



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.11.2019

CORAM

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

W.P. No. 189 of 2018

and

W.M.P. No. 254 of 2018

M. David Devaraj

... Petitioner

-vs-

1. The District Collector,
Coimbatore District,
Coimbatore - 641 018.

2. The Revenue Divisional Officer,
Pollachi,
Coimbatore - 641 018.

3. The Tahsildar,
Pollachi,
Coimbatore - 641 402.

4. Deputy Superintendent of Police,
Coimbatore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the Third Respondent in Na. Ka. 9248/2017/A5 dated 30.12.2017 and to quash the same and consequently forbearing the Respondents from in anyway interfering with the conduct of prayers by the Petitioner in Premises in S. No. 93/1, 93/2 B, 93/3, 94/2 A1 & 94/2 A2 at No. 10/18, Jothi Nagar, Negammam - 642 120, Pollachi Taluk, Coimbatore District.

For Petitioner : Mr. P. Subramanian

For Respondents: Mr. M. Karthikeyan,
Additional Government Pleader

O R D E R

Heard Mr. P. Subramanian, Learned Counsel for the Petitioner and Mr. M. Karthikeyan, Learned Additional Government Pleader appearing on behalf of the Respondents and perused the



materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a Pastor practicing Christianity, has been conducting prayer meetings at his residence at S. No. 93/1, 93/2 B, 93/3, 94/2 A1 & 94/2 A2 at No. 10/18, Jothi Nagar, Negammam - 642120, Pollachi Taluk, Coimbatore District after getting plan approval from District Municipality. The Respondents had called the Petitioner for a peace meeting on 15.07.2017 pursuant to the complaints received from neighbourhood. The Respondents by notice Na. Ka. No. 9248/2017/AA5 dated 30.12.2017 required the Petitioner to apply and obtain permission for conducting such prayer meetings. The Petitioner has challenged the said order contending that it is in violation of his fundamental rights.

3. During the earlier hearing on 19.06.2019, this Court passed the following self-explanatory order:-

"Learned Government Advocate appearing for the Respondents submits that the order Na. Ka. No. 9248/2017/AA5 dated 30.12.2017, which is impugned in the Writ Petition, has been issued to the Petitioner for the purpose of requiring to comply with Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, which reads as follows:-

"(4) No site can be used for the construction of a building intended for public worship or religious purposes, without the prior approval, of the Collector of the District who may refuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order.

Provided that an appeal shall lie against the Collector's decision to the Government who may issue such orders as they deem fit."

As the aforesaid requirement is a statutory necessity, the Petitioner shall produce a copy of such approval if already obtained, and in the event such approval has not been obtained so far, it is open to the Petitioner to make an application for the same and furnish details so as to ascertain its status from the First Respondent. On the contrary, if it is the contention of the Petitioner that the aforesaid requirement is not applicable, the Petitioner shall file an affidavit explaining the reasons for the same."

4. The Petitioner then made an application dated 16.08.2019 for permission to conduct public worship in the premises and the same has been rejected by the First Respondent since the Petitioner is using loud speakers, which causes inconvenience to the neighbourhood, and the construction for the place of public



worship has been made without prior approval as required under the aforesaid statutory provisions.

5. 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



WEB COPY

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."

6. It is equally settled law that though right to freedom of religion and manage religious affairs on any denomination are undoubtedly fundamental rights under Articles 25 and 26 of the Constitution, 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 held by the Hon'ble Supreme Court of India in *Adi Saiva Sivachariyargal Nala Sangam -vs- State of Tamil Nadu* [(2016) 2 SCC 725].

7. It is evident from the aforesaid legal position that the Petitioner is bound to ensure while conducting public worship in his residential premises that no hindrance or disturbance is caused to the general public, and for that purpose, it would be 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.

8. Viewed from that perspective, the conduct of public worship by prayer meetings causing disturbance to the neighbourhood, cannot be permitted, more so, when the Respondents have inspected the premises and factually found that it would not be possible to grant any permission under Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972. It is needless to point out here that a mere contemplation or possibility that a right may be infringed, without any legitimate basis for that right, would not give rise to a cause of action. In such circumstances, the question of granting the relief sought by the Petitioner in this Writ Petition does not arise for consideration.



9. Accordingly, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsa/vjt

To

1. The District Collector,
Coimbatore District,
Coimbatore - 641 018.
2. The Revenue Divisional Officer,
Pollachi,
Coimbatore - 641 018.
3. The Tahsildar,
Pollachi,
Coimbatore - 641 402.
4. Deputy Superintendent of Police,
Coimbatore District.

+1cc to the Government Pleader, S.R.No. 98041

W.P. No. 189 of 2018

BP(CO)
GN(09/01/2020)