

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.18998 of 2017

and

WMP Nos.20526 and 23960 of 2017

V.R.Vengan

.. Petitioner

Vs.

- 1 The State rep by its
The Secretary,
Department of Home Secretariat,
Fort St. George, Chennai-600 009
- 2 The District Collector,
Dharmapuri District, Dharmapuri.
- 3 The Revenue Divisional Officer,
Dharmapuri District, Dharmapuri.
- 4 The Superintendent of Police,
Dharmapuri District, Dharmapuri.
- 5 The Deputy Superintendent of Police,
Arur, Dharmapuri District, Dharmapuri.
- 6 The Thasildhar,
Pappirettipatti Taluk,
Dharmapuri District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to calling for records pertaining to the order dated 19.05.2017 bearing Na.Ka. En.4450/2015/A3

passed by the 3rd respondent to quash the same and consequently direct the respondents to allow the petitioner to install Thanthai Periyar Statue in his private land at Survey number 99/4 Venkatasamuththiram comes under the revenue jurisdiction of Pappirettipatti Taluk Previously Arur Taluk in Dharmapuri District.

For Petitioner : Mr.NGR.Prasad
for Mr.R.Thirumoorthy

For Respondents : Mr.A.Kumar
Special Government Pleader

ORDER

The petitioner, aged about 91 years, challenged the order of the third respondent dated 19.05.2017 and consequently sought for a direction to the respondents to allow the petitioner to install Thanthai Periyar Statue in his private land at Survey number 99/4, Venkatasamuththiram.

2.The third respondent through the impugned order rejected the request of the petitioner by stating that such installation of the statue in his private land may lead to a law and order problem apart from causing hindrance to free flow of traffic.

3.A counter affidavit is filed by the third respondent supporting the impugned order and reiterating the objections raised in the impugned order once again.

4.Learned counsel appearing for the petitioner submitted that the petitioner is going to erect the statue of Thanthai Periyar in his own private patta land without causing any disturbance to the public or free flow of traffic. He further pointed out that for erecting statue in a private land, no prior permission is required from these respondents. In support of such contention, the learned counsel relied on a decision of this court reported in **2011 (1) CWC 399, P.Maniyarasan vs The Government of Tamilnadu, rep. by its Secretary.**

5.On the other hand, the learned Special Government Pleader appearing for the respondents, after reiterating the contentions raised in the counter affidavit, submitted that if such permission is granted, it would cause only a law and order problem in that area. He also submitted that as per G.O.Ms.No.140, Rural Department and Panchayat Department dated 18.12.2009, all effective preventive measures have to be taken to avoid any kind of untoward incident.

6.Heard Mr.NGR Prasad, learned counsel appearing for the petitioner and Mr.B.Kumar, learned Special Government Pleader appearing for the respondents.

7.It is not in dispute that the petitioner wants to install the statue of Thanthai Periyar in a private patta land said to be belonging to the petitioner. It is not the case of the respondents that the said property is not a private property and on the other hand, it is a public property. Perusal of the impugned order would only show that the third respondent rejected the request made by the petitioner only based on certain presumption and assumption, without there being any material justification in support of such apprehension. In fact, the very same issue was raised and considered by this court in P.Maniarasan's case reported in 2011 (1) CWC 399, wherein the learned Judge, after thoroughly considering various aspects of the matter and also the G.O.Ms.No.248, Rural Development Department dated 23.11.1998, which is sought to be relied on by the respondents in this case as well, has rejected the contention of the respondents therein and allowed the said writ petition, by directing the respondents therein to permit the petitioner therein to erect the statue of one Muthukumar, in a private land. The relevant findings of the learned Judge at paragraph Nos.15 to 20 are extracted hereunder:

"15.The learned Special Government Pleader also contended that even to put up a building in a private place, it requires necessary plan sanction by the local bodies. Therefore, the citizens cannot have free for all in erecting the statues . The Government has power to regulate erection of statues even in

private places. But, the learned Special Government Pleader is unable to point out any law under which such power is assumed by the State Government or by any local bodies. On the other hand, the village panchayat is empowered to grant approval for the site, buildings and huts in terms of the Tamil Nadu Panchayats Building Rules, 1997. In the rules, there is no reference to any prior permission in respect of erection of statues in a private patta land. A perusal of the Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997 relating to places of public worship reads as follows:

"4(3)No site shall be used for the construction of a building intended for public worship or religious purposes without the prior approval of the Collector of the district who may refuse such approval, if in his opinion, the use of the site and buildings is likely to endanger public peace and order." Other than this, there is no other permission of any kind is required.

16.If the argument of the learned Special Government Pleader is accepted, then for putting up or hanging the picture of ones own parents or forefathers in the private pattadars lands, they should move the authorities (whether it is local body, revenue or police authorities) for seeking such permission. Such step is never contemplated. The attempt by the respondents is to clutch to a non existing power. The Special Government Pleader had attempted to submit that the Government guidelines can be a law also cannot stand to reason. An embargo on the citizen's right to make use of his own land without any hindrance and it can be done in the absence of any valid law circumscribing such

act, cannot be entertained by this court. A fetter on a citizen's right must be spelt out by a valid law made by the State legislature and that law alone can regulate the questions raised in this writ petition.

