

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
Dated : 14.06.2019

CORAM:

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

W.P. No. 8093 of 2019  
and  
W.M.P. No. 9928 of 2019

S. Asirvatham Daniel

... Petitioner

-vs-

1. The District Collector,  
Nagapattinam District.

2. The Revenue Divisional Officer,  
Mayiladudurai.

3. The Tahsildar,  
Seerkazhi.

4. The Inspector of Police,  
Thiruvengadu Police Station,  
Thiruvengadu,  
Nagapattinam District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the Respondents to permit the 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, Thiruvenkadu and protect the right to religion guaranteed under the Constitution of India.

For Petitioner : Mr. P. Manikannan

For Respondents: Mr. R. Venkatesh,  
Government Advocate

WEB COPY  
O R D E R

The Petitioner claims to have constructed a prayer hall in his residential house situated at No. 1/65(2), Sami Nagar, Saraboji Agraharam Main Road, Thiruvenkadu. On objections raised from certain persons belonging to the Hindu Munnani that the conduct of prayer meetings by the Petitioner at his aforesaid residence opposite to Sakthi Nursery and Primary School, was causing hindrance to the general public of that locality, the

Second Respondent, viz., the Revenue Divisional Officer, Mayiladudurai in the minutes of the Peace Committee Meeting held on 18.09.2018 recorded the following decisions that had been taken:-

- (i) The Petitioner could conduct public prayer meetings in the prayer hall at his residence only after getting proper permission in that regard.
- (ii) Until such permission was obtained, the Petitioner could conduct prayer with his family members in the prayer hall without causing hindrance to the general public of that locality.
- (iii) No loudspeakers shall be installed while conducting such prayers.

Complaining that the Petitioner has been unlawfully prevented from exercising his fundamental right to practice his religion, the present Writ Petition has been filed for a direction to the Respondents to permit him to conduct prayer meeting on every Sunday and on Christmas and other festivals relating to Christian religion in his aforesaid residential house.

2. Heard Mr. P. Manikkanan, Learned Counsel for the Petitioner and Mr. R. Venkatesh, Learned Government Advocate appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. It is well settled that the right to freedom of religion and manage religious affairs on any denomination are undoubtedly fundamental rights under Articles 25 and 26 of the Constitution, but the same are subject to public order, morality and health, which would not prevent the State from acting in appropriate manner in larger public interest as reiterated in *Adi Saiva Sivachariyargal Nala Sangam -vs- State of Tamil Nadu* [(2016) 2 SCC 725].

4. The Hon'ble Supreme Court of India in *Church of God (Full Gospel) in India -vs- K.K.R. Majestic Colony Welfare Association* [(2000) 7 SCC 282] while considering the same issue and after referring to the relevant statutory provisions under the Madras City Police Act, 1888, and the Madras Town Nuisances Act, 1889 and the Noise Pollution (Regulations and Control) Rules, 2000 framed by the Central Government under the provisions of the Environment (Protection) Act, 1986, read with Rule 5 of the Environment (Protection) Rules, 1986, has observed as follows:-

"13. In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to "public order, morality and health" are not required to be dealt with in detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it

should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observations made by the Constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat [(1975) 1 SCC 11]. After considering the various contentions, the Court observed that: (SCC p. 20, para 30)

"No rights in an organized society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests..."

The Court also observed that: (SCC p. 20, para 31)

"A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole."

14. Further, it is to be stated that because of urbanization or industrialisation the noise pollution may in some area of a city/town might be exceeding permissible limits prescribed under the Rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing reasonable restrictions including the Rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisances Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced. We would mention that even though the Rules are unambiguous, there is lack of awareness among the citizens as well as the implementation authorities about the Rules or its duty to implement the same. Noise-polluting activities are rampant and yet for one reason or the other, the aforesaid Rules or the Rules framed under the various State Police Acts are not enforced. Hence, the High Court has rightly directed implementation of the same."

Recently, a Learned Judge of this Court in order dated 11.01.2019 in W.P. (MD) No. 710 of 2019 filed by a person similarly placed to the Petitioner, has held as follows:-

"14. Following the above decisions and the fundamental

rights guaranteed under the Constitution of India to the Citizens, in the opinion of this Court, there is no need to get prior permission from any authority for assembling and conducting prayers in a dwelling place without causing nuisance or disturbance to others and without causing hindrance to the general public. It is the duty of the authorities to safeguard the protection of every citizen of this Country to practise constitutional rights guaranteed under the Constitution of India. However, in a civilized Society in the name of religion, activities, which disturb others, in any manner and for bona fide reasons, cannot be permitted and hence, if there is any nuisance caused due to noise pollution or for any other bona fide reasons, it is always open to the authorities to take necessary action under the provisions of the relevant statutes. But, before resorting to any action, the authorities, on the basis of concrete evidence, should arrive at a subjective satisfaction that there exists infringement of a right of others, under the Constitution of India, to enforce public order."

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.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The District Collector,  
Nagapattinam District.
2. The Revenue Divisional Officer,  
Mayiladudurai.
3. The Tahsildar,  
Seerkazhi.
4. The Inspector of Police,  
Thiruvengadu Police Station,  
Thiruvengadu,  
Nagapattinam District.

+1cc to the Government Pleader, S.R.No.49458

RRS (19/06/2019)

W.P. No. 8093 of 2019



WEB COPY