

(2011) 06 MAD CK 0445

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) . No. 1618 of 2011

Rajan David Livingston, Pastor,
New Life Good News Mission
Church

APPELLANT

Vs

The District Collector, The
Superintendent of Police, The
Inspector of Police Sutthamalli
Police Station, and The President
Sutthamalli Village Panchayat

RESPONDENT

Date of Decision: June 27, 2011

Acts Referred:

- Tamil Nadu Town and Country Planning Act, 1971 - Section 49, 49(2), 49(3), 50

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: M. Punitha Devakumar, for the Appellant; M. Govindan, Special Government
Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Rajendran, J.

This petition has been filed seeking a writ of mandamus directing the first Respondent to consider the Petitioner's representation dated 22.12.2010 to give permission to continue the construction of multipurpose building in Plot Nos. 103 and 110 in Survey Nos. 51 & 52 of Suthamalli Village, Tirunelveli District.

2. The Petitioner would contend that originally, the land was gifted by his father for establishing multi-purpose building for helping poor and aged persons and for construction of a church. The then Pastor Dr. M.Rajendran had sought building plan approval and permission was granted on 01.08.2002 and then, on 22.09.2003, the

fourth Respondent extended the plan approval and on 18.08.2004, receipt was given to that effect, but, he could not put up construction and the construction has been stopped with the lintel level due to lack of funds. Thereafter, on 14.12.2009, the Petitioner was appointed as Pastor of the said church and people are now willing to donate for construction of building and they wanted to shift the church from the small rental building to their own. They have also obtained No. Objection Certificate from various others in that area and religious activities are necessary for them. Therefore, the Petitioner gave a representation on 22.12.2010 seeking permission for continuous construction of the building and for prayer meeting, for which, since there was No. response, he has come forward with the present writ petition seeking a writ of mandamus directing the first Respondent to consider his representation dated 22.12.2010 for giving permission to continuous construction of the multi-purpose building in Plot Nos. 103 and 110 of Survey Nos. 51 & 52 of Sutthamalli Village, Tirunelveli District.

3. Notice of motion was ordered and the learned Additional Government Pleader brought to the notice of this Court that the permission to put up construction expired as early as 29.07.2004. In fact, as per the communication dated 22.09.2003, the permission earlier granted was extended to put up construction only upto 29.07.2004. Thereafter, the then owner sought further extension by receipt dated 18.08.2004 and permission was further extended from 30.07.2004 to 29.07.2005 and after that, they have never approached the authorities seeking any extension and therefore, the permission which was originally granted in the year 2002 has lapsed with effect from 29.07.2005. The Petitioner has never approached the authorities till the submission of the present representation dated 22.12.2010. Even now, the representations dated 10.06.2010 and 22.12.2010 were only given to the District Collector seeking continuous construction of the building as per the permission granted earlier in the year 2002. The Petitioner has not followed the procedure as contemplated under the Planning Permit Act. In any view of the matter, the representation is baseless as there is No. basis at all on the representation seeking to construct the building as per the original approval.

4. Heard both sides.

5. The Petitioner would only contend that the original permission to put up construction was duly approved as early as 2002 and thereafter, it has been extended duly upto 2005. Thereafter, the Petitioner could not renew permission only because there was No. funds available and therefore, they did not approach the authorities. The present Pastor has been newly appointed in the year 2009 and therefore, he has taken steps by seeking some donations. Hence, he sought permission from the District Collector to put up construction as per the earlier approval.

6. In this connection, if we take Section 49 of the Tamil Nadu Town and Country Planning Act, 1971, as amended, it provides that any person shall make an

application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed. On such application, u/s 49(2) of the Act, the concerned authority will grant or refuse such permission. As per Section 49(3), if the planning authority wants to refuse, he has to give reason thereof. In this case, permission has been granted. Then, if we take Section 50 of the Act, the duration of permission is given and the said Section reads as under:

50. Duration of permission.-Every permission for development granted u/s 49 shall remain in force for a period of three years from the date of such permission:

Provided that the appropriate planning authority may, on application made in this behalf before the expiry of the aforesaid period, extend such period for such time as it may think proper; but such extended period shall, in No. case, exceed three years.

Provided further that any expiry of permission shall not bar any subsequent application for fresh permission under this Act.

7. It is very clear that the permission will remain in force for a period of three years from the date of permission. Then, as per proviso, the appropriate planning authority may, on application made by the Petitioner before the expiry of the aforesaid period, extend such period for such time as it may think proper, but, such extended period shall, in No. case, exceed three years. In this case, originally, the permission was granted in the year 2002 and thereafter, it was extended for one year from 30.07.2003 to 29.07.2004. Again, the Petitioner sought extension and that was extended from 30.07.2004 to 29.07.2005 and thereafter, they have not at all sought any extension. Therefore, the Petitioner now cannot seek permission from the District Collector to put up construction on the basis of the erstwhile permission which was granted in the year 2002. At the same time, the Petitioner is not left out without any legal remedy under second proviso to Section 50 which clearly indicates that any expiry of permission shall not bar any subsequent application for fresh permission under this Act. Therefore, the expired permission which expired on 29.07.2005 cannot be sought to be directed to be considered by the District Collector for putting up construction.

8. In this connection, I am fortified by the order passed by the Division Bench of this Court in [M. Ingaci Vs. The Commissioner, Devekottai Municipality and Others](#), , to which I was also a party. In the said decision, following the Supreme Court decision, this Court has held that an application that could not even be considered, cannot be directed to be considered by the authority and therefore, very strongly opposed the application of this nature and even the very maintainability of the application itself. The relevant paragraph of the said judgment, viz., paragraph No. 8 reads as under:

....

8. Why we are extracting this judgment in such detail is that we should be aware of the consequences of our order when we direct the authorities to "consider". In the aforesaid situation, if the learned Judge, before directing the authorities to consider, had heard the Petitioner herein, then the order of the Division Bench reprimanding the 5th Respondent would have been brought to the notice of the learned Single Judge. Some time, we also come across cases where our directions is to an authority who cannot really pass an effective order and the effective order can only be passed by an authority superior to the one to whom we issue directions. Obviously, when the order is not complied with, since it cannot be complied with because of the hierarchy discipline, the officer has to face the contempt. All these can be avoided if we only bear in mind the guidelines given in the above case by the Supreme Court before we direct the Respondent to "consider and pass orders".

In this connection, it would also be worthwhile to refer to a judgment of the Supreme Court in the case of [A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others](#), wherein it has been observed as follows:

19. There are also several instances where unscrupulous Petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

The case on hand is exactly similar to the illustration. Here, the Petitioner wants a direction to consider a representation which cannot be considered at all as the permission has expired long back in 2005. No. application has been made for seven years. Now under the guise of a representation he wants an order to construct which cannot be permitted.

9. In view of the above decisions, I am of the considered view that the writ petition is not at all maintainable and it has to be dismissed in limini. Accordingly, the writ petition is dismissed. No. costs. But, it is always open to the Petitioner to file a fresh application seeking permission and not seeking extension under the guise of disposal of representation.