

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HON'BLE MR JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Appeal No.1559 of 2016
and C.M.P.Nos.19268 and 19269 of 2016

K.M.Peter

..Appellant

Vs

1.The Revenue Divisional Officer
Office of the Revenue
Erode.

2.Inspector of Police
Erode Taluk Police Station
Erode

3.Arunachalam

4.T.Murali

5.K.Siva

6.T.Jagadeesan

7.K.Poosappan

..Respondents

Writ Appeal filed against the order made in W.P.No.38644 of 2016 dated 07.11.2016.

Writ petition filed u/a.226 of the constitution of India, praying to call for the records relating to the impugned order of the 1st respondent, in Na.Ka.6204/2016/136 dt.26.10.16 and quash the same consequently directing the respondents 1 and 2 to permit the petitioner for conducting prayer in the suit schedule mentioned property situated in R.S.No.811/part at Erode Taluk and district within the boundaries.

On the East of 23 ft length southern road,
on the west of site No.16

On the south of site No.12A and 13 and on the North of
Private land within the Jurisdiction of erode District.

For Appellant : Mr.P.Immanuel Prakasam

For Respondents: Mr.P.S.Sivashanmugasundaram

Special Government Pleader for R1 and

R2.

JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and the learned Special Government Pleader, appearing for respondents 1 and 2. By consent of counsel appearing on both sides, the Writ Appeal itself is disposed of at the admission stage. Notice to respondent Nos.3 to 7, is dispensed with, at this stage, inasmuch as no adverse order is passed against him in this Writ Appeal.

2. It is seen from the records that the appellant is the Pastor, who purchased land to an extent of 1912 sq.ft., situated in R.S.No.811/Part, Erode Taluk and constructed a building for running Play School and due to poor strength of the school, he utilised the same as a place of worship.

3. In the Writ Petition filed before the learned Single Judge, it has been mentioned that on 25.10.2016, respondents 3 to 7, made agitation in front of the place of worship and the matter was referred to the 1st respondent by the 2nd respondent-Police, who on receipt of such reference, initiated proceedings under Section 107 Criminal Procedure Code, 1973 (hereinafter after called as "Cr.P.C.")

4. Before the learned Single Judge, the appellant herein/writ petition sought to quash the order of the 1st respondent-Revenue Divisional Officer, Erode, dated 26.10.2016 and for a direction to the respondents 1 and 2 to permit him for conducting prayer in the suit schedule property. The learned Single Judge, by order dated 07.11.2016, held as under:-

" 4. On a careful reading of the notice dated 26.10.2016, which is impugned in this writ petition, it is seen that there is a dispute between two private parties and they were under loggerheads which resulted in prevalence of tension and peacelessness in the locality. In such circumstances, the first respondent has issued the notice dated 26.10.2016 calling upon the A and B parties for a Peace Committee Meeting to peacefully resolve the dispute among them. In the said notice, reference was also made to the suit filed by the petitioner before the Civil Court for a bare injunction. At any rate, as there was disturbance and commotion in the area, the first respondent, by invoking his powers under 107 Cr.P.C., has directed the petitioner and other parties concerned to appear for a peace committee meeting. In and by the impugned notice, the first respondent also sought for report from the authorities concerned

to ascertain as to whether the petitioner has obtained prior permission for conducting prayer in the premises which was hitherto used by him for running a school. Thus, the notice, which is impugned in this writ petition, has been issued by the first respondent to explore the possibility to arrive at an amicable settlement of all the disputes between the parties. As per the notice dated 26.10.2016 both sides were directed to appear on 24.11.2016. Therefore, I am of the view that it is premature for the petitioner to come to this court at this stage and no relief can be granted to the petitioner in this writ petition. It is always open to the petitioner to attend the meeting, bring the notice of the first respondent all the points which are raised in this writ petition for consideration.

5. In the result, the Writ Petition is dismissed. No costs."

5. The above writ petition filed by the appellant herein has been rejected on the above lines. Hence the writ petitioner/appellant has filed the present Writ Appeal.

6. It transpires from the typed set of papers filed along with this Writ Appeal that the appellant is conducting Prayer meeting in Sundays and running Play school on other days in his own building and the same is causing disturbance to Arasu Nagar Public and one K.Siva, 5th respondent herein, raised objection regarding the said conduct of Prayer meeting.

7. Thereafter, on the said complaint, the Revenue Divisional Officer, by letter dated 24.10.2016, issued summons to both parties and called for a Peace Committee Meeting. In the Peace Committee Meeting held on 26.10.2016, on the side of Party A, which includes the respondents 3 to 7 herein, it was submitted that earlier in the suit schedule property, a play school was running and on sundays, a prayer meeting is being conducted and nearly 200 persons from various places assembling and it is a nuisance for them and sometimes creating fear in the minds of neighbours and moreover, two wheelers and four wheelers parked in that area is causing hindrance to the people of that area. It is also stated that in the prayer meeting, the appellant herein is using speakers for their prayer and it creates air and noise pollution.

