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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

Review Application No. 224 of 2019

and

W.M.P. No.33796 of 2019

in

W.P. No. 8093 of 2019

1. The District Collector
Nagapattinam District.
2. Revenue Division Officer
Myladudurai.
3. Tahsildhar
Seerkazhi.
4. The Inspector of Police
Thiruvengadu Police Station
Thiruvengadu.

...Review Petitioners

-vs-

Mr.S.Asiravatham Daniel
S/o. Mr.Samual
No.1/65, Sami Nagar
Saraboji Agraharam Main Road
Thiruvengadu
Nagapattinam District.

...Respondent

Prayer:- This Review Application filed under Order XLVII Rule 1 read with Section 114 of Civil Procedure Code and read with Article 226 of the Constitution of India, to set aside the order dated 14.06.2019 passed in W.P. No. 8093 of 2019 by this Court.

WP.No.8093/2019: Petition praying to issue a unit of Mandamus directing the Respondents to permit Petitioner to conduct the prayer meeting in every Sundays and Christmas festival and other auspicious festival of Christian religion in his residential house situated at No. 1/65(2), Sami Nagar, Saraboji Agraharam Main Road, Thiruvengadu and protect the right to religion guaranteed under the Constitution of India.

For Petitioners : Mr. G.K.Muthukumar
Special Government Pleader
For Respondent : Mr. P.Manikannan



O R D E R
(through video conference)

Heard Mr. G.K.Muthukumar, Learned Special Government Pleader appearing for the Petitioners and Mr. P.Manikannan, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties. The parties are hereinafter referred as per their description in this Review Application.

2. The Writ Petition in W.P. No. 8093 of 2019 had been filed by the Respondent for a direction to the Petitioners to permit him to conduct prayer meeting in every Sundays and Christmas Festival and other auspicious Festival of Christian Religion in his residential house situated at No. 1/65, Sami Nagar, Saraboji Agraharam Main Road, Thiruvankadu and protect his Right to Religion guaranteed under the Constitution of India.

3. This Court by an order dated 14.06.2019 in W.P. No. 8093 of 2019, after referring to the contentions of the parties viz-a-viz the legal position, held as follows:-

"5. In the light of the aforesaid settled legal principles, the question of requiring the Petitioner to get prior permission from any authority for assembling and conducting any prayers in his dwelling place per se, without causing nuisance or disturbance to others and without causing hindrance to the general public of the locality, does not arise. Consequently, the restraint on the Petitioner from conducting prayer in his residential premises till he obtains proper permission, cannot be sustained. However, the Petitioner is bound to ensure that while conducting such prayers in his residential premises, no hindrance or disturbance is caused to the general public and for that purpose, it is certainly open to the concerned authorities on the basis of subjective satisfaction with concrete evidence to take necessary action under the provisions of the relevant statutes in accordance with law in the event of any nuisance being caused due to noise pollution or for violation of any statutory provisions or for any bonafide reasons.

6. The Writ Petition stands disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs."

4. The Petitioners have thereafter filed this Review Application contending that the Respondent does not have the requisite license from the District Collector under the provisions of Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, permitting him for



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conducting prayers in the place of worship. In order to ascertain its applicability and factual correctness, this Court by an order dated 05.02.2020 had passed the following order:-

"The Fourth Petitioner shall inspect the building in which the Respondent claims to be conducting prayers in order to ascertain as to whether that premises is a place of worship or used for religious purpose, which requires prior permission of the District Collector, under Section 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, before its construction and file a report on or before 30.04.2020 in that regard.
Post the matter on 08.07.2020."

5. The Fourth Petitioner has filed Report dated 20.08.2020 in furtherance to the aforesaid order passed by this Court in which it has been stated as follows:-

"1. As per the directions I inspected the Jesus Alive Jebaveedu Church situate at Swami Nagar, Thiruvengadu, Sirkali Taluk, Mayiladuthurai District at 17.30 hours on 19-08-2020. The said property (Church) is owned by one Thiruthuva Janili W/o.Ebinesar Gnanaraj of Kailasam Nagar, Trichy.

