

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.21260 of 2014

G.Thangavel

... Petitioner

vs.

1.The District Collector,
Villupuram,
Office of the District Collector,
Villupuram Town and District.

2.The Revenue Divisional Officer,
Thirukovilur,
Villupuram District.

3.The President of Panchayat,
Nerkunam Panchayat,
Tirukovilur Taluk,
Villupuram District.

4.Arumugam

.... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondents 1 and 2 to permit the Nerkunam Villagers to conduct the annual festival of Chithirai Thiruvizha Gengaiamman Thirukovil, Thirukovilur in the month of April of every English calendar year with seven Vagaiyara of village people till the eighth vagaiyara people get appropriate orders from the civil court as directed by the High court in WP.No.9332 of 2013 on 21.02.2013.

For Petitioner : Mr.P.Thiagarajan

For R1 & R2 : Mr.V.Jayaprakash Narayanan, SGP

For R3 : Mr.P.Sanjay Gandhi, AGP

For R4 : Mr.S.Kumaresan

ORDER

The petitioner has come up with the present writ petition for a mandamus, directing respondents 1 and 2 to permit the Nerkunam Villagers to conduct the annual festival of Chithirai Thiruvizha in Sri Gengaiamman Thirukovil at Thirukovilur in the month of April of every English calendar year with seven Vagaiyaras of village people till the eighth vagaiyara people get appropriate orders from the civil court as directed by the High court in the order dated 21.02.2013 made in WP.No.9332 of 2013.

2. The facts of the case, as per the averments made in the writ petition, are as follows:

2.1 The petitioner is a permanent resident of Nerkunam Village. There is a temple called Arulmighu Mariamman Gengaiamman Temple situated in the said village and patta has been granted to the petitioner in respect of the said temple. During the month of Chithirai i.e., April or May of English Calendar Month of every year, the villagers used to conduct festival for nine days. For the first eight days, each vagaiyaras of village people sponsored for the celebration of the festival and the ninth day festival used to be celebrated in a grand manner, out of the contribution collected from all eight vagaiyaras of villagers.

2.2 In 2009, at the time of festival, there was a dispute within the 8th vagaiyara people and the same resulted in serious dispute between two groups of villagers and the 8th vagaiyara villagers prevented others from celebrating the festival. Therefore, the villagers filed a complaint dated 24.03.2009 to the police authorities, who referred the matter to the Tahsildar, who in turn formed a peace committee and conducted a meeting on 10.04.2009. In the said peace committee meeting, no settlement has been arrived at and therefore, it has been resolved to stop the festival temporarily and further it was resolved that both the groups are entitled to give representation to celebrate the festival on or before 25.04.2009 if the dispute is resolved.

2.3 Thereafter, the villagers took sincere steps and decided to conduct festival and communicated the same to the Tahsildar. Following the same, the second respondent conducted a peace committee meeting on 27.04.2009 at his office. In the said meeting, the villagers have assembled and the persons from 8th vagaiyara have also been present, however, the concerned person who involved in the dispute, did not attend the peace committees meeting. Further more, the persons, who have attended on behalf of 8th vagaiyara, created a problem and they refused to permit the others to go ahead with the festival. Therefore, the second respondent adjourned the meeting to 25.05.2009 and as a result, the festival for the year 2009 has been stalled. The villagers'

request for celebration of the festival in the name of village, without the vagaiyaras was also denied by the second respondent.

2.4 During the interregnum period, challenging the order, dated 27.04.2009, in not permitting to perform the temple festival starting from 30.04.2009, one of the villagers viz., M.Radhakrishnan filed a writ petition in WP.No.8569/2009, which was dismissed with liberty to approach the civil court. Other group of people represented by one Arumugam, who is the fourth respondent herein, also filed a writ petition in WP.No.9332/2009 seeking reschedule the temple function and allowing the petitioner therein to conduct the 8th day celebration. By order dated 21.02.2013, the said writ petition was dismissed as infructuous. While doing so, this Court has observed in para 5 as follows:

"The dispute with regard to customary rights of a person to perform pooja in a temple can be determined based on evidence of customs and proving the customs in accordance with law. The remedy with the petitioner was to go to the civil court and not invoke the writ jurisdiction. The writ petition therefore is not competent."

However, till date, no civil suit has been filed by the fourth respondent herein.

2.5 In the mean while, the village people made various representations to the second respondent. However, the respondents 1 and 2 have not called for any peace committee meeting till today, as a result of which, the festival is not being conducted in the temple in question for the past five years. Further, the villagers' attempt to seek police protection for celebrating the festival during the month of Adi starting from 10.04.2014, also ended in failure. Therefore, the petitioner has no other option except to approach this court with the present petition for the above stated relief.

3. A counter affidavit has been filed by the respondents 1 and 2, inter alia stating as follows:

3.1 As per the age old custom of the village, the annual festival will be conducted for nine days by eight vagaiyaras i.e., daily one vagaiyara will undertake to conduct the festival, according to custom, the ninth day festival will be conducted jointly by all the eight groups. Any change in this custom would affect the customary right of a person.

3.2 While so, there is a dispute over the conduct of festival between 1 to 7 groups on one side and 8th group on the other side and the remedy for the dispute is only to approach the competent civil court. Therefore, the respondents 1 and 2 have no jurisdiction to break or modify any customary right that prevails in the village.

