

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Date of Reservation : 29.04.2019****Date of Pronouncement : 04.06.2019****CORAM:****THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN****WP (MD) No. 10992 of 2019****and****WMP (MD) Nos. 8395 and 8396 of 2019**

Pentico Jesus Ministries,
Rep. by its Pastor and Managing Director,
Rev. Mariathas ... Petitioner

Vs.

1. The District Collector,
Kanyakumari District, Nagercoil.
2. The Assistant Director of Town Panchayats,
Collectorate Campus, Nagercoil.
3. The Executive Officer, Vellimalai Town
Panchayat,
Tirunainarkurichi,
Kanyakumari District. ... Respondents

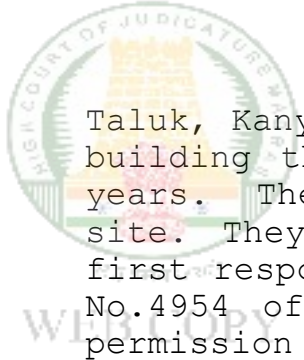
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the order passed by the first respondent vide D.Dis.C3/18801/2018 dated 22.01.2019, quash the same and consequently directing the first respondent to grant permission for construction of a church in R.S.No.608/1B, 608/2A1 & 608/2A2 of Kadiapattinam Village, Kalkulam Taluk, Kanyakumari District.

For Petitioner : Mr.C.T.Perumal

For Respondents : Mr.K.Mu.Muthu,
Additional Government Pleader.

ORDER

The writ petitioner is a registered religious Trust. They own the building bearing Door No.24/13 A. It is situated in R.S.No.608/1B, 608/2A1 & 608/2A2 of Kadiapattinam Village, Kalkulam



Taluk, Kanyakumari District. The petitioner claims that in the said building they are conducting prayer meetings for the last several years. The writ petitioner wants to construct a church in the said site. They had submitted an application dated 09.01.2018 to the first respondent seeking approval. The writ petitioner filed WP(MD) No.4954 of 2018 for directing the respondents to grant them the permission sought for. By order dated 08.03.2018, this Court directed the first respondent to consider the said application. Pursuant to the direction given by this Court, the first respondent considered the petitioner's application and rejected the same. This is under challenge in this writ petition.

2. Heard the learned counsel appearing for the writ petitioner who reiterated all the contentions set out in the affidavit filed in support of the writ petition.

3. It is not in dispute that the site in question belongs to the writ petitioner. Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972 reads as follows :

"6(4) : - No site 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, it in his opinion, the use, purpose of the site and building is likely to endanger public peace and order."

4. The point for consideration before me is whether the first respondent was justified in negating the writ petitioner's plea. The writ petitioner's foremost contention is that their fundamental rights guaranteed under Article 25 and 26 have been violated. It is relevant to note that the rights conferred by both these Articles are "subject to public order, morality and health". The Building Rules, whether under the Panchayats Act or the Municipalities Act, contemplate "prior approval" of the District Collector. Of course, the discretion conferred on the District Collector is not absolute or unqualified. There is an in-built guideline in the Rule itself. The authority may refuse approval if public peace and order is likely to be endangered by the proposed use of the site and building for religious purposes or for public worship.

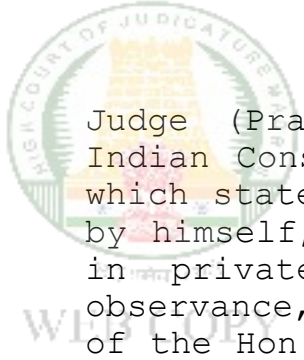
5. In the case on hand, the Superintendent of Police has submitted a report dated 12.01.2019 pointing out that in the north west direction, there is an old Krishnan Temple and Perumal Temple. The distance between the site in question and those two temples is hardly 25 meters. In the north east direction at a distance about 200 meters, there is an old Mutharamman Temple. More than 300 Hindu families are residing in the vicinity. Even for conducting the prayer meetings, there is a strong objection that only outsiders are attending the prayer meetings. The local residents who belonging to Hindu religion have lodged their objections for constructing the church. The facts mentioned in the report of the Superintendent of Police, Kanyakumari District have not been controverted by the writ



petitioner. The Superintendent of Police, Kanyakumari District has categorically opined that if the writ petitioner is allowed to construct the church in the site in question, riots and clashes will occur and that it will lead to law and order problem.

