

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.18851 of 2018

and

WMP.Nos.22227 and 22228 of 2018

1.A.S.Gunasekaran
2.S.Chandrasekaran

.. Petitioners

Vs

1. The State rep by its Secretary,
Home Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The District Collector,
Nagapattinam District,
Nagapattinam.
3. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
4. The Tahsildar,
Sirkali Taluk,
Nagapattinam District.
5. The Inspector of Police,
Pudupattinam Police Station,
Nagapattinam District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings dated 22.07.2018 bearing Na.Ka.No.10/D6 PS/2018 passed by the fifth respondent, to quash the same and consequently direct the respondents to allow the petitioners to conduct the function to unveil the statue of "Thanthai Periyar" on 26.07.2018 in private land at survey No.54/4C, Kadavasal Villages, comes under the revenue jurisdiction of the Sirkali Taluk.

For Petitioner : Mr.D.Veerasekaran

For Respondents: Mr.P.H.Aravind Pandian

Additional Advocate General

Assisted by Mr.V.Jayaprakash Narayanan
Special Government Pleader

ORDER

Challenging the memo dated 22.07.2018 issued by the fifth respondent, the petitioners have come up with the present writ petition. A consequential direction has also been sought to the respondents, permitting the petitioners to conduct a function relating to unveil the statue of "Thanthai Periyar" in their private land at survey No.54/4, Kadavasal Village, Sirkali Taluk, Nagapattinam District.

2.The case of the petitioners in a nutshell is that the first petitioner is the President of Mayiladuthurai District of Dravidar Kazhagam and the second petitioner is his brother. Both the petitioners are residing in their respective independent houses with one compound wall in the aforesaid patta land. On 24.05.2016, a meeting was held at Kadavasal Village and a resolution was also passed to install Thanthai Periyar statue in the private land of the petitioners. Pursuant to the same, the fourth respondent conducted an inspection and concluded that the land in question is the private land and filed a report to that effect. Thereafter, the Periyar Statue was installed in the petitioners' land on 12.07.2018 and the date was fixed for unveiling the same by the President of Dravidar Kazhagam on 26.07.2018. While so, the fifth respondent instructed the petitioner to get permission for the same. Accordingly, a letter was sent to the Director General of Police, Mylapore, Chennai on 18.07.2018. Following the same, the first petitioner filed a petition dated 20.07.2018 to the fifth respondent seeking necessary permission for conducting the function in question. Without considering the same, the fifth respondent, by the impugned memo dated 22.07.2018, directed the first petitioner to obtain permission from the competent authorities for unveiling the statue in the land in question. Hence, this writ petition.

3.Upon notice, the fifth respondent filed a detailed counter affidavit inter alia stating that the petitioners are residing in RS.No.54/4 of Kadavasal Village, Sirkali Taluk and there is no dispute with regard to the title of the land, however, the petitioner's party has not obtained any prior permission from the Government for the construction of Periyar statue and there is likelihood of any problem, since Hindus and Muslims are residing in the surrounding area and there is a Hindu Mariamman Temple within a distance of 20 to 30 metre of the land in question and hence, the petitioners were directed to get proper permission from the Government.

4.The learned counsel for the petitioner submitted that the statue, which is going to be unveiled, was installed in the private land belonging to the petitioners and hence, no prior permission is necessary. In support of his submission, the learned counsel placed reliance on the following decisions:

(i)P.Maniyarasan v. The Government of Tamil Nadu [2011 (1) CWC 379];

(ii)C.Ponnusamy v. District Collector [W.P(MD)No.2782 of 2013, decided on 02.07.2014]; and

(iii)Ramadurai v. District Collector [WP (MD)No.9249 of 2015 decided on 13.07.2015].

Thus, the learned counsel sought a similar order in this writ petition as well.

5.Per contra, the learned Additional Advocate General appearing for the respondents, relying on the guidelines issued by the Government vide G.O.Ms.No.248, Rural Development (C2) Department, dated 23.11.1998, submitted that prior permission is necessary for the erection of statues. The learned Additional Advocate General further submitted that the Supreme Court, vide order dated 18.01.2013 made in SLP (Civil) No.8519 of 2006, directed the State Government not to grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places, however, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads etc. and relating to public utility and facilities. Thus, according to the learned Additional Advocate General, the memo issued by the fifth respondent, which is impugned herein, is perfectly right and the same warrants no interference. The learned Additional Advocate General also placed reliance on the judgment dated 11.04.2016 passed by the Division Bench of this Court in Dr.Amedkar Mandram, Thiruchuli v. the District Collector [WA (MD) No.549 of 2016], wherein, the claim of the appellant therein seeking permission for installation of Dr.Ambedkar's Bronze Statue in Dr.Ambedkar Ground, Thiruchuli, Virudhunagar District, was rejected.

6.Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents and perused the materials placed before this Court.

7.The issue involved herein is relating to unveil the Thanthai Periyar statue already installed in the land in question, which is stated to be the petitioners' private land.

8.The Supreme Court, vide order dated 18.01.2013 in S.L.P. (Civil)No.8519 of 2006, has held as follows:

"4. Until further orders, we direct that the status quo, as obtaining today, shall be maintained in all respects by all concerned with regard to the Triangle Island where statue of late Shri N.Sundaran Nadar has been permitted to be sanctioned. We further direct that henceforth, State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. Obviously, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads etc. and relating to public utility and facilities.

5. The above order shall also apply to all other states and union territories. The concerned Chief Secretary/Administrator shall ensure compliance of the above order."

