

IN THE HIGH COURT OF JUDUCATURE AT MADRAS

Dated: 06.08.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.19226 of 2018

A.Santhosh Kumar ... Petitioner
vs.

1.The District Collector,
Office of the District Collector,
Salem District.

2.The District Revenue Officer,
Salem District,
Salem.

3.The Member Secretary,
Salem Local Planning Authority,
Salem.

4.The Asst.Commissioner,
Salem Municipality,
Ammamet, Salem,
Salem District.

5.The Inspector of Police,
Salem Town Police Station,
Salem.

6.The President,
Jameeya Majeeth Trust,
Opp.Kottaimariyamman Temple ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to direct the Respondents 1 to 5 herein to remove the unauthorizedly constructed Minar at Jameeya Majeeth Trust, Opp.Kottaimariyamman Temple, No.16/49-A, First Agraharam, Salem-636 001 based on the Representations given by the Petitioner.

For Petitioner : Mr.C.Turibius Beski

For Respondents :Mr.Kamalesh Kannan,G.A.
For R1 to R3 and R5
Mrs.K.Bhuvaneswari for R4
Mr.Mohammed Habeeb Raja
for R6

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate for R1 to R3 and R5. Also this Court heard the Learned Counsel for R4. In respect of service of Court notice for R6, the same is awaited.

2.According to the Petitioner, he has filed the present Writ Petition under the Caption of 'Public Interest Litigation', stating that just opposite to the 'Arulmigu Kottaimariayamman Temple', a 'Mosque' was built before three decades and at the time of building the Mosque just opposite to the temple, there was no objection from any side and that the construction of the 'Mosque' was peaceful. In fact, the existence of the Mosque was also peaceful till the year 1985. However, during the year 1985, the temple Authorities have decided to construct a 'Gopuram' in the entrance of the temple.

3.The Learned Counsel for the Petitioner points out that when it was announced that a Gopuram will be constructed at the entrance of the Temple, the Muslims in that area started objecting for constructing 'Gopuram' on the ground that the Shadow of the Gopuram will fall on the Mosque which is 'harm' as per the Islamic Tenets. In spite of several requests from the temple authorities and the elders in that area belonging to Hindu Community, the Muslims were adamant that they will not permit the 'Gopuram' to be built as planned. Hence, the height of the 'Gopuram' was reduced to just half the height as originally planned.

4.The Learned Counsel for the Petitioner proceeds to point out that in September 2017, the construction of 'Minar' on the Mosque began and that the Petitioner gave a Representation before the First Respondent/District Collector, Salem District, on 27.11.2017, to interfere and stop the 'Unauthorised' construction of 'Minar'. Till today, there is no response. He also addressed a Letter to the 5th Respondent/The Inspector of Police, Salem Town Police Station, Salem, seeking permission to conduct a demonstration, which was denied.

5.The Learned Counsel for the Petitioner contends that the Third Respondent/The Member Secretary, Salem Local Planning Authority, issued a 'Stop Work' notice to the President of the 6th Respondent/Trust for stop work and also to vacate and discontinue the use of the building. Since the notice issued by the Third Respondent was in English, the 6th Respondent had not received the same and hence, another notice was issued in Tamil to the 6th Respondent by the Third Respondent.

6.The main grievance of the Petitioner is that he sent another Representation dated 21.12.2017 to the First Respondent/District Collector, Salem and another Representation dated 05.01.2018 was handed over to the First Respondent. Apart from that another Representation dated 18.01.2018 was given by the Petitioner to the Fifth Respondent/Inspector of Police, Salem Town Police Station, Salem, who had also not taken any action. Another Representation dated 25.01.2018 was handed over by the Petitioner to the Commissioner of Police, Salem City and that the Petitioner's grievance is not redressed. Hence, he has filed the present Writ Petition seeking to remove the unauthorisedly constructed 'Minar' at Jameeya Majeeth Trust, Opposite to Kottaimariayamman Temple, at No.16/49-A, First Agraharam, Salem-636 001, based on the Representations submitted by him and in this regard, necessary orders directing the Respondents 1 to 5 to remove the said 'Minar' is sought for.

7.The Learned Counsel for the Fourth Respondent/The Assistant Commissioner, Salem Municipality, Salem District, informs this Court that a Criminal Case in STC No.107 of 2018, on the file of the Learned Judicial Magistrate No.1, Salem, was initiated against the President/Muthavalli of the 6th Respondent Trust and that a fine of Rs.1000/- was imposed by the Judicial Magistrate No.1, Salem. Also it is represented on behalf of the Fourth Respondent that necessary intimation was given to the 3rd Respondent/Member Secretary, Salem Local Planning Authority, to take necessary action in regard to the removal of 'unauthorised' construction of 'Minar'. सत्यमेव जयते

8.The Learned Counsel for the Fourth Respondent/Municipality brings it to the notice of this Court that the Municipality had issued a notice to the 6th Respondent/The President, Jameeya Majeeth Trust, under Sections 274, 283, 296(1) (2), 297 and 447 of the Salem City Municipal Corporation Act, 1994.

