

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 25.05.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**W.P.(MD)No.9762 of 2017****and****WMP(MD)No.7487 of 2017**

Pastor J.Roche

... Petitioner

Vs.

1. The District Collector,
Nagercoil, Kanyakumari District.

2. The Revenue Divisional Officer,
Padmanabapuram, Thuckalay,
Kanyakumari District.

3. The Tahsildar,
Vilavangode Taluk,
Kanyakumari District.

... Respondent

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order in Na.Ka.Aa4/1/2016 dated 29.03.2016 passed by the 3rd respondent herein and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the 1st and 2nd respondents to permit the petitioner to conduct prayer meetings in prayer hall at Apostolic Revival Church, No.IV-12-11(2), Karaikadu, Puthuvel Veedu, Mathoorkonam Village, Arumanai Post, Vilavangode Taluk, Kanyakumari District.

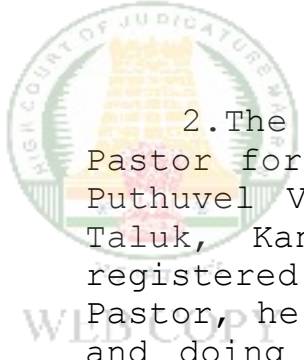
For Petitioner : Mr.S.Balamurugan

For Respondents : Mrs.S.Bharathi

Government Advocate

O R D E R

The petitioner has filed the writ petition for the issuance of Certiorarified Mandamus, calling for the records relating to the order in Na.Ka.Aa4/1/2016 dated 29.03.2016 passed by the 3rd respondent herein and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the 1st and 2nd respondents to permit the petitioner to conduct prayer meetings in prayer hall at Apostolic Revival Church, No.IV-12-11(2), Karaikadu, Puthuvel Veedu, Mathoorkonam Village, Arumanai Post, Vilavangode Taluk, Kanyakumari District.

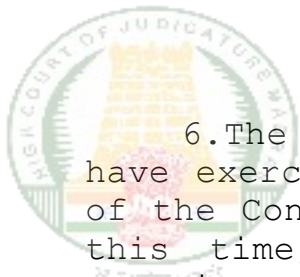


2.The case of the petitioner is that the petitioner is the Pastor for Apostolic Revival Church at No.IV-12-11(2), Karaikadu, Puthuvel Veedu, Mathoorkonam Village, Arumanai Post, Vilavangode Taluk, Kanyakumari District, by forming the lawful trust and registered it before the registering authorities. Being the Pastor, he has been performing the duties and obligations of trust and doing the gospel work proclaiming salvation and prayers for the worshipers in the locality. While this being the position the local residents opposed at the time of construction and it was thwarted by getting necessary orders from the jurisdictional Court by filing the original suit in O.S.No.283 of 2014 and the same was decreed in favour of the writ petitioner on 20.04.2015.

3.It is the further case of the petitioner is that the petitioner had been working for locality people who believe and practice Christianity and for their holistic performances of gathering every Sunday and worshiping the god and it is being held weekly once and it is now being opposed by the locality people when they do not want the prayer halls in the society it shows the excess of the religious sentiments. He has continued to perform the prayer for the past 3 years as Pastor and conducted several special meetings in the said place by his mission without any law and order problems.

4.The petitioner further submits that he has applied for building plan permission and on 18.09.2014 from the local body Panchayat as Community Hall and it was requested the 1st respondent to permit them to continue and use the said community hall as prayer hall and it has not been granted while this being the position, the locality people continued to oppose the existence of the prayer hall and that their opposition was thwarted by the local jurisdictional Court order and having lost in the Court, they have moved the revenue authorities and somehow made to pass the present impugned order on 29.03.2016 by the 3rd respondent. The present prayer hall was directed to wind up by the 3rd respondent on 29.03.2016 citing out that they have not obtained any permission. When the petitioner have applied for building permission and it has been granted and local Court has granted relief restraining the residents from opposing the existence of the prayer hall, how locality people opposing the same. The petitioner has made a representation dated 14.07.2016 to the respondents to protect the interest of the petitioner for conducting the prayer in the prayer hall owned by the authority.

5.It is further case of the petitioner is that the respondents 1 and 2 are neither denying the permission nor granting the permission for conducting the prayer in the above said address kept pending indefinitely. He further states that the 3rd respondent with undisclosed manner with intention to curtail the democratic and constitutional right for gathering and worshiping as enshrined in the Constitution of India.



6.The petitioner also states that the 3rd respondent ought to have exercised his power reasonably in compliance with Article 25 of the Constitution of India, ought to have granted permission by this time, which will enable them to worship peacefully and practice the religion according to their own interest. But, the respondents 1 to 3 has not replied nor passed appropriate orders on his representation dated 14.07.2016 and 13.05.2017 till date.