9. From the above, it is clear that the Supreme Court imposed ban order on the State Government with regard to grant of permission only for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places and it does not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads etc. and relating to public utility and facilities, whereas, in the present case, the petitioners sought to unveil the statue installed in their private patta land.

10. That apart, similar issue had already been dealt with by this Court in number of decisions, which are as follows:

(i) This Court, in *P. Maniyarasan v. The Government of Tamil Nadu* [2011 (1) CWC 379], has held as follows:

"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 vein 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 heroes 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."

(ii) This Court, in yet another case in C.Ponnusamy v. The District Collector [W.P(MD) No.2782 of 2013, decided on 02.07.2014], has passed the following order:

"10. In the result, this writ petition is allowed and the matter is remanded to the first respondent for fresh consideration. The petitioner is directed to produce all the relevant materials before the first respondent forthwith. Upon receipt of the same, the first respondent shall consider the claim of the petitioner in the light of the above said decision of this Court in P.Maniyarasan v. The Government of Tamil Nadu reported in 2011 (1) CWC 379, and G.O.(Ms) No.140, Rural Development and Panchayats Department, dated 18.12.2009 and pass appropriate orders on merits and in accordance with law, after affording due opportunity to the petitioner, within a period of six weeks thereafter. The petitioner shall also file an affidavit to the effect that all necessary safeguards would be undertaken during such installation of statue."

(iii) In the light of the aforesaid two decisions, this Court, in Ramadurai v. District Collector, Tirunelveli District and others [WP.(MD) No.9249 of 2015 decided on 13.07.2015] has passed the following order:

"In the result, this writ petition stands allowed and the impugned order passed by the second respondent in his proceedings in A8/2134/2013, dated 26.08.2013, is quashed and the matter is remanded to the second respondent for fresh consideration. The petitioner is directed to produce all the relevant materials before the second respondent forthwith and on receipt of the same, the second respondent shall

consider the claim of the petitioner in the light of the above said decisions of this Court in (i) P.Maniyarasan v. The Government of Tamil Nadu reported in 2011 (1) CWC 379 and (ii) C.Ponnusamy v. The District Collector [W.P(MD) No.2782 of 2013, decided on 02.07.2014] and also G.O.(Ms)No.140, Rural Development and Panchayats Department, dated 18.12.2009 and pass appropriate orders on merits and in accordance with law, after affording due opportunity to the petitioner, within a period of six weeks thereafter. The petitioner shall also file an affidavit to the effect that all necessary safeguards would be undertaken during such installation of statue. Consequently, the connected miscellaneous petition is closed. No costs."

(iv) The Division Bench of this Court in Dr.Amedkar Mandram, Thiruchuli v. the District Collector [WA (MD) No.549 of 2016 decided on 11.04.2016], though declined the claim of the appellant therein for grant of permission for installation of Dr.Ambedkar's Bronze Statue in Dr.Ambedkar Ground, Thiruchuli, Virudhunagar District, on the different footing, has passed the following order:

"5.In such view of the matter, the relief sought for by the appellant/petitioner cannot be granted against the respondents. If at all the appellant has any right, under the above said Government Orders, he can enforce it only against the Secretary to the Government, Rural Development and Panchayat Raj Department, and he has chosen to do so. When mandamus cannot be issued against the District Collector and the Superintendent of Police, who have no authority to grant permission, consequently, the grounds of challenge made in this appeal are not tenable in law.

6.In the light of the decisions cited supra and discussions made, the appeal is dismissed. No order as to costs. However, the Secretary to the Government Rural Development and Panchayat Raj Department, Government of Tamil Nadu, Chennai-9, is directed to dispose of the petition, dated 05.04.2016, submitted by the appellant within a period of two months from the date of receipt of a copy of this order. The appellant is at liberty to place all materials in support of his claim. The Secretary to the Government is directed to dispose of the petition, on merits and in accordance with the

Government Orders, without reference to the observation made by the writ court."

11. When it is an admitted case that the statue, which is going to be unveiled, was installed in the private patta land belonging to the petitioners, applying the aforesaid decisions, this Court is of the view that the petitioner's application cannot be rejected, as fetters on citizen's right can be made only when there is valid law made by the State legislature and not by Government Guidelines.

12. At this juncture, the learned Additional Advocate General appearing for the respondents, though relying on the guidelines issued by the Government vide G.O.Ms.No.248, Rural Development Department, Dated 23.11.1998, ultimately submitted that if the petitioner approaches the competent authority i.e. the first respondent with a fresh representation along with the required documents, the same would be considered on merits, which has been agreed by the learned counsel for the petitioner.

13. In view of the aforesaid discussion and having regard to the submissions made by the learned counsel on either side, this Court directs the petitioner to submit a fresh representation enclosing all the relevant materials to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On such submission, the first respondent shall consider the same and pass appropriate orders on merits and in accordance with law and also in the light of the earlier orders passed by this Court (cited supra) within a period of three weeks thereafter.

14. This writ petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

ms/rk

To

1. The State rep by its Secretary,
Home Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The District Collector,
Nagapattinam District,
Nagapattinam.

3.The Superintendent of Police,
Nagapattinam District,
Nagapattinam.

4.The Tahsildar,
Sirkali Taluk,
Nagapattinam District.

5.The Inspector of Police,
Pudupattinam Police Station,
Nagapattinam District.

+2 Ccs to Mr.D. Veerasekaran, Advocate sr 60018.

+1 CC to Govt. Pleader sr 60584.

W.P.No.18851 of 2018

SP(27/09/2018)



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