17.The petitioner's attempt to put up a bust-size statue for their hero Muthukumar is not intended to convert the site into a place of worship nor the place was to be used for religious purpose. May be in a lighter vain it can be said there will be 'Hero worship'. The history of Tamil Nadu is replete with instances of laying "Nadukal" (hero stone) in memory of many Subaltern heros in each area. The more excavations done in the State more such hero stones are found. The respondents have unnecessarily blown up the issue which otherwise would have gone off without much ado.

18.This court is of the opinion that the objections raised by the respondents are not based on any sound legal foundation. The respondents cannot prevent the petitioner's political party in installing a bust-size statue of a person who in their esteem is a Martyr, in a private land. Instead of asking the petitioner to furnish the details of adangal, chitta, FMB sketch, etc, the second respondent himself being the head of the Revenue Department can very well verify the credentials of the claim made by the petitioner from their records and satisfy themselves that the land in question is not a poramboke land or notified public pathway.

19.Further in the present case, the land owner pattadar had given a sworn statement notarized by the notary public, which could be treated as a valid authorization. It is not as if

there are any other contending party to the said land. Whether the statue should be made of clay or wood or stone or metal is to be left to the volition of the organizers of the event. It may be the policy of the State that bronze statue alone should be erected in public places, lest any other forms are likely to be damaged by miscreants or by political rivals. But such ideas cannot be thrust upon to private citizens who sets up memorial in their own private lands. Nowhere in the written statement, the District Collector had said that there is any threat or opposition for erecting the statue of Muthukumar. It is for the organizers like the petitioner to take care of their memorials in the event of their proceeding to erect the statue in the village in question.

20. In view of the above, the writ petition will stand allowed. The impugned orders of the second and third respondents, dated 5.5.2010 will stand set aside. The respondents are hereby directed to permit the petitioner to erect the statue of Muthukumar in Survey No.159B/7A at Sanoorapatti Village, Budalur Panchayat Union, Thanjavur District on the date notified by the petitioner party. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed."

8. A careful perusal of the facts and circumstances of the present case as well as the respective pleadings of the parties and also the above decision of this court, I am of the view that the impugned order cannot be sustained not only on the reason that such permission is not at all required as found by this

court in the above said decision and also on the reason that even assuming such permission is required, the grounds on which the third respondent has chosen to reject the request of the petitioner are totally based on mere assumption and presumption, without there being any materials to satisfy this court that such apprehension is well founded. Therefore, I find every justification to allow the writ petition. At the same time, the petitioner should ensure that such erection of statue does not affect the public or free flow of traffic in any manner. The petitioner is also directed to properly fence the statue. Accordingly, the writ petition is allowed and the impugned order is set aside. The petitioner is permitted to erect the statue of Thanthai Periyar in his private land in Survey Number 99/4 at Venkatasamuththiram. No costs. The connected miscellaneous petitions are closed.

03.11.2017

Speaking/Non Speaking

Index:Yes/No

Note:Issue order copy on 10.11.2017.

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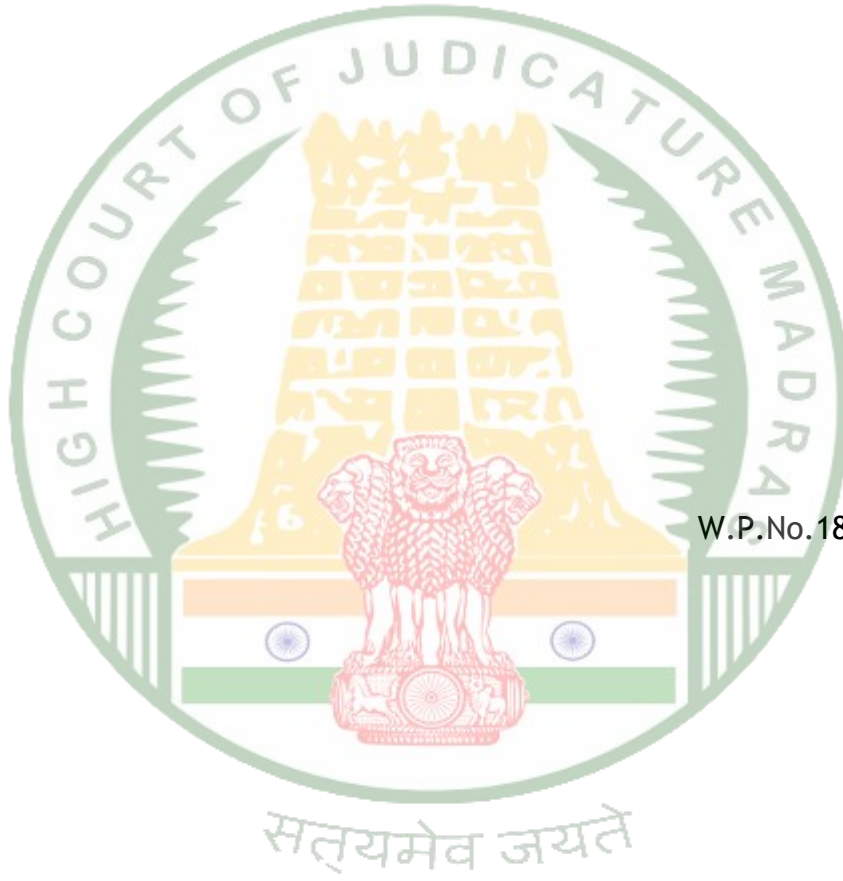
To

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K.RAVICHANDRABAABU,J.
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