



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.12.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.23382 of 2017

in

W.M.P. (MD) Nos.19648 and 19649 of 2017

P.Prabin, S/o.M.Paulraj,
President of the Function committee of
Nehru Ninaivay Vilayattu Mandram,
Registration No.63/2015,
No.19/60, Thodukulam,
Kanjiracode Post, Nattalam Village,
Kanyakumari District.

... Petitioner

Vs.

1. The Superintendent of Police,
Kanyakumari District,
Nagercoil.

2. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

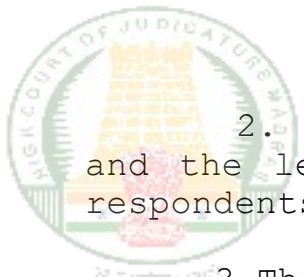
... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent dated 13.12.2017 and quash the same and direct the respondents to accord permission and provide police protection to the 22nd Annual Day Celebration of "Nehru Ninaivu Vilaiyattu Mandram" scheduled on 1st and 2nd January 2018.

For Petitioner : Mr.N.Dilipkumar
For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader.

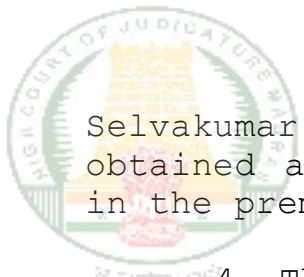
O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent dated 13.12.2017 and quash the same and direct the respondents to accord permission and provide police protection to the 22nd Annual Day Celebration of "Nehru Ninaivu Vilaiyattu Mandram" scheduled on 1st and 2nd January 2018.



2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The learned counsel for the petitioner submitted that the youngsters in the village by name Thodukulam and nearby villages joined together and formed a society in the name of "Nehru Ninaivu Vilaiyattu Mandram" and that the same was also registered as a society under the District Registrar in Registration No.63 of 2015 on 12.06.2015, under the Tamil Nadu Societies Registration Act. It is also admitted by the petitioner that earlier, the youngsters found a society in the name of "Nehru Vilaiyatu Thidal" in 1992 under Registration No.64 of 1997 and were conducting youth welfare activities, sports celebrations and social welfare activities. It is stated by the petitioner that the earlier society had become defunct and had been struck off since 2005 itself, for the failure of the past President to comply with the statutory requirements of filing the annual reports and other documents. The society was dissolved vide Government Notification No.17, dated 04.05.2005. It is the case of the petitioner that from 1992 to 2017 the annual day celebration marked with flag hoisting, sports activities, cultural events were conducted every year without fail. It is further stated that the youngsters also celebrating anniversary of Dr.A.P.J.Abdul Kalam and other leaders. The petitioner and the members of the new society claim that they have been instrumental in the construction of a library in the area. In fact, though the library was constructed by the Government, it is at the initiation of the members of the erstwhile society. It is submitted that in 2014 an attempt was made to prohibit the celebration of the function and to file complaints with the police officials and other authorities and one P.Selvakumar filed O.S.No.31 of 2015 on the file of the District Munsif Court, Kuzhithurai against the petitioner and two others. It is further stated that no interim order was granted and the suit is still pending. He further submitted that the second respondent earlier declined permission by an order dated 03.12.2015 and therefore, the petitioner filed a Writ Petition in W.P.(MD)No.22389 of 2015 before this Court and the same was allowed on 16.12.2015 and that the petitioner celebrated the annual day festival in 2016. Similarly, the petitioner applied to the police authorities on 03.12.2016 for celebrating annual day on 01.01.2017 and 02.01.2017. The said application was kept pending and therefore, it is stated that the petitioner filed W.P.(MD) No.25063 of 2016 before this Court and the same was allowed on 29.12.2016 and this Court permitted the petitioner to conduct the annual day celebration on 01.01.2017 and 02.01.2017 subject to conditions. Further, he stated that the petitioner submitted an application on 05.11.2017 to the respondents seeking permission and police protection for conducting the annual day celebration on 01.01.2018 and 02.01.2018. However, the second respondent declined permission mainly on the ground that one



Selvakumar S/o. Ponnupillai has filed W.P.(MD)No.22193 of 2017 and obtained an order of injunction restraining any public functions in the premises of the library.