3.3 The writ petitioner himself admits that there is a dispute in the celebration of festival by some miscreants and the conduct of the festival should in no way lead to a breach of peace in the village. As such, the dispute with regard to customary rights can be determined based on the evidence of customs and proving the customs in accordance with law, as observed by the High Court in the order dated 21.02.2013 made in WP.No.9332/2009.

By stating so, the respondents 1 and 2 prayed for dismissal of the writ petition.

4. The fourth respondent has filed a counter affidavit, wherein, it has been averred as follows:

4.1 The writ petitioner is not a competent person for the 7th day Ubayadharar, which were headed by one P.Rajagopal and Poongovil. The 7th day Ubayadharar alone cannot conduct the festival.

4.2 The writ petitioner has not impleaded the head man of 1 to 6 and 9th Ubayadharars and therefore the writ petition is bad for non-joinder of necessary parties.

4.3 The said Gangaianman Mariamman Temple function has been celebrated by the forefathers of the fourth respondent from the time immemorial. They are celebrating 8th day function in the temple every year for a period of past 60 years without any interruption by joining with other Udayadharars upto the year 2008.

4.4 In 2009, before the commencement of function, 1 to 7 Ubayadharars jointly raised objections for the participation of the fourth respondent Ubayadharar, in common customs of 1st day and 8th day function. Thereafter, some unwanted disputes were created by 1 to 7 Ubayadharars to prevent the fourth respondent Ubayadharar from conducting 8th day function. This has been brought to the knowledge of the third respondent. Thereafter, The Tahsildar conducted a peace committee meeting on 10.04.2009, wherein, two resolutions have been passed to the effect that (i) there is no unity between 1 to 7 and 8th day Ubayadharars and (ii) both the parties shall arrive at a uniform opinion on or before 25.04.2009 and thereafter, the temple festival has to be conducted by either parties.

4.5 According to the fourth respondent, the 7th day Ubayadharar i.e., the petitioner group has unwantonly created the problem on 10.05.2009 with the 8th day Ubayadharar and demolished the 8th day Ubayadharar houses, which resulted in registration of the FIR in Crime No.266 of 2009 dated 17.05.2009 under sections 147, 448, 427 IPC r/w Section 3 of PPD Act 1992.

4.6 Without 8th day Ubayadharar function, the entire Chithirai festival will not be fulfilled. The temple function has been stopped since from the year 2009.

4.7 The petitioner also has to establish his right before the civil court for conducting the temple function, as per the direction given to the fourth respondent by this Court in the order dated 21.02.2013 made in WP.No.9332 of 2009. By stating so, the fourth respondent sought for dismissal of this writ petition.

5. When the writ petition came up for consideration, learned counsel for the petitioner submitted that the fourth respondent has already filed a writ petition in WP.No.9332 of 2013 seeking permission to reschedule the temple function and to conduct the 8th day celebration in the temple in question. By order dated 21.02.2013, the said writ petition was dismissed with liberty to approach the competent civil court. But the fourth respondent has not filed any civil suit. Further, the learned counsel denied the averment raised in the counter affidavit filed by the fourth respondent to the effect that the petitioner group was responsible for the dispute. In fact, the peace committee meeting conducted on earlier occasion by the Tahsildar, ended in failure, due to non-co-operation on the part of the fourth respondent. However, he submitted that the petitioner is ready and willing to co-operate with the Revenue officials, if one more peace committee meeting is conducted, for the purpose of conducting the temple festival.

6. According to the learned counsel for the fourth respondent, the direction issued by this Court in WP.No.9332/2013 to the fourth respondent to approach the civil court for getting appropriate relief, is equally applicable to the petitioner also, whereas, the petitioner without resorting to the civil court, has come to this court with the same relief as sought for by the fourth respondent in the said writ petition.

7. Opposing the relief sought for in this writ petition, the learned Special Government Pleader appearing for respondents 1 and 2 submitted that there is no unity among the 8 groups and if a permission is granted to conduct the festival in the temple in question against the customary right, it will lead to law and order problem in the village.

8. Keeping the submissions made by all the parties, I have perused the materials available on record and I am of the opinion that in the interest of justice, a direction can be issued to the second respondent to conduct one more peace committee meeting. Hence, without going into the merits of the case made by the petitioner, this Court directs the second respondent to conduct one more peace committee meeting for

conduct of the temple festival by inviting all the groups and if any amicable settlement is arrived at between the parties, then the second respondent may permit the parties to conduct the temple festival, or in case, if no compromise is arrived at between the parties, the second respondent is at liberty to pass an appropriate order. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner and the fourth respondent are directed to co-operate with the second respondent for conducting the peace committee meeting in a peaceful manner for arriving at the settlement amicably.

9. The writ petition is disposed of accordingly. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rk

To

1.The District Collector,
Villupuram,
Office of the District Collector,
Villupuram Town and District.

2.The Revenue Divisional Officer,
Thirukovilur,
Villupuram District.

3.The President of Panchayat,
Nerkunam Panchayat,
Tirukovilur Taluk,
Villupuram District.

1 cc to Mr.P. Thiagarajan, Advocate, Sr. 15370
1 cc to Mr.S. Kumaresan, Advocate, Sr. 14876
1 cc to Government Pleader, Sr. 14997

W.P.No.21260 of 2014

SCD (CO)
kk 25/4