



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :26.02.2019

Delivered on :27.03.2019

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

AND

THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.P.(MD)No.1975 of 2019

and

W.M.P(MD)Nos.1613 to 1615 of 2019

N.Krishnakumar

.. Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.N.Thangappan

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the order by the first respondent vide e.f.vz;./9481/2012 dated 11.01.2019 quash the same.

For Petitioner : Mr.M.Vallinayagam
Senior Counsel for
Mr.C.T.Perumal

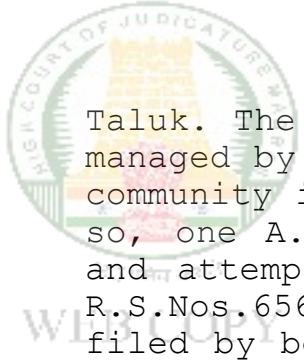
For Respondents : Mr.Aayiram K.Selvakumar
Addl. Govt. Pleader (for R1)
Mr.K.P.Narayanakumar (for R2)

O R D E R

[Order of the Court was delivered by **K.KALYANASUNDARAM, J**]

Challenge in this writ petition is the order of the first respondent dated 11.01.2019 where under permission was granted to renovate a new Sudaimadasamy Temple in R.S.No.656/1, 2, 14 and 15 of Neendakarai "B" Village, Agasteeswaram Taluk.

2.According to the petitioner, he is the Vice-President of Alankottai Oor Siva Sudalaimadasamy Temple Trust, which is administering and managing Arulmigu Siva Sudalaimadasamy Temple, Alankottai constructed in Old Survey No.82/7, correlated to R.S.Nos.173/31 and 32 of Needakarai "B" village, Agasteeswaram



Taluk. The petitioner further claims that the temple was originally managed by Dharmakan Nadar and he dedicated the temple to the Nadar community in the year 1966 by way of a registered gift deed. While so, one A.P.Chelladurai, formed a rival group in the same village and attempted to construct a new Siva Sudalaimadasamy Temple in R.S.Nos.656/1, 2, 14 and 15. In this regard, writ petitions were filed by both the groups and this Court by a common order disposed of the writ petitions directing the District Collector to pass orders in accordance with law.

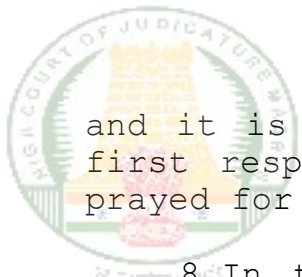
3.It is to be noted that both the groups have filed writ petitions alleging that constructions are being put up in both the temples without permission of the District Collector as per Sections 198 and 199 of the Tamil Nadu District Municipalities Act.

4.It is relevant to note that in the writ petition No.11848 of 2013 filed by the second respondent, a direction was sought for to the first respondent to grant permission as per the Section referred above. In pursuance of the common order passed by this Court dated 17.08.2017, the first respondent issued a notice to both the parties and after obtaining opinion from the Sub-Collector, Nagercoil and the Superintendent of Police, Kanyakumari District, granted permission to the second respondent as stated supra.

5.Mr.M.Vallinayagam, learned Senior Counsel for the petitioner contended that the first respondent without providing adequate opportunities to the petitioner and in violation of the relevant provisions of the Act, granted permission to the second respondent. It is the contention of the learned Senior Counsel that the Sub-Collector has given a report stating that if a permission is granted to construct a new temple, it will create a law and order problem, but the impugned order does not show why the report of the Sub-Collector was not accepted by the first respondent. According to the learned Senior Counsel, a new temple cannot be permitted to be constructed within 1 k.m of the existing temple, which is not taken note of by the first respondent at the time of passing the impugned order.

6.Per contra, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the first respondent would state that the impugned order has been passed after hearing both the parties as per the order in the earlier writ petition and there is no violation of any of the provisions of the Act.

7.Mr.K.P.Narayanakumar, learned counsel for the second respondent would state that the new temple was established in the year 1976, since the decedents of Dharmakan Nadar claimed exclusive right over the administration of the temple and also prevented the majority of the people from the same community from worshipping in the temple. It is further stated that there was already a temple existing in the patta land of the second respondent



and it is being worshiped by more than 200 families and that the first respondent before granting permission conducted enquiry and prayed for dismissal of the writ petition.

8. In the instant case, indisputably, there are two groups in the same community in Needakarai "B" Village, Agasteeswaram Taluk. It seems that in the year 1976, there was a split in the same community and the group led by A.P. Chelladurai wanted to establish a new temple in R.S.Nos. 656/1, 2, 14 and 15 of Needakarai "B" Village. The establishment of the new temple was resisted by the petitioner's group on the ground that the new temple is being constructed without prior permission/approval under the provisions of the Tamil Nadu District Municipalities Act. The learned Senior Counsel for the writ petitioner relies upon the information obtained under Right to Information Act to say that there should not be a new temple within one kilo metre distance of the existing temple, but no rules or regulations have been shown prohibiting establishment of new temple as alleged by the petitioner. Hence, we are not able to appreciate the submission made by the learned Senior Counsel appearing for the writ petitioner.

9. The impugned order has been challenged mainly contending that the petitioner was not given opportunity as per the earlier order of this Court. In para 17 of the affidavit, the petitioner has categorically admitted that he received notice from the first respondent on 09.01.2018 and also attended enquiry on 18.01.2018. The petitioner during the enquiry conducted by the Sub-Collector raised objection for construction of the new temple and insisted for the opposite group to worship in the old temple. The second respondent gave statement before the Sub-Collector expressing their unwillingness to act under the administration of the writ petitioner and they wanted to construct a new temple. Considering the statement of the rival groups, the Sub-Collector reported that there will be law and order problem, if a permission is given for construction of a new temple. Further, the Superintendent of Police, Kanyakumari District, in its letter dated 24.09.2018 has given no objection for the construction of the temple by the second respondent.

10. It is pertinent to note that Article 26 of the Constitution of India guarantees every religious denomination and any section thereof to establish and maintain institution for religious and charitable purpose, to manage its own affairs in the matters of religion subject to public order, morality and health. Article 25 guarantees the citizen of India freedom of conscience and right to protest, practice and propagate religion, however, subject to public order morality and health. Hence, unless any statute expressly prohibits establishment of new temple, the authorities are entitled to grant such permission. In the case on hand, as stated supra, no materials have been produced to show that there is any bar for establishment of a new temple. The Superintendent of Police in his letter dated 24.09.2018 gave no objection for construction of a new

temple by the second respondent. The District Collector, after considering the entire aspects of the matter, granted permission to the second respondent. We find no illegality or violation of any law in the order of the first respondent.

11. For the forgoing reasons, we are of the opinion that the order impugned in this writ petition warrants no interference of this Court. In fine, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

skn
To

The District Collector,
Kanyakumari District,
Nagercoil.

1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-56897[F] dated 27/03/2019)

+1 CC to M/s.C.T.PERUMAL, Advocate (SR-57052[F] dated 27/03/2019)

+1 CC to M/s.SPL GP (SR-57387[F] dated 28/03/2019)

Order made in

W.P.(MD)No.1975 of 2019
and

W.M.P (MD) Nos.1613 to 1615 of 2019

27.03.2019