4. The learned counsel for the petitioner produced a copy of the order in W.P.(MD)No. 22193 of 2017 passed by the Honourable Division Bench of this Court, dated 05.12.2017 wherein this Court has passed the following order:-

"7.Considering the fact that the petitioner's representation dated 09.11.2017 addressed to the second respondent/District Collector, Nagercoil, Kanyakumari District is pending as on date, at this stage, this Court, without going into the merits and demerits of the contents of the representation dated 09.11.2017 simpliciter, in the interest of justice, fair play, equity, good conscience and even as a matter of prudence, directs the second respondent/District Collector, Nagercoil, Kanyakumari District, to look into the representation of the petitioner dated 09.11.2017 with all seriousness and earnestness and to pass a reasoned speaking order on merits, of course, after providing necessary opportunity to the petitioner and others concerned, if any, by adhering to the Principles of Natural Justice, within a period of four weeks from the date of receipt of copy of this order. If any personal hearing is required by the petitioner, then that kind of opportunity may also be provided to the petitioner by the second respondent."

5. Hence, the District Collector, Nagercoil, Kanyakumari District has been directed to consider the representation of the petitioner dated 09.11.2017 within a period of four weeks from the date of receipt of a copy of this order.

6. The learned counsel for the petitioner submitted that the object for filing the writ petition by individual by name Selvakumar is to stall the function organised by the petitioner and that the petitioner in W.P.(MD)No.22193 of 2017 has omitted to implead the petitioner as a party. Since the impugned order passed by the second respondent is purely on the basis of the order passed in W.P.(MD)No.22193 of 2017, this Court is of the view that the order passed by the second respondent is without an application of mind and the second respondent has been misled by some interested persons so as to prompt the second respondent to decline permission to the petitioner to conduct the annual day celebrations. The learned counsel for the petitioner submitted that having regard to the fact that the petitioner was permitted to conduct the celebrations during the past can be permitted to conduct the same on the 32nd annual day celebration of "Nehru Ninaivu Vilaiyattu Mandram". He further stated that the said Selvakumar has organized similar function earlier as Secretary of erstwhile



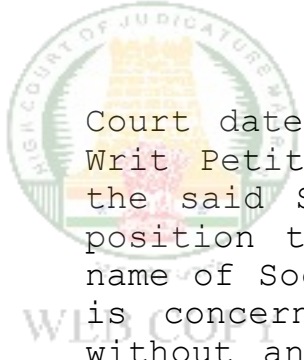
Society and cannot be stopped at the instance of individual, who knows very well about the past.

7. From the suit filed by the said individual and the facts before this court by the said individual by name Selvakumar, this Court is not able to see any public interest involved. After making an attempt to identify himself as a person who is actively involved and interested in the Society out of frustration the individual has approached this Court earlier in W.P.(MD)No.22558 of 2015 for issuing a Writ of Certiorari Mandamus to quash the order passed by the fourth respondent/the Sub Inspector of Police, Marthandam Police Station, dated 04.12.2015 and consequently to direct the fifth respondent to grant permission for conducting the annual day celebration on 01.01.2016 and 02.01.2016. The petitioner herein also filed W.P.(MD)No.22389 of 2015 seeking permission as in the present writ petition. This Court allowed W.P.(MD)No.22389 of 2015 and dismissed the W.P.(MD)No.22558 of 2015 and the findings of this Court in paras 8 and 9 of the common order dated 16.12.2015 are as follows:-

"8. It is also not in dispute that "Nehru Ninaivu Vilaiyattu Thidal", represented by the petitioner in W.P. (MD)No.22558 of 2015 has already become defunct and the State Government had also declared the said "Nehru Ninaivu Vilaiyattu Thidal", dissolved vide notification No.17, dated 04.05.2005. It is represented by the petitioner in W.P.(MD)No.22558 of 2015 that he has already given a representation dated 27.07.2015 to the Inspector General of Registration for renewal of "Nehru Ninaivu Vilaiyattu Thidal" and the same has been admittedly pending with the Inspector General of Registration for consideration. Therefore, this Court is of the considered opinion that unless or until an order is passed on the said representation in one way or the other, there is no justification with the petitioner, seeking to conduct the Annual Day Celebration.

