

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34987 of 2015
and
M.P.Nos.1 and 2 of 2015

Keezha Oduthurai Village Welfare
Association (Regn. No.421/2015),
Rep., by its President R.Selvam,
No.86, Anthonyar Koil Street,
Keezha Oduthurai Karaikal,
Pondicherry-609 604. ... Petitioner

-vs-

- 1.The District Collector,
Karaikal District,
Puducherry.
- 2.The Superintendent of Police,
Karaikal District,
Puducherry.
- 3.The Member Secretary,
Karaikal Planning Authority,
Karaikal.
- 4.The Inspector of Police,
Pattinam Police Station,
Karaikal, Puducherry.
- 5.O.L. of Angels Church,
Rep., by Rev.Fr. Antony,
Plot No.6, Anna Nagar,
Karaikal, Puducherry Union Territory. ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus to call
for the records connecting to the granting of No Objection
Certificate in No.1211/CK/A3/2011, dated 07.07.2015 by the 1st
respondent herein and the permission granted by the 3rd
respondent herein in Permit No.276/1228/KPA/KM/2010-15, dated
01.09.2015 and quash the same and consequently pass an order of
direction directing the respondents 1 and 3 herein forbearing
them from granting permission for the 5th respondent herein to

construct a Church Building at R.S.No.161/4pt, T.S.No.145pt, Ward-L, Block-02, Karaikal-Nagore Main Road, Oduthurai Revenue Village, Karaikkal Municipality, Karaikal.

For Petitioner : Ms.K.R.Vinodhini
For Mr.G.Karthikeyan

For Respondents: RR1 to 4 - Ms.N.Mala,
Additional Govt. Pleader (Puducherry)

: R5 - Mr.K.Sukumaran

ORDER

Heard Ms.K.R.Vinodhini, learned counsel representing Mr.G.Karthikeyan, learned counsel for the petitioner, Ms.N.Mala, learned Additional Government Pleader appearing for respondents 1 to 4 and Mr.K.Sukumaran, learned counsel for the 5th respondent.

2.With consent on either side, this writ petition is taken up for final disposal.

3.The petitioner is an Association registered on the file of Sub Registrar, Karaikal. It is stated by the petitioner, in their village there are 75 families and 85% of them are Hindus and all of them belong to Schedule Caste Community. It is further stated that there is a temple in the area nearby National Highway 45A. Two temples are situated which are stated to be in existence for several centuries. Further, it is stated that all the vehicles passing through the National Highway stop at the temple and offer their prayers and during the Tamil month of Margazhi, holy songs are played in the temple.

4.Further, the petitioner would state that there is a church called 'St. Antony's Church' at about a distance of 200 meters from the temple on the opposite side of the road. This church is admitted to have been in existence for several years and prayers are being regularly conducted in the church. The petitioner has approached this Court by filing this writ petition on account of the fact that during the year 2007, the church had purchased an extent of property opposite to the temple within 100 meters distance and they were taking steps for constructing a church and had applied to the authority for grant of No Objection Certificate and for issuance of planning permission. The application submitted to the District Collector, Karaikal, for grant of No Objection was considered favourably and an order has been passed on 07.07.2015. Based on the said No Objection Certificate, the church authorities have applied to the local body and have also obtained a planning permission.

5.The petitioner has questioned the grant of No Objection Certificate in favour of the 5th respondent by contending that there is no necessity for putting a new church in the proposed site, as already there is a church within a distance of 40 metres from the proposed site. Further, it is submitted that if the church is established just opposite to the temple and loud speakers are installed in the church, it will definitely trigger the situation and there is every possibility of communal disharmony occurring in the locality. Therefore, it is submitted that the No Objection Certificate granted to the 5th respondent should be cancelled.

6.The 3rd respondent has filed a counter affidavit which refers to the No Objection Certificate granted by the District Collector and it is submitted that planning permission has been granted in accordance with the rules.

7.After elaborately hearing the learned counsel for the parties, this Court is of the view that the larger issue which should be borne in mind is that communal harmony should be maintained in the locality. India being a secular country, this is very essential to be maintained and from the submissions of the learned Additional Government Pleader, this Court is informed that as of now, there are no communal disharmony in Karaikal District. If such is the situation, should the present attempt of the 5th respondent disturb such peaceful harmony. In the considered opinion of this Court, if peace and harmony prevail in the locality, the authority should ensure that the same should be maintained as such and any attempt made by any third party who will have an effect of disturbing the peace and effect of communal harmony, should be appropriately prevented.

8.From a perusal of the order passed by the first respondent dated 07.07.2015, which is the order granting No Objection to build a single storied church building, it is seen that the order has been passed without due application of mind. There is nothing to indicate that the 1st respondent was appraised of where the proposed construction is to be located. It is not clear as to whether the 1st respondent was fully acquainted with the logistics of the area and regarding the existence of an ancient church within 40 meters from the proposed site. When objections have been raised by the public, the 1st respondent should take all factors into consideration. Admittedly, there is no Government Order stipulating any specific conditions with regard to granting No Objection Certificates for places of worship, though there is a Government Order issued for the Kanyakumari District. Nevertheless, as the head of the District Administration, the District Collector should consider all parameters and paramount consideration would be communal harmony and peace and tranquillity in the area.

Bearing all these in mind, if one peruses the impugned order, it shows that the impugned order has been passed without due application of mind.

9.Further, as rightly pointed out by the learned Additional Government Pleader, the planning permission granted by the 3rd respondent in favour of the 5th respondent has also lapsed. Thus, for all the above reasons, this Court is inclined to interfere with the impugned order.

10.Accordingly, this writ petition is allowed and the impugned order dated 07.07.2015 is set aside. Consequently, the planning permission dated 01.09.2015, granted by the 3rd respondent is also set aside. However, liberty is granted to the 5th respondent to apply a fresh representation seeking necessary approval and if the same is done, the District Collector, Karaikal, shall consider the application bearing in mind the observations made in this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

abr

To

- 1.The District Collector,
Karaikal District, Puducherry.
- 2.The Superintendent of Police,
Karaikal District, Puducherry.
- 3.The Member Secretary,
Karaikal Planning Authority,
Karaikal.
- 4.The Inspector of Police,
Pattinam Police Station,
Karaikal, Puducherry.

+1cc to Mr.K.Sukumaran, Advocate SR.No.102173
+1cc to Mr.G.Karthikeyan, Advocate SR.No.102045
+1cc to Government Pleader (P) SR.No.102445

W.P.No.34987 of 2015

SSD(CO)
GMY(28/01/2020)