8. On the other hand, on the side of B party, viz., the appellant herein, it is submitted before the Revenue Divisional Officer, the 1st respondent herein, that on the earlier objections of 3rd respondent-Arunachalam, he moved the

appropriate court and obtained permission and further stated that they never clap or make any noise.

9. On the above submissions, the Revenue Divisional Officer, passed an order holding that Peace Committee Meeting will be held on 24.11.2016 at 11.00 a.m., and till then, the Inspector of Police, Erode Taluk Station shall monitor the situation and if any one from either side create any law and order problem, he was directed to take action, after registering the case, under Section 107 Cr.P.C.

10. The apprehension of the appellant is that on the regular prayer meeting on sundays, the respondents 3 to 7 may raise objection and create commotion, resulting in proceedings to be initiated under Section 107 Cr.P.C.

11. Sections 107 to 111 Cr.P.c., provides for Security for keeping the peace in other cases; security for good behaviour from persons disseminating seditious matters; security for good behaviour from suspected persons; security for good behaviour from habitual offenders and order to give security respectively.

12. As per Section 107 Cr.P.C., when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. Clause 2 of Section 107 Cr.P.C., states that proceedings under this section may be taken before any Executive Magistrate when either the place where the breach or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

13. Although the Executive Magistrate is empowered to proceed, he may, in the manner provided, require such person to show cause why he should not be ordered to execute a bond for keeping the peace for such period.

14. What is being contemplated under Section 107 to 111 of Cr.P.C., is that when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction, or there is within such jurisdiction, a person, who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act, Proceedings under

Section 107 of Crpc., may be initiated.

15. In our considered view, the proceedings, which are sought to be initiated by the Executive Magistrate and restricting the conduct of Prayer Meeting in the appellant's suit schedule property, on the ground that it is causing public nuisance, is not an appropriate action. What is to be prevented by the Executive Magistrate is undoubtedly the action of any person who is likely to commit a breach of peace or diturb the public tranquillity.

16. The respondents 3 to 7 raised objection as regards conduct of prayer meeting in the petitioner's suit schedule property, stating that it causes noise pollution and security problems. On the said objection, this court directs the appellant not to cause any nuisance and not to disturb the peace and public tranquillity while conducting prayer meeting and abstain the use of microphone and loud speakers etc.,

17. However, in the event of any unreasonable nuisance caused to the neighbours and people in the said area, on such situations, as contemplated in Section 107 Cr.P.C., the Executive Magistrate, would necessary issue show cause notice to the concerned parties, hear them and pass necessary orders.

18. Thus, we are of the considered view that unless and untill such complaints being received, which make out a disturbance of public tranquillity or breach of peace, the situation does not warrant the Executive Magistrate to initiate proceedings under Section 107 Cr.P.C., rather being an Executive Magistrate, he can issue notice to the appellant, asking to maintain peace and not to cause nuisance to the public. In the event of any disturbance in the nature of invasion of rights of any private persons, which is in the form of civil wrong, remedy lies before the civil court, by filing a civil suit. On such suit being instituted, it is for the civil court to take into cosnideration all the aspects before it and after affording sufficent opportunity to the parties, and pass appropriate orders therein.

19. The impugned proceedings dated 26.10.2016 recommends the action sought to be initiated by the Executive Magistrate, under Section 107 Cr.P.C., in the event of law and order problem and in case of persons involved therein create breach of peace. Hence, in order to maintain peace, law and order, it is advisable that the appellant shall give an undertaking to the 1st respondent that he will not create any noise pollution or cause disturbance to the people living nearby. The appellant shall necessarily reduce the volume of the prayer meeting and further, the parking of vehicle, if any, be only within the ambit of suit schedule property and shall not in any manner create disturbance

to neighbours. The conduct of prayer, per se, would not in any way result in breach of peace or disturb the public tranquillity. Thus, the appellant is directed to abide by the directions stipulated above, while conducting prayer meetings and worship.

20. Learned counsel appearing for the appellant submits that he is ready to give an undertaking before the 1st respondent, stating that he will reduce the volume of worship and not cause public nuisance. The said statement is recorded. The complaints already given to the authorities on this aspect may be treated as closed. However, it is for the appellant herein to take notice of the objections raised in the complaint and abstain from those acts.

21. This Writ Appeal is disposed of on the above terms. No costs. Consequently, connected CMPs are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Revenue Divisional Officer
Office of the Revenue
Erode.

2.Inspector of Police
Erode Taluk Police Station
Erode

+2 cc's to Mr.Immanuvel Prakasam,advocate,sr.70652

+1 cc to Govt.Pleader,sr.70958.

krd 5/12

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