

(2011) 08 MAD CK 0361

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 2081 of 2007

Rev. Fr. Callistus

APPELLANT

Vs

The Secretary to Government,
Home Department and Others

RESPONDENT

Date of Decision: Aug. 12, 2011

Acts Referred:

- Tamil Nadu Panchayats Building Rules, 1997 - Rule 4(3)

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: C. Robert Bruce, for the Appellant; S. Bharathi, Government Advocate for R-1 to R-4 and G.R. Swaminathan, for R-5, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner has invoked the writ jurisdiction of this Court, praying for issuance of a Writ in the nature of Certiorari, to quash the order dated 28.12.2005, being illegal and unconstitutional.

2. The pleaded case of the Petitioner, is that the Church of the Petitioner is having several Sub Stations, and the Christ the King Church at Udavilai in R.S. No. 214/32 of Kunnathur Village, Vilavancode Taluk in Kanyakumari District, is one among them.

3. The Petitioner is in charge of the Christ the King Church at Udavilai. The Petitioner claimed, that the Christ the King Church was established in the year 1980, in R.S. No. 212/26 of Kunnathur Village, and prayers are held in the said Church since 1980.

4. There were communal disturbances, and to solve it a Peace Committee meeting was held on 20.11.2000, wherein a decision was taken to shift the Church to R.S. No. 214/32, and liberty was granted to the Petitioner to construct the Church.

5. The case of the Petitioner, is that in pursuance to the decision of the Peace Committee, a decision was taken to shift the Church to R.S. No. 214/32 for conducting religious ceremonies. That one Sundaradhas filed a suit in the Court of the learned District Munsif, Kuzhithurai vide O.S. No. 442 of 2002, and obtained injunction. The suit was finally decreed, and the Petitioner herein was restrained from raising construction, without prior permission of the District Collector as envisaged under Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997 (hereinafter referred to as "the Rules").

6. The Petitioner filed W.P. No. 2010 of 2004, wherein directions were issued to the District Collector, to dispose of the application moved by the Petitioner for permission to raise the construction of the Church.

7. The application was disposed of with liberty to the Petitioner, to file fresh application, after the decision in the Civil Suit, which was pending in the Court of learned District Munsif, Kuzhithurai.

8. The Petitioner, on an earlier occasion filed W.P. No. 39616 of 2005, before the Principal Bench of this Court, to construct the Church building, as per the peace resolution. The writ petition was allowed by Hon"ble Single Judge.

9. In pursuance to the order passed by the Principal Bench of this Court in W.P. No. 39616 of 2005, the Petitioner started construction of a church in R.S. No. 214/32, and police protection was also provided to carry out the construction.

10. The decision of the Hon"ble Single Judge was challenged in W.A. No. 65 of 2006, wherein the Additional Advocate General made a statement before the Court, that permission for construction of a church was refused by the District Collector. The Petitioner, therefore, sought permission, to withdraw the writ petition. The prayer was allowed, consequently, the order of the learned Single Judge was ordered to be set aside while disposing of the writ appeal.

11. The application moved by the Petitioner, for permission, to raise the Church has been declined by the District Collector, vide the impugned order.

12. The impugned order is challenged on the ground, that it has been passed without application of mind. That the District Collector was influenced by the decision of the Hon"ble Division Bench in Writ Appeal in withdrawing the writ.

13. It is also submitted, that in the impugned order, the District Collector has failed to take note of the proceedings of the Peace Committee. The impugned order is also challenged on the ground, that the construction of the Church was almost complete, when the inspection was carried out by Respondent Nos. 3 and 4, therefore, the order passed by the second Respondent, had become infructuous, as the construction was completed under the orders of this Court.

14. On the grounds referred to above, the Petitioner prays for quashing of the impugned order.

15. The fifth Respondent herein, had also filed a Writ Petition No. 10347 of 2006, for issuance of a Writ, in the nature of Mandamus, to direct the second Respondent, to initiate action for demolition of construction put up in Re Survey No. 214/32 by the fifth and sixth Respondents, in view of rejection of Planning permission, by the second Respondent vide proceedings dated 28.12.2005.

16. The writ petition was dismissed by this Court on 03.08.2011, with liberty, to the Petitioner, to get the Civil Court decree executed, or avail any of the other remedy, in accordance with law, to enforce the order.

17. This writ petition was also tagged with the Writ Petition No. 10347 of 2006, for final disposal. However, the Learned Counsel for the Petitioner requested for adjournment of the case on the ground, that the case has to be argued by a Senior Counsel, who would be available only on 12.08.2011.

18. The prayer of the Learned Counsel for the Petitioner was not appropriate, however, in the interest of justice, the case was directed to be posted for orders on 08.08.2011. The Learned Counsel for the Petitioner partly argued the matter, and thereafter made a request, that the case be adjourned to today, as it is to be argued by his Senior Counsel, who would positively be present before this Court on 12.08.2011. The case was adjourned to 12.08.2011, with a specific direction, that no further adjournment, shall be granted. Today, again the neither the Petitioner nor his counsel is present.

19. The facts and grounds stated herein above show, that there is no merit in the writ petition. The very object of Rule 4(3) of the Rules is to seek prior permission of the District Collector, who can either grant or refuse permission in the facts and circumstances of that case. There is statutory duty cast on District Collector to take into consideration relevant material and then pass an order.

20. There were communal disturbances in the area, and Judicial Commission was appointed to go into the reasons, which was headed by a retired Judge of this Court. It was on the recommendations of the Judicial Commission, that the Government has issued an order.

21. The Government Order is only an administrative instruction, having no force of law, nor there was any necessity of issuing any G.O., as statutory provision under Rule 4(3) of the Rules, exist dealing with the same issue.

22. The reason for challenge to the impugned order passed by learned District Collector, is that the construction of the Church was carried on under the orders of this Court, therefore, the District Collector should have granted the permission.

23. This contention is mis-conceived. It is well settled law, that any benefit taken under the order of Court, on the reversal of the decision, results in status quo ante. The Petitioner, had chosen to withdraw the writ petition and a specific order was passed by Hon"ble Division Bench, setting aside the order of the Hon"ble Single Judge. It was therefore obligatory on the part of the Petitioner to restore status quo ante to the one existing before passing of the order in the writ petition. Instead of doing so, the Petitioners chose to approach the District Collector, and thereafter filed the present writ petition, and obtained interim direction.

24. The ground of the Petitioner that as the construction is complete, therefore, the permission should have been granted, cannot be sustained. The Petitioner cannot be allowed to play hide and seek with the Court, by getting an interim order, and thereafter withdraw the writ petition. Thereafter instead of restoring status quo ante, the Petitioner filed the writ petition and enjoyed interim order, but has chosen to be absent at the time of final hearing.

25. The exercise of discretion by the District Collector in view of the peculiar facts and circumstances of the case, does not call for interference by this Court.

26. Consequently, this writ petition, being without merit, is dismissed, but with no order as to costs.