2. On enquiry I came to know that in Survey No.149/01 Plot No.10 for 61 ft length and 40 ft breadth and a total extent of 2989 Sq.ft., a thatched house was put up as Jabaveedu by Asirvadam Daniel in the year 2007 and resided in the same. The said Thiruthuva Janili W/o.Ebinesar Gnanaraj executed a registered document to her father Asirvadam Daniel in the year 2013. The said Asirvadam Daniel and his wife Ebinesar formed a trust for the Jabaveedu as per the statement of Asirvadam Daniel.

3. After that the thatched shed was removed and put up walls with brick and cement mortar in extent of 34 x 16-1/2 ft and roof was put up by cement asbestos sheets. A cross was put up for 4 feet height on the top of the roof. No panchayat approval or permission was obtained for construction of Jabaveedu. A resident was put up on the back side abutting the Jabaveedu for the length of 10 ft. The Jabaveedu is situate facing southwards on the East West road leading to Swamy Nagar. The said Jabaveedu is bounded by Koola Vaikal on the North, an RCC house belong to Sivakumar Son of Chinnapillai (Vanniar Community) on the West, a vacant site on East, Sakthi Primary and Nursery School on the South abutting east west road.

4. The Jabaveedu was opened on 27-12-2016. There is a space for sitting 60 persons inside the Jabaveedu. A small amplifier and small Box speaker is being used for Jabaveedu. The EB Service bearing No.1182 for



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Jabaveedu and No.1490 for residence are given. Due Covid-19 Pandemic no Jabam was conducted now. Prior to that nearly 20 persons belonging to Perunthottam and Chinna Perunthottam along with his family members participated in the Jabam.

5. The Jabam was conducted during Sundays. There are three ceiling fans and a toilet facility available in Jabaveedu. The Pastor of Jabaveedu Asirvadam Daniel has his wife Ebinesar, two sons namely Johnson of Jayabal and Daughter Thiruthuva Janili. Now Asirvadam Daniel, his wife Ebinesar, Second son Jayabal are living in the residence abutting the Jabaveedu."

6. When the matter is taken up for hearing today, it is represented by the Learned Special Government appearing for the Petitioners that since the premises is situated in a land falling under a Panchayat, the Respondent has to obtain prior permission from the District Collector under Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997, instead of Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, which is applicable in respect of similar premises situated in Municipalities.

7. Learned Counsel for the Respondent brings to the notice of the Court that though prior permission for construction had not been obtained by the Respondent, a representation dated 22.12.2018 has been made by the Respondent seeking such permission, if he is otherwise entitled to the same, in terms of Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997, which may be disposed by the concerned authority.

8. Having regard to the aforesaid submissions made, the following directions are issued:-

- (i) The First Petitioner, viz., the District Collector, Nagapattinam, shall treat the representation dated 22.12.2018 made by the Respondent as one made for prior permission in terms of Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997, and if the same is otherwise in order, after affording full opportunity of personal hearing to the Respondent, a reasoned order on merits and in accordance with law shall be passed thereon by 31.10.2020;
- (ii) The Respondent, viz., S.Asirvatham Daniel, shall not conduct any prayer meeting in the premises till permission for the same is granted by the First Respondent;
- (iii) Though obvious, it is made clear that if the Respondent is aggrieved by any adverse order passed by the First Petitioner, he is not precluded from working out his remedy



for appropriate relief before the proper forum in the manner recognized by law;

(iv) The order dated 14.06.2019 in W.P. No. 8093 of 2019 passed by this Court shall stand modified to that extent.

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In the result, the Review Application is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya/vjt/msm

To

1. The District Collector
Nagapattinam District.
2. The Revenue Division Officer
Myladudurai.
3. The Tahsildhar
Seerkazhi.
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Thiruvengadu Police Station
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SAI(CO)
KKV/07/10/2020