

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.P.No.11886 of 2018

and

W.M.P.Nos.13868 to 13869 of 2018

- 1 Major J.Victor
President
Balar Kalvi Nilayam Residents Association
No.1A Balar Kalvi Nilayam Avenue
Vepery Chennai-600 007
- 2 NRD Ezekiel
General Secretary,
Balar Kalvi Nilayam Residents Association
No.9 Balar Kalvi Nilayam Avenue
Vepery Chennai-600 007

Petitioners

Versus

- 1 The Government of Tamil Nadu
rep by its Secretary to the Government
Department of Housing and Urban Development
Fort St. George Chennai-600 009
- 2 Chennai Metropolitan Development Authority
rep by Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1 Gandhi Irwin Road
Egmore Chennai 600 0008
- 3 The Corporation of Chennai
rep by its Commissioner
Ripon Buildings
Poonamallee High Road Chennai-600 003

- 4 The Regional Deputy Commissioner
Corporation of Chennai
North Zone Royapuram
No.62 Basin Bridge Road
Moolakothalam Chennai-600 021
- 5 The Chief Educational Officer
Department of School Education
Panagal Maaligai
Saidapet Chennai-600 015
- 6 The Commissioner of Police
Vepery Chennai-600 007
- 7 The Methodist Bishop
MRC Complex
BKN Compound
Vepery Chennai-600 007
- 8 The District Superintendent
Tamil Methodist Church
Rithordon Road
Vepery Chennai-600 007

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the first respondent to consider the application of the petitioners dated 22.2.2017 under Section 90 of the Tamil Nadu Town and Country Planning Act, 1971 and pass appropriate orders within a time frame fixed by this Honourable Court.

For petitioner : Mr.M.Ramamoorthi

For RR1, 5 & 6 : Mr.Jayaprakash Narayanan,
Government Pleader (Incharge)

For R7 & R8 : Mr.Palani Selvaraj

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The prayer made in the writ petition, purported to be a PIL under Article 226 of the Constitution of India filed by Major J.Victor, claiming to be the President of Balar Kalvi Nilayam Residents Association and Mr.NRD Ezekiel, claiming to be the General Secretary of the said Association is for a direction to the first respondent to consider the application of the petitioners dated 22.2.2017, under Section 90 of the Tamil Nadu

Town and Country Planning Act, 1971 for the alleged illegal construction raised by Respondent No.7, the Methodist Bishop, Veppery Chennai, who is running an Educational Institution in the building in question.

2. The court's attention was drawn to the earlier order passed by a coordinate Bench of this court on 9.8.2016 in W.P.No.27792 of 2016 filed by the same petitioner Major J.Victor against the Chennai Metropolitan Development Authority and others, wherein certain directions were given. Relevant portion of the same is quoted hereunder for ready reference:-

"3. The petitioner claims to have made a representation on 28.11.2010 and thereafter regularly pursued the same, as respondent Nos.7 to 11 are alleged not to be running a licensed marriage hall, community hall and Kalyana mandapam. The last representation is stated to have been made on 14.12.2015 to the first respondent alone which has not been disposed of. The prayer made is for disposal of the representation and for taking necessary steps forbearing respondent Nos.7 to 11 from renting out the school premises for private functions.

4. The learned counsel appearing for the first respondent/CMDA states that as per his instruction, the area is larger than what is meant for the school and thus, there are church activities in the remaining part of the area. The learned Senior Counsel appearing for respondent Nos.7 to 11, on instruction, states that the total area available is 23 grounds. He submits that the required area for the school is 6 grounds and no social activities of the nature alleged take place in that area. He further undertakes on behalf of the said respondents to continue to abide by the same.

5. The aforesaid takes care of the issue of social events alleged to be held in the school.

6. The other aspect is noise pollution in the function hall and in the remaining area. Here also, the learned Senior Counsel,

on instruction states that the noise level would be kept within the decibel levels permitted in pursuance to the judgment of the Hon'ble Supreme Court in Church of God (Full Gospel) in India v. K.K.R.Majestic Colony Welfare Association and others), reported in AIR 2000 SC 2773. He further submits that the provisions of the rules referred to aforesaid by the learned counsel for the petitioner are also not applicable to minority institutions as per judicial pronouncement.

7. The only other aspect which is pointed out by the learned counsel for the petitioner is that the hall is being used not only for marriages and the church, but is also being rented out to third parties, which may require permission. This aspect be looked into by the concerned respondent/authorities and respondent Nos.7 to 11 to ensure that the law of the land is complied with.

8. It is directed that within a period of three months' time from the date of the receipt of the order copy, this aspect be also concluded/settled."

