another CSI church is located at a distance of 200 meters. A Hindu Temple is located at a distance of 250 meters. When the other religious places of worship are located in a distant place, the first respondent herein ought not to have rejected the request of the petitioner.

6.The learned counsel for the petitioner had relied upon a judgement of our High Court reported *in CDJ 2007 MHC 5279 (Sadhu C.Selvaraj -Vs- The Collector of Kanyakumari, Collectorate at Nagercoil and others)* to contend that just because the Hindus of the said locality are objecting, the Collector cannot shirk his responsibility from seeing that the constitutional rights of the petitioner's group. The learned counsel had further relied upon a judgement of our High Court reported *in 2005 (4) CTC 171 (Albert Raj -Vs.The District Collector, Kanyakumari District at Negercoil)* to contend that the District Collector cannot reject the permission for construction of a Church building on the ground that there are only few CSI Christians church in the hamlet. The learned counsel had further relied upon a Division Bench Judgement of our High Court rendered *in W.A(MD).No.1349 of 2013 (The District Collector, Kanyakumari District, Kanyakumari and other Vs.*



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A.Suresh Rajan) dated 03.01.2017 to impress upon the Court that frivolous complaints to restrict the freedom to practice and profess any form of religion should not be entertained, as it would affect the constitutional rights of a person. The learned counsel has also relied upon Paragraph No.8 of the said judgement to that effect. In the said case, the prayer hall was functioning nearly 13 years without any dispute.

7.In the present case, according to the petitioner the prayer hall is functioning from the year 1996 onwards and permission was sought for only in the year 2009. In between this 13 years period, there was no objection from any quarters whatsoever. He further contended that the Superintendent of Police without any basis has denied the permission. He had further contended that the Collector has to take an over all view after considering the recommendation made by the Revenue Authorities. However, without taking an independent decision, the District Collector has simply followed the report of the Superintendent of Police and has chosen to reject the permission. Hence, he prayed for allowing the writ petition.

8.Per contra, the learned Additional Government Pleader appearing for the respondents contended that in the aftermath of communal clashes that took place in Mandaikadu of Kanniyakumari District in the year 1982, the



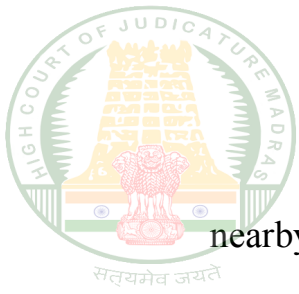
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Government has formed One Man Committee headed by former learned Judge of our High Court namely Justice Thiru.P.Venugopal. The said One Man committee has recommended that no church or temple should be allowed to come up within close proximity. The religious institutions should not be allowed to use the loud speakers all the time. The Committee has further recommended that prior permission should be obtained to establish any Church or Temple. He further contended that the Kanyakumari District being a communally sensitive District, various restrictions are imposed in permitting the religious activities. The said condition is incorporated by way of G.O.Ms.No.916 Public (Law and Order) Department dated 29.04.1986. Therefore, he contended that only after conducting discreet enquiry and based upon the enquiry by the police authorities, the first respondent has arrived at a conclusion that permission should be rejected in order to maintain communal harmony and law and order problem. He had further contended that the fundamental rights of freedom of religion is always subject to public order, morality and health. In the present case, the first respondent has invoked his power in order to maintain law and order problem in a communal sensitive District.

9.The learned Additional Government Pleader had further contended

that as per report of the revenue authorities, three churches are located very



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nearby and a Hindu temple is also located within the close surrounding. He had further pointed out that the Superintendent of Police in his report recorded that 80% of the people surrounding the prayer hall are objecting to the conversion of building into a prayer hall. Only after considering the said report, the Collector has arrived at a conclusion that the permission to be rejected. Hence, he prayed for dismissal of the writ petition.

10.I have considered the submissions made on either side and perused the materials available on record.

11.The petitioner is running a prayer hall in his private property from the year 1996 onwards which is located in a Town Panchayat.