9. Hence, I find nothing wrong in permitting the petitioner in W.P.(MD)No.22389 of 2015, in conducting the Annual Day Celebrations, such as games, flag hoisting, sports activities, Elocution, Singing, Fancy Dress, Quiz competition, rope pulling etc.,"

8. It is in these circumstances, the object of the said individual by name P.Selvakumar is obvious and therefore this Court is not inclined to consider the objections of the said individual. With regard to the present writ petition, it is true that the petitioner has not impleaded the Selvakumar in the present writ petition. However, the learned Additional Government Pleader made submissions on the objections of the said Selvakumar on the strength of the order passed by the Division Bench of this



Court dated 23.09.2017. With regard to the prayer in the present Writ Petition, this Court is of the view that the objections of the said Selvakumar have no *bona fide*, in view of the admitted position that he was trying to conduct similar programme in the name of Society which became defunct. As far as the impugned order is concerned, this Court has already found that it is passed without an application of mind as the same was passed under the wrong impression that this Court has passed an order restraining the petitioner or any one to conduct the programmes in the campus where there is a library.

9. First of all, the place in which the event proposed to be conducted is a public land and that the same is not a library as a whole. Though a portion of the property was given for the purpose of establishing library, the entire premises cannot be construed as the place in which the library is located. Hence, this Court is inclined to allow the Writ Petition and accordingly the Writ Petition is allowed and the impugned order passed by the second respondent, dated 13.12.2017 is set aside. The second respondent shall accord permission and provide police protection to the petitioner to celebrate the 22nd Annual Day Celebration of "Nehru Ninaivu Vilaiyattu Mandram" scheduled on 1st and 2nd January 2018. subject to the following conditions:-

(i) The petitioner is permitted to conduct the 'Annual Day Celebration' on 1st and 2nd January 2018 at 6.00 a.m., to 9.00 p.m., at the place in question.

ii) The petitioner and other participants shall not shout, raise any slogan for or against any party or party leader, any caste, community or creed.

iii) The petitioner shall ensure that no untoward incident is caused disturbing the public peace and tranquility.

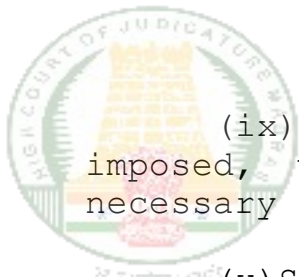
iv) The petitioner shall ensure proper first aid arrangements by keeping one or two doctors in the venue.

v) The participants of the sports events shall not wear any form of dress showing offending slogans or picture of any communal/political leader which may cause disturbance.

vi) Songs praising communal leader or having communal overtones should not be played.

vii) The petitioner will ensure that no flex board or hoardings depicting particular community or leader, who is alive, will be displayed.

viii) No flex boards in support of any political party or religious leader be erected.



(ix) If there is any violation of any one of the conditions imposed, the concerned Police Officer is at liberty to take necessary action, as per law and stop such performance;

(x) Similarly, the Police is empowered to stop the programme, if it exceeds beyond the permitted time.

(xi) The participants of the tournament shall not intake any kind of toxic substance or liquor during the meeting. In the event of any suspicion of consumption of alcohol, by the respondent police, can very well check the person by using Alcohol Breath Analyser;

(xii) If there is any untoward incident took place, the organizers of the tournament be made responsible for the same;

(xiii) The organizer of the function should ensure free flow of traffic.

(xiv) If any untoward incidents happened during the programme, the same should be brought to the notice of this Court by the respondent and it will be viewed seriously.

(xv) During programme normal level audio speakers alone are permitted to use.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Kanyakumari District, Nagercoil.

2. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

+ 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 93767

+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 94112

LS

TE/MR-KKR/SAR-4 : 28/12/2017 : 6P/5C