7.The petitioner also states that in similar case the permission was rejected and it was set aside by this Court in W.P.No.13336 of 2012 on 14.12.2012 and the same was confirmed by the Hon'ble Division Bench of this Court in W.A.(MD)No.1349 of 2013, dated 03.01.2017. That order is squarely applicable to the petitioner's case. Therefore, he filed the present writ petition, challenging the order dated 29.03.2016 passed by the 3rd respondent and permit the petitioner to conduct prayer meetings in the prayer hall.

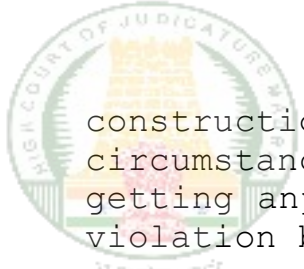
8.When the matter is came up for admission, Mrs.S.Bharathi, learned Government Advocate has taken notice for all the respondents and the main writ petition itself is taken up for final hearing.

9.I heard Mr.S.Balamurugan, learned counsel appearing for the petitioner and Mrs.S.Bharathi, learned Government Advocate appearing for the respondents and perused the entire records.

10.Admittedly, the petitioner is conducting the prayer meeting for several years at No.IV-12-11(2), Karaikadu, Puthuvel Veedu, Mathoorkonam Village, Arumanai Post, Vilavangode Taluk, Kanyakumari District. On behalf of the petitioner, the suit was filed before the learned Principal District Munsif, Kuzhithurai, for seeking a decree for permanent injunction restraining the defendants from disturbing the plaintiff from enjoying the suit property in full along with the buildings and the suit was also decreed.

11.The local residents of the said area were opposing for conducting the prayer in the above address, since the Apostolic Revival Church Trust, is running from the year 2006 and conducting the prayer with the devotees.

12.Pursuant to the above judgment and decree in the suit in O.S.No.283 of 2014 dated 20.04.2015, on the file of the learned Principal District Munsif, Kuzhithurai, the petitioner trust also made an application to the local authorities for granting permission and the said permission is pending with the authority concerned. But all in sudden, the present impugned order has been passed by the 3rd respondent Tahsildar on 29.03.2016, in the said order, the 3rd respondent Tahsildar has stated that the petitioner is running the Church without getting any permission from the authorities concerned, since the building circumstances in that place without get permission for



construction, there is no law and order problem arosed in the said circumstances, the petitioner should not conducted prayer without getting any proper permission from the authority concerned, if any violation by conducting the prayer, action would be initiated.

13. On fair reading of the above impugned order dated 29.03.2016, the 3rd respondent passed an order based on the report of the Village Administrative Officer, Vellangode, in the said impugned order, there is no whisper about the hearing of the petitioner or the complainants, but it is only passed based on the report of the Village Administrative Officer, Vellangode.

14. This is a dispute of Christian community has conducted prayer in the building which was constructed without permission, which was opposed by the local residents, if that being so, why the 3rd respondent has not called the petitioner or their trust to give explanation about the conducting of prayer.

15. It is also made clear that the 3rd respondent has not visible anything of the complaint made by whom and how the Village Administrative Officer has filed the report and what basis and on whose direction. But nothing stated in the impugned order except the report of the Village Administrative Officer, Vellangode, the present impugned order has been passed. This order has been passed in total violation of principles of natural justice, though even in the individual case, since it is not the individual case by community namely the Christian and the authority could have given opportunity before passing the orders and hearing them to pass appropriate orders, but what hurried this order has been passed and under which provision the order also been passed.

16. It is the duty bound of the respondents, particularly, the 3rd respondent, who is the Executive Magistrate might have gone through the complaint given by whom, might have hear both the parties, who given complaint and thereafter only the order should be passed. But each and every occasion, the order has been passed without giving any fair opportunity to either parties, which is totally lack on the part of the respondents. Therefore, the writ petition ought to be allowed on the ground, the present impugned order has been passed without giving any fair opportunity to the petitioner, by violating the interest of principles of natural justice.

17. In the result:

(a) this writ petition is allowed and the impugned order is set aside and the matter is remand back to the 3rd respondent / Tahsildar.

(b) the 3rd respondent / Tahsildar is directed to conduct fresh enquiry and passing orders, by giving opportunity of hearing to the petitioner as well as the complainants;



(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Nagercoil, Kanyakumari District.
2. The Revenue Divisional Officer,
Padmanabapuram, Thuckalay,
Kanyakumari District.
3. The Tahsildar,
Vilavangode Taluk,
Kanyakumari District.

+1cc to M/S. B.WILLIAM, Advocate, SR.No.57631.

+1cc to Special Government Pleader, SR.No.57758.

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and
WMP (MD) No.7487 of 2017
25.05.2017

vsa/skn

SDS/KP/SAR 4/06.10.2017/5P/6C