12.Rule 6(4) of the Tamil Nadu District Municipalities Building Rules 1972 is extracted as follows:

“ 6(4): No site be used for 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:

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



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13.The Government of Tamil Nadu has issued G.O.Ms.No.916 dated 23.04.1986. In the said report, Thiru.Justice P.Venugopal's Commission has made many recommendations to preserve communal harmony in the Kanyakumari District. As per recommendation No.2, the Government should take steps to avoid construction of religious places very nearby each other. The said recommendation has been accepted by the Government under the above said G.O. In the present case, as per the report of the Tahsildar, two other churches are located within 200 meters and a Hindu temple is located within 250 meters. The said fact has also been confirmed by the report of the Revenue Divisional Officer dated 07.04.2010. The Superintendent of Police, in his report dated 29.06.2010 has stated that the Hindu temple is located at about 300 meters north of the proposed prayer hall. In his report, he has also recorded that 80% of the surrounding people are against the prayer hall. They did not like to convert the existing building into a prayer hall. The superintendent of Police has further recorded that if it is allowed, the law and order problem would arise.

14.As per Paragraph No.3 of the affidavit, it is evident that the petitioner is paying house tax for the said building which is sought to be converted into a prayer hall. Hence, it is evident that originally the building was constructed as a residential house. It could not be gathered from the



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affidavit whether any building plan approval was granted by the competent authority for construction of the house property. The criteria of plan approval for a residential building would be completely different from that of a building approval for a prayer hall. Now, the petitioner has proposed to conduct a prayer for 100 members in the residential building. It is not a case where the petitioner is seeking permission for the construction of a new building wherein provision could be made for the accommodation of 100 people. This is a case where the petitioner is attempting to convert a residential house into a prayer hall. It could also be gathered from the affidavit that the building is located in a residential area. The gathering of a large number of people in the said residential area would cause nuisance and much more difficulty to the residents of the said locality.

15.A perusal of Rule 6 (4) of the Tamil Nadu District Municipalities Building Rules 1972 clearly reveals that before construction of a building intended for public worship or religious purposes, permission has to be obtained from the District Collector. In the present case, a residential building has already been constructed prior to 1996 and the same is attempted to be converted into a prayer hall. Hence, the question of invoking powers of the District Collector under Rule 6(4) of the Tamil Nadu District Municipalities Building Rules 1972 would not arise. There is no provision under the District



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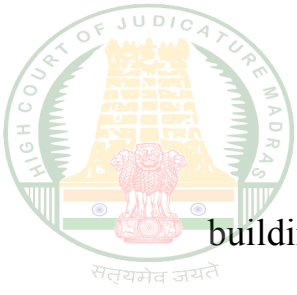
Municipalities Building Rules to convert one type of building into a another type of building.

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16.The Superintendent of Police of the concerned District is of the opinion that allowing of conversion of residential house into a prayer hall would result in law and order problem. He has also recorded that 80% of the people surrounding the said building are against the prayer hall. There is no reason why this report should be rejected.

17.The respondents 1 and 2 are the ultimate Authorities in respect of a District to maintain law and order problem. Hence, their opinion is more important in relation to law and order problem. Both the said authorities have concurred and found that the conversion of the residential house into a prayer hall would result in a law and order problem.

18.It is not a case where a single individual or some organisation has raised any objection with regard to the conversion of a building into a prayer hall. As per report of the second respondent, 80% of the people of the said locality are opposing the said conversion. That apart, two other churches are located very close to the proposed prayer hall. Hence, the recommendation of the Tahsildar and the Revenue Divisional Officer for conversion of the



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building into a prayer hall cannot be taken advantage of the writ petitioner.

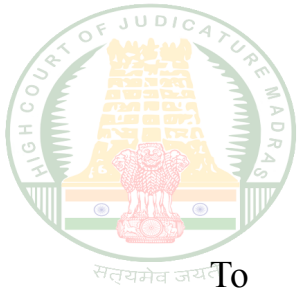
The said authorities are only recommending authorities and the ultimate decision has to be taken only by the first respondent herein independently.

18A. In the light of the above said facts, Building Rules do not permit conversion of a residential building into a Prayer Hall. The first respondent after considering the sensitive nature of the locality and the wishes of the 80% of the local people has arrived at an opinion to reject the request of the petitioner. This Court does not find any infirmity or illegality in the impugned order.

19. In view of the above said facts, I do not find any merits in the writ petition. The writ petition stands dismissed. No costs.

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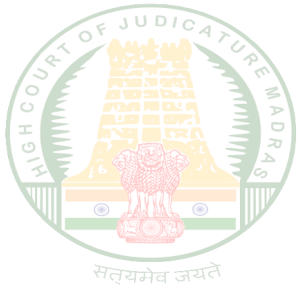
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To
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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