
(2016) 10 MAD CK 0015

In the Madras High Court

Case No : Writ Petition(MD)No.15091 of 2016 and W.M.P(MD)Nos.11124 and 11125 of 2016

C. Soman

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 7 FLT 209

Hon'ble Judges : Mr. S. Nagamuthu and Mr. M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. I. Velpradeep, Advocate, for the Petitioner; Mr. Aairam K. Selvakumar, Govt. Advocate, for the Respondent Nos. 1 to 4; Mr. T. Lajapathy Roy, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

M.V. Muralidaran, J.—The petitioner has come forward with this writ petition as Public Interest Litigation seeking a prayer for the issuance of a Writ of Certiorari to call for the records relating to the impugned order in D.Dis.No.C3.1472/16 dated 13.07.2016 issued by the first respondent and quash the same.

2. The case of the petitioner is that the fifth respondent is putting up a new construction for church in R.S.No.774/8, 10-13 and 23 of Lakshmipuram Village, Kalkulam Taluk, Kanyakumari District. The said area falls within the Costal Regulation Zone. There is a notification, namely, Coastal Regulation Zone notification. As per regulation, no construction shall be permitted within Coastal Regulation Zone. The subject construction of Church by the fifth respondent which is situated within 100 meters, falls, within Coastal Regulation Zone (CRZ-III).

3. It is the further case of the petitioner that without getting proper permission and clearance from the competent Government authority, the fifth respondent

tried to construct the church within prohibited area (Coastal Regulation Zone). Therefore, the petitioner submitted an objection citing the regulation of Coastal Regulation Zone. However, without considering the objection, the first respondent passed the impugned order dated 13.07.2016 granting permission to the fifth respondent to construct the church in the subject land. The said impugned order of the first respondent is without jurisdiction and not in consonance with the Coastal Regulation Zone. The Government of India, by notification dated 06.01.2011, issued the coastal regulation zone notification. Therefore, as per regulation a prior approval from the committee is necessary. Without getting approval from the committee, no construction shall be permitted. The construction of the fifth respondent not falls within the exception. The impugned order clearly reveals that no order and clearance from the competent authority under the Coastal Regulation Zone was not obtained by the fifth respondent. In these circumstances, the petitioner is left with no other option except to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. No counter affidavit has been filed before this Court.

5. Heard the parties and perused the records.

6. When the matter is taken up for hearing, the learned counsel for the fifth respondent has produced a copy of the order passed by us made in W.P(MD)No.2285 of 2016 dated 09.09.2016, wherein, the issue involved in this writ petition has already been decided by this Court following the Judgment of the Hon'ble Apex Court. The relevant portion of the said order reads as follows:-

"18. Admittedly, the relative of the writ petitioner one Tmt. Thulasibai ammal has filed the writ petitions in W.P(MD)No.10648 and 10649 of 2011 and the same were transferred by this Court to the National Green Tribunal South Zone, Chennai, which was taken on file as Application No.118 of 2013. Since the matter is absolutely involved health, the writ petitioner ought to have go before the National Green Tribunal. To support their case, the respondents have produced a Judgment passed by the Honourable Apex Court in Bhopal Gas Peedith Mahila Udyog Sangathan and others v. Union of India and others reported in (2012)8 SCC 326. In the above said Judgment, the Honourable Apex Court held as follows:-

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Section 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted

only before NGT. This will help in rendering expeditious and specialised justice in the filed of environment to all concerned."

19. As per above said Judgment of the Honourable Apex Court, we come to the conclusion that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal only and not before this Court under Article 226 of the Constitution of India. Such approach may be necessary to avoid likelihood of conflict of orders between the High Court and National Green Tribunal. After Act of NGT 2010 came into force, the environmental issues and matters covered under the NGT Act, Schedule-I should be instituted and litigated before the National Green Tribunal and this Court have no competent jurisdiction to entertain this writ petition. Accordingly, this writ petition is dismissed with a direction to the petitioner to approach the National Green Tribunal. No costs. Consequently, connected miscellaneous petition is also dismissed.

7. The above said Judgement in W.P(MD)Nos.2285 of 2016 dated 09.09.2016 is squarely applicable in the present case. Hence, this writ petition is dismissed with a direction to the petitioner to approach the National Green Tribunal. No costs.

8. Consequently, connected miscellaneous petitions are also dismissed.