



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 20.03.2017

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**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

W.P (MD) No.8340 of 2014  
and  
M.P (MD) Nos.1 and 2 of 2014

The Joint Commissioner,  
Office of the Joint Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Tirunelveli -2. ..Petitioner

.vs.

The District Collector,  
Tirunelveli District,  
Tirunelveli. ..Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order of the respondent in ROC.No.C3/17075/2014, dated 2.5.2014 and the impugned order of the respondent in Na.Ka.No.C3/17075/2014, dated 8.5.2014 and to quash the same with costs and adequate compensation to the Petitioner.

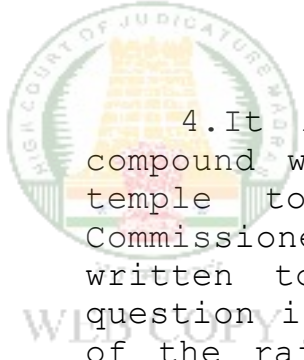
For Petitioner :Mr.C.Jegannathan  
for M/s.Veera Associates  
For Respondent :Mr.S.Kumar  
Addl.Govt.Pleader

**ORDER**

The Joint Commissioner of HR and CE Department, Tirunelveli-2 is the Petitioner. The challenge in the Writ Petition is to the proceedings of the respondent dated 2.5.2014 and 8.5.2014, allegedly under Section 133 of the Code of Criminal Procedure.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3, By the impugned proceedings, dated 2.5.2014, the respondent namely, the District Collector, Tirunelveli has directed demolition of a compound wall of the Nelliappar Gandhimathi Temple, Thatchanallur for a distance of 6 meters in length from north-east corner towards west and for a distance of 6 meters from north-east corner towards south.



4. It is the admitted case of both the parties that the compound wall was demolished to enable the car festival of the temple to be conducted in a peaceful manner. The Joint Commissioner, HR and CE Department by letter, dated 2.5.2014 written to the respondent pointing out that the temple in question is nearly 1000 years old and because of the construction of the railway over-bridge, a width of the car street has been reduced thereby there is difficulty in the said temple car from turning it to the east car street from the north car street. Pointing out the order of status-quo in W.P(MD)No.13361 of 2013 by this Court, the Commissioner requested the District Collector to enable the car festival to be conducted on 5.5.2015 without any obstruction by removing the side wall of the Railway Over-bridge. The District Collector has however passed the impugned order on 2.5.2014 itself. Pursuant to the said impugned order, it is stated that the compound wall of the temple was in-fact demolished. The petitioner has also written to the District Collector on 2.5.2014 reiterating the request made by the Commissioner. On 8.5.2014, the District Collector has rejected the request on the ground that, it is in public interest, he has exercised his power as a District Magistrate under Section 133 of the Code of Criminal Procedure. However, he has also pointed out that the small portion of the compound wall of the temple was removed and the car festival was conducted on 5.5.2014 and the order directing the removal of the compound wall was passed by him without notice to the parties taking into account the order of status-quo by this Court in W.P (MD)No.13661 of 2013. In the said order, the District Collector namely, the respondent has also stated that as the car festival is over and the department is at liberty to re-construct the compound wall. According to the learned counsel for the Petitioner, the demolition and reconstruction of the wall would become an yearly affair and this issue needs to be solved permanently. Pointing out the nature of the said wall of the railway over-bridge, the learned counsel would contend that the removal of the said wall for about 5 to 6 feet would enable free flow to traffic without any hindrance to the car festival of the temple also. The entire fiasco appears to have happened due to the lack of communication between the HR and CE Department and the District Collector. The District Collector, no doubt is entitled to take action for maintenance of public order under Section 133 of the Code of Criminal Procedure. However, the said power is limited to the circumstances enumerated under the Section. Section 133(1) of Cr.P.C. Which reads as follows:

'133. Conditional order for removal of nuisance.--

(1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other person and on taking such evidence (if any) as he thinks fit, considers--



(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or''

The other clause of the section are not necessary for the purpose of the case.

5. From the above reading of the section, it is clear that what could be removed is an unlawful obstruction or nuisance. Admittedly, the compound wall is in the land belonging to the temple. In other words, the land on which the compound wall is in existence, has not been acquired by the Government. It still remains as the property of the temple. While so, it cannot be treated as an unlawful obstruction.

6. I am of the prima facie opinion that the exercise of the power of the District Collector under Section 133 of Cr.P.C itself is not in accordance with law. Apart from the above, I find that the impugned order as well as the counter affidavit filed in W.P.No.8340 of 2014, the District collector has used a very strong language against the petitioner, who is also an officer of the HR and CE Department. This Court as well as the Honourable Supreme Court have time and again reiterated that using of very harsh language in the pleadings of the parties should be avoided. The respondent being the responsible officer and head of administration, is expected to desist from using harsh language, that too, against the other officers of the Government. It is seen from the letter, dated 2.5.2014 of the Commissioner of HR and CE Department that he has also requested the Collector to avoid demolition of the wall of a temple, which is more than thousand years old. Apart from the above order under Section 133 of Cr.P.C, the respondent/The District Collector, Tirunelveli has also initiated proceedings under Section 186 and 143 of the Indian Penal Code and directed the Joint Commissioner to appear before him on 26.5.2014. The said proceedings have also been stayed by this Court. Therefore, I am of the considered opinion that this is not a fit case which could be solved by initiating proceedings under Cr.P.C or IPC. The Officials of both departments involved must put their heads together and decide how best the situation could be solved. If by making certain minor adjustments, it could be ensured that the temple car is able to turn from north car street to east car street without any obstruction, there should be an attempt to carry out such adjustment by the officials. The HR and CE Department and Revenue Department will arrange for a joint inspection of the area and discuss the matter at the highest level and reach an amicable solution thereby the rights of the temple are protected without affecting the public interest.

<https://hcservices.ecourts.gov.in/hcservices/> 7. The learned counsel for the Petitioner would suggest that removal of the side wall for the proposed over-bridge which is under construction to a length of about five feet would solve the



issue. I do not propose to go into the technical aspects because it is for the authorities to decide all those questions.

8. Accordingly, this Writ Petition is allowed and the impugned orders of the respondent/District Collector, Tirunelveli, dated 2.5.2014 and 8.5.2014 are set aside, with a direction to the authorities to make a joint inspection of the area and find out an amicable solution, which would be acceptable to all the parties concerned. The said exercise shall be completed within a period of four months from the date of receipt of a copy of this order. Both the departments are directed to co-operate with each other, in finding out an amicable solution to the issue in question.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The District Collector,  
Tirunelveli District,  
Tirunelveli.

+1 cc to M/S.Veera Associates , Advocate, SR.No. 16346

**W.P(MD)No.8340 of 2014**

**and**

**M.P(MD)Nos.1 and 2 of 2014**

**20.03.2017**

vsn

MKV-SKN-RSK-SAR 4/3.4.2017/4P-3C