



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

W.P (MD) No.16145 of 2014

R.A.Joseph Kingston

... Petitioner

Vs.

1. The District Collector,
Tuticorin District,
Tuticorin.
2. The Revenue Divisional Officer,
Tuticorin,
Tuticorin District.
3. The Superintendent of Police,
Tuticorin District,
Tuticorin.
4. The Inspector of Police,
Tuticorin South Police Station,
Tuticorin.
5. The District Environmental Engineer,
Tuticorin District,
Tuticorin.
6. Pastor
C.P.M.Church,
No.22/8, South Beach Road,
Tuticorin.
7. The Commissioner,
Tuticorin Corporation,
Tuticorin.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondents 1 to 5 and 7 herein to initiate appropriate action as against the 6th respondent herein within a time frame fixed by this Court and pass such further or other orders as this Court may deem fit and proper in the circumstances of this case and thus render justice.



For Petitioner : Mr.R.Vijayakumar
For Respondents 1-4&7 : Mr.N.Manoharan,
Special Government Pleader.
For 6th Respondent : Mr.C.Jeganathan
For 5th Respondent : Mr.C.Elaman

ORDER

(Order of the Court was made by S.TAMILVANAN,J)

This writ petition has been filed seeking an order in the nature of Mandamus directing the respondents 1 to 5 and 7 to initiate appropriate action against the sixth respondent for causing noise pollution in the residential area, specified in the writ petition.

2.Mr.R.Vijayakumar, learned counsel appearing for the petitioner submits that the sixth respondent has put up illegal construction without getting permission from the authorities and causing noise pollution to the petitioner and others. However, in spite of repeated representations being made to the respondents 1 to 5 and 7, no action has been taken so far, which necessitated the petitioner in filing the present writ petition.

3.It is also submitted that though sufficient opportunity was given, the sixth respondent has not come forward in filing counter affidavit. It is a public interest litigation raising an allegation that the sixth respondent is causing public nuisance by noise pollution to all the residents in the area.

4.Mr.R.Vijayakumar, learned counsel appearing for the petitioner drew the attention of this Court to paragraph 2 of the affidavit wherein he has specifically stated that the petitioner has constructed the residential house in plot No.7, which has been approved by the Tuticorin Municipality in No.18/86. However, the sixth respondent in plot Nos.18, 19 and 20 of the said lay out which are opposite to the petitioner's residential house using loud speaker in conducting prayers everyday between 9.30 am and 2.00 p.m and 7.00 p.m and 10.00 p.m and on Saturdays, the evening prayers extended upto 01.00 a.m and causing annoyance for the people living of the petitioner and others.

5.It cannot be disputed that every one has right to have faith, worship and also to perform his religious affairs. In this regard minority right has to be protected, however, that is subject to reasonable restrictions as contemplated under Article 25 of the Constitution of India. Such religious freedom should not exceed the rights of other persons. Article 21 of the Constitution is paramount as that of Article 14 which has been interpreted by the Hon'ble Apex Court in various decisions that every one is entitled to lead a peaceful life which cannot be tampered with by



way of air pollution, noise pollution or other forms of nuisance in the name of religion.

6.It is submitted by the learned counsel for the petitioner that the sixth respondent is using loud speakers in the name of conducting prayers, causing noise pollution even during midnight in the residential area where the petitioner and others are residing.

7.It is also relevant to note that the petitioner is also following Christianity. However, no one is entitled to cause noise pollution by using loud speakers or using their voice unreasonably causing disturbance to others in the name of religion, as it would be against the right given under Article 21 of the Constitution.

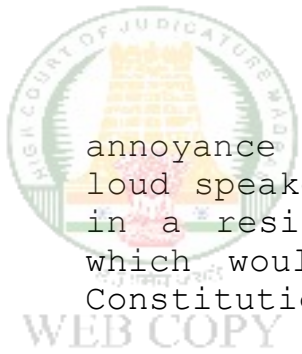
8.On the said facts and circumstances, it is the duty of the respondents 1 to 5 and 7 to prevent the sixth respondent from unauthorised construction in the name of religion or causing noise pollution by using loud speakers detrimental to the rights of other persons.

9.In **State of M.P. Vs. Kedia Leather and Liquor Ltd.**, reported in (2003) 7 SCC 389, the Hon'ble Supreme Court has categorically held that environmental, ecological, air and water pollution amount to violation of right to life assured under Article 21 of the Constitution. It is well settled that hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.

10.Similarly, in **Prohibition and Excise Superintendent, A.P., Vs.Toddy Tappers Co-operative Society**, reported in AIR 2004 SC 658, it was held by the Hon'ble Apex Court that it is for the Government to evolve the excise policy and implement the same in the interest of the general public and no citizen has got any fundamental right for the trade in liquor.

11.It cannot be disputed that right guaranteed to life under the Constitution is not for mere animal life but a meaningful life with human dignity in a pollution free atmosphere. Hence, living in a conducive atmosphere without air and noise pollution is also a fundamental right.

12.As per Article 25, subject to public order, morality and health and to the other provisions of Part III of the Constitution, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Nothing in the said Article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting the religious activities causing



annoyance to another by way of creating noise pollution by using loud speaker for performing prayers, causing disturbance to others in a residential area and the same amounts to noise pollution which would not come under the purview of Article 25 of the Constitution.

13.If there is any construction of building which should be constructed as per law and the Municipal Rules, there could be no exemption or privilege for violating the law based on any religion or community. Any prayers or songs relating to religion or otherwise shall be performed in accordance with law which should not affect others right of peaceful living as guaranteed under Article 21 of the Constitution. In fact, the right guaranteed under Article 21 of the Constitution is paramount and it is applicable to everyone. If there is any unauthorized construction put up by the sixth respondent, it is the duty of the respondents 1 to 5 and 7 to take appropriate action against the unauthorized construction.

14.Similarly, if there is noise pollution by way of prayers or otherwise, using loud speaker, affecting peaceful living of other persons, the same should not be construed as religious freedom within the purview of the guarantee given under Article 25 of the Constitution as the same is subject to reasonable restrictions.

15.On the said facts and circumstances, having considered the material papers and the submissions made in the accompanying affidavit, we are of the view that the respondents 1 to 5 and 7 should take appropriate action if there is any violation by the sixth respondent as alleged by the petitioner herein so as to protect the rights of the petitioner and other persons from noise pollution, we make it clear that it is open to the 6th respondent to exercise his religious rights without affecting the rights of others and if there is any act done by way of unauthorized construction or causing noise pollution making annoyance or nuisance to other persons affecting the peaceful atmosphere in a residential area either by the sixth respondent or any other person proper and immediate action shall be taken by the authorities according to law.

16.With the above observation, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(Writs)

/True Copy/



To

1. The District Collector,
Tuticorin District,
Tuticorin.
2. The Revenue Divisional Officer,
Tuticorin,
Tuticorin District.
3. The Superintendent of Police,
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Tuticorin.
4. The Inspector of Police,
Tuticorin South Police Station,
Tuticorin.
5. The District Environment Engineer,
Tuticorin District, Tuticorin.
6. The Commissioner,
Tuticorin Corporation, Tuticorin.

+1cc to Mr.Veera Kathiravan, Advocate, in SR. No.12885/15.

+1cc to Mr.C.Elaman, Advocate, in SR. No.13387/15.

+1cc to Mr.R.Vijayakumar, Advocate, in SR. No.12945/15.

+1cc to Special Government Pleader, in SR No.13713/15.

W.P (MD) No.16145 of 2014
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sms

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