6. The Sub Collector, Padmanabhapuram has also given a report on the same lines. The District Collector, Kanyakumari District has chosen to go by these two reports for rejecting the petitioner's request. The District Collector has taken note of all the relevant aspects. He has also analyzed the constitutional provisions. By no stretch of imagination can this Court come to the conclusion that the discretion of the District Collector has been exercised in an irregular or arbitrary manner. This Court cannot lose sight of the fact that Kanyakumari District is a communally sensitive District. It has witnessed bloody riots in the past. Their recurrence must be prevented at all costs. The demographic composition of the Kanyakumari District cannot also be lost sight of. In a given locality, where one group of religionists are in an overwhelming majority, they may not oppose the religious activities of the minority group. But where the numerical strength of the competing groups are tantalisingly poised, each group is likely to view the other with suspicion and insecurity. According to 2011 Census, the Hindus constitute 48.65% while Christians constitute 46.85% and Muslims constitute 4.20%. Unlike the Roman Catholics or the Church of South India and a few other traditional denominations, new groups have sprung up claiming that it is their religious duty to harvest the souls of other religionists and denominations. Hindus of the village in question are apprehensive of such poaching activities. They fear that their numbers may dwindle further. The Hon'ble Supreme Court in the decision reported in (1977) 1 SCC 677 (Rev. Stainislaus V. State of Madhya Pradesh and Ors) held that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes such conversion activities, that would impinge on the freedom of conscience guaranteed to all the citizens of the country alike. Therefore, there is considerable substance in the stand taken by the official respondents that if the church is allowed to come in the face of strong opposition from other religionists, it will lead to serious breach of public tranquility.

7. It is relevant to refer to the decision of the Hon'ble Supreme Court of Sri Lanka reported in 2018 SCC Online SL SC 69 (Karuwalagaswewa Vidanelage Swarna Manjula, Tilakapura, Kalakarambawa and another Vs. C.I.V.P.J. Pushpakumara Officer-in-Charge, Police Station, Kekirawa and others). The petitioners in the said case belonged to Jehovah's witnesses, a Christian denomination which differs from the doctrines of the mainstream churches. They claimed to be engaged in a Bible discussion with a Buddhist woman at her invitation, when they were challenged by others and later taken to the police station. It was held that the police action amounted to arrest and was declared as unlawful and compensation was also awarded. During the course of a scholarly discussion, the learned



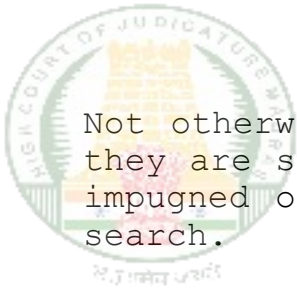
Judge (Prasanna Jayawardena, P.C.J.) compared Article 25 of the Indian Constitution with Article 14 of the Sri Lankan Constitution which states that every citizen is entitled to "the freedom, either by himself, or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching". After referring to the decisions of the Hon'ble Supreme Court of India, the learned Judge notes that the Constitution of Sri Lanka does not confer the right to propagate and went on to observe "the makers of the Sri Lankan Constitution had taken a considered decision to omit granting right to propagate and to grant only a more private and confined right to teach religion or beliefs. There could have been reasons for that decision, including the vital importance of taking measures to preserve social harmony and amity, which have proved to be fragile at times, in a geographically small country with a rapidly growing population which is multi-ethnic, multi-religious and economically disparate. Regrettably, there have been many lessons in our history, of the horrendous consequences of fractures in social harmony".

8. Even though in our Constitution, the expression "propagate" is found, the exercise of that fundamental right is subject to the demands of public order.

9. The scope for judicial review is rather limited in matters having law and order implications. The Hon'ble Division Bench in the decision reported in **2004 (5) CTC 554 (Rama Muthuramalingam Vs. The Deputy Superintendent of Police and Ors)** after referring to several earlier cases held that in administrative matters, courts should ordinarily defer to the judgment of the administrators unless the decision is clearly illegal or shockingly arbitrary.

10. In **State of Karnataka and Ors. vs. Praveen Bhai Thogadia, (2004) 4 SCC 684**, it was observed that Courts should not normally interfere with matters relating to law and order. They fall primarily within the domain of the concerned administrative authorities who are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities, within their special knowledge. It was further observed that in such matters, court cannot act as an appellate authority over the decision of the official concerned. Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimization by those in power, normally interference should be the exception and not the rule. The Court cannot in such matters substitute its view for that of the competent authority.

11. Judicial review is not monochromatic. There is a variety. The mode and manner of approach will vary with the context. It can sometimes assume the character of strict scrutiny. I feel tempted to invoke the analogy of the personal search protocol. In airports, pre-embarking security check is done with hand held metal detector. Any audio or visual alarm may result in deeper checking.



Not otherwise. But when accused are arrested by police in U.S.A., they are subjected to strip-search. Coming to the case on hand, the impugned order does not warrant a judicial scrutiny akin to strip-search.

12. Viewed from any perspective, the order passed by the authority cannot be faulted. He has taken into account all the relevant factors. The facts projected in the impugned order have not been contested by the petitioner at all. The sheet anchor of the petitioner's case rests on Article 25 of the Constitution of India. That is not an absolute right. It will have to give way to the requirements of public order. I therefore sustain the impugned order and dismiss the writ petition. No costs. Consequently, connected miscellaneous petitions also stand dismissed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The District Collector,
Kanyakumari District, Nagercoil.
2. The Assistant Director of Town Panchayats,
Collectorate Campus, Nagercoil.
3. The Executive Officer, Vellimalai Town
Panchayat,
Tirunainarkurichi,
Kanyakumari District.

+1 CC to M/s.C.T.PERUMAL, Advocate (SR-66808[F] dated 04/06/2019)

WP(MD)No.10992 of 2019

and

WMP(MD)Nos.8395 and 8396 of 2019

04.06.2019

Skm

SDS (06.05.2020) 5P-5C