9.In response, the Learned Counsel for the 3rd Respondent/The Member Secretary, Salem Local Planning Authority, Salem, informs this Court that an inspection was carried out by the Third Respondent/Member Secretary, Salem Local Planning Authority, Salem, and that after coming to know that the

construction of 'Minar' is an 'Unauthorised' one, necessary Form-I notice under the Tamil Nadu Town and Country Planning Act, 1971 was issued to the 6th Respondent, on 13.12.2017, for 'Stop Work' of the construction. For the said Notice, there is no response from the side of the 6th Respondent.

10. Considering the fact that the Criminal case in STC No.107 of 2018, against the 6th Respondent/The President, Jameeya Majeeth Trust, had resulted in payment of fine, before the Learned Judicial Magistrate No.1, Salem, and also this Court taking note of the fact that a fine of Rs.1000/- was remitted by the 6th Respondent and also taking note of the attendant facts and circumstances of the present case in an encircling fashion, this Court, in the interest of justice, fair play, good conscience and as a matter of prudence, directs the Respondents 1 to 5 to look into the Representations of the Petitioner dated 21.12.2017, 05.01.2018, 18.01.2018, 25.01.2018 and 05.02.2018 and to dispose of the said Representations in a fair, just, unbiased and in a dispassionate manner, of course, after providing adequate opportunity to the 6th Respondent/The President, Jameeya Majeeth Trust, within a period of four weeks from the date of receipt of copy of this Order. It is open to the First Respondent/The District Collector, Salem District, to provide 'personal Hearing' to the 6th Respondent/The President, Jameeya Majeeth Trust, if situation requires/arises. It is open to the 6th Respondent to raise all factual and legal pleas before the First Respondent, who shall take into account of the same and to pass a reasonable speaking Order on merits, uninfluenced and untrammelled with any of the observations made by this Court in this Order.

With the above observations/directions, the Writ Petition shall stand disposed of. No costs.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

msk

To

1. The District Collector,
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2.The District Revenue Officer,
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Salem.

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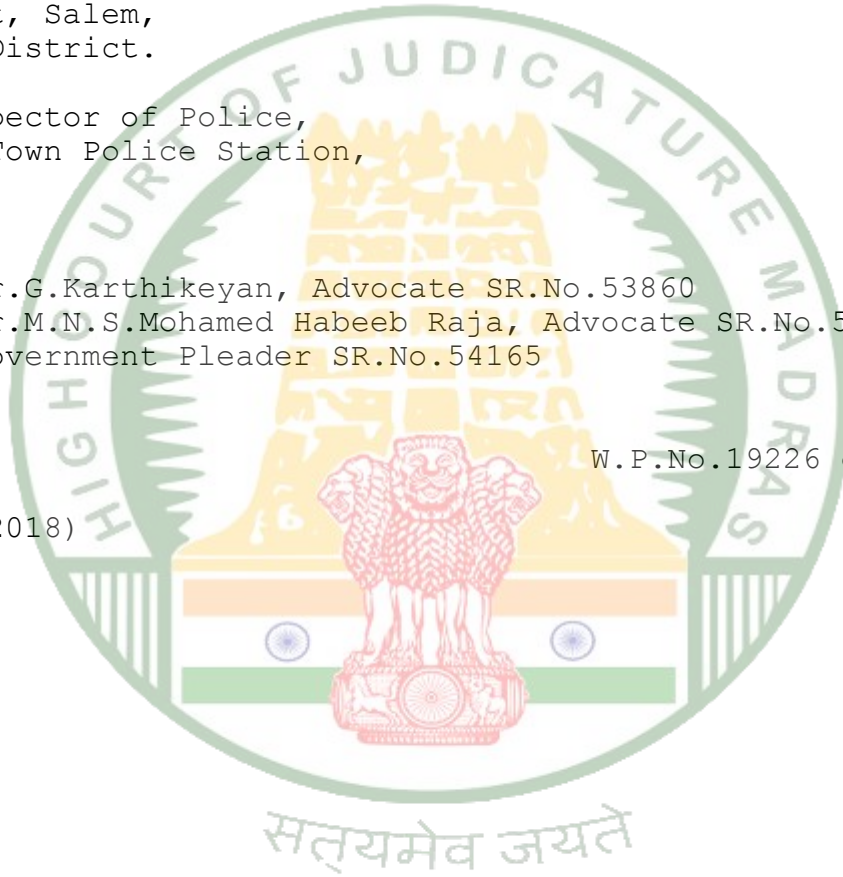
+1cc to Mr.G.Karthikeyan, Advocate SR.No.53860

+2cc to Mr.M.N.S.Mohamed Habeeb Raja, Advocate SR.No.54698

+1cc to Government Pleader SR.No.54165

W.P.No.19226 of 2018

GP (CO)
GN(23/08/2018)



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