3. The learned counsel appearing for the Respondents has also drawn our attention to the communication dated 26.10.2016 of the Chennai Metropolitan Development Authority addressed to one Thiru.M.Ramamoorthy under RTI Act in which they have informed that the construction in question is as per the Approved Plan. However, they submitted that 'No Objection Certificate' from the Department of School Education was not available for verification. It was also submitted at Bar by Mr.Palani Selvaraj, learned counsel appearing for the private Respondent No.7 that the petitioner was, earlier a part of the Management of the said Educational Institution and having since been removed from that place, being a disgruntled person, is filing series of petitions against the said respondent in this court in misuse of PIL Jurisdiction.

4. Having heard the learned counsels for the parties and upon perusal of the materials placed on record, we are satisfied that the present petition is not a genuine and proper PIL to be taken up by this court, under Article 226 of the Constitution of India. Therefore, keeping the other remedies open to the petitioner, as available to him under law, we close this writ petition. No costs. The connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Government of Tamil Nadu
rep by its Secretary to the Government
Department of Housing and Urban Development
Fort St. George Chennai-600 009
- 2 Chennai Metropolitan Development Authority
rep by Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1 Gandhi Irwin Road
Egmore Chennai 600 0008
- 3 The Corporation of Chennai
rep by its Commissioner
Ripon Buildings
Poonamallee High Road Chennai-600 003
- 4 The Regional Deputy Commissioner
Corporation of Chennai
North Zone Royapuram
No.62 Basin Bridge Road
Moolakothalam Chennai-600 021
- 5 The Chief Educational Officer
Department of School Education
Panagal Maaligai
Saidapet Chennai-600 015

6 The Commissioner of Police
Vepery Chennai-600 007

7 The Methodist Bishop
MRC Complex
BKN Compound
Vepery Chennai-600 007

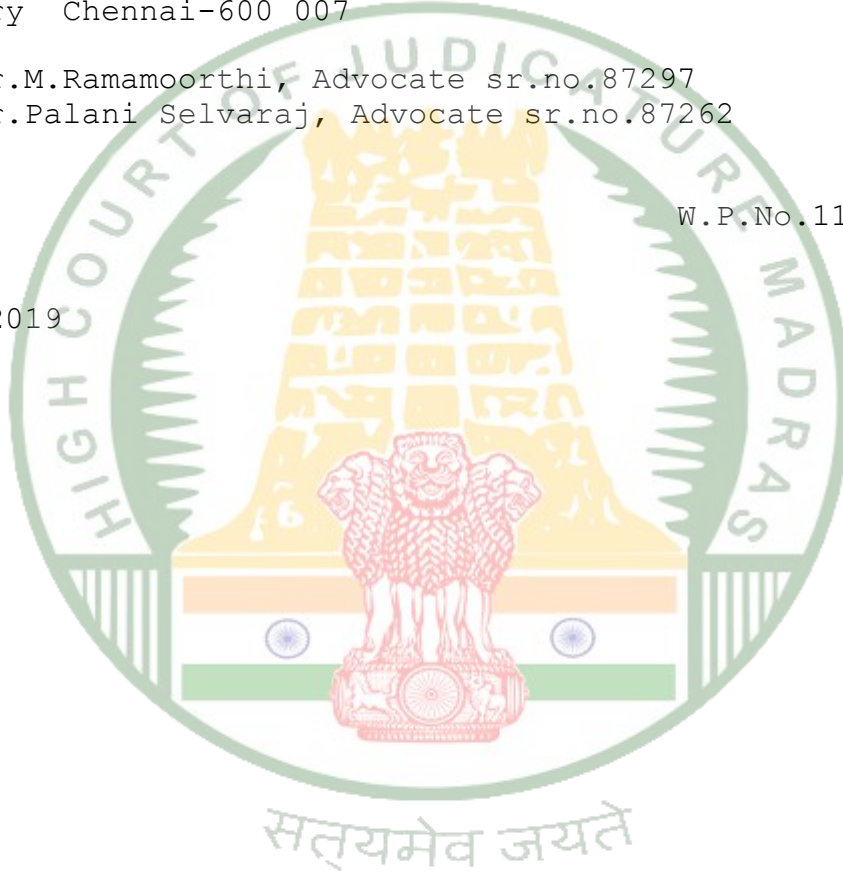
8 The District Superintendent
Tamil Methodist Church
Rithordon Road
Vepery Chennai-600 007

+1cc to Mr.M.Ramamoorthi, Advocate sr.no.87297

+1cc to Mr.Palani Selvaraj, Advocate sr.no.87262

W.P.No.11886 of 2018

jp(co)
nr 01/02/2019



WEB COPY