



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.12.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Writ Petition (MD) No.1151 of 2019

S.Mohan

... Petitioner

Vs.

1.The Superintendent of Police,
Virudhunagar District.

2.The Tahsildar,
Srivilliputtur Taluk,
Virudhunagar District.

3.The Inspector of Police,
Taluk Police Station,
Srivilliputtur,
Virudhunagar District.

4.Raj Naicker

... Respondents

[4th respondent is impleaded vide order dated 10.12.2019
in W.M.P.(MD)No.4445 of 2019]

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents from interfering with the peaceful conducting of prayer in the house of the petitioner along with his family members and relatives, situated in Door No.7/70, Nachiyarpatti Village, Srivilliputtur Taluk, Virudhunagar District.

For Petitioner : Mr.K.Samidurai

For R1 to R3 : Mrs.Bharathi

Government Advocate (Crl. side)

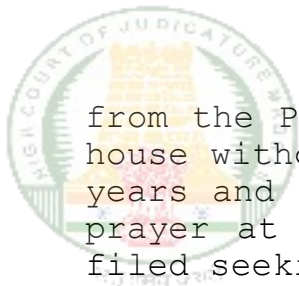
For R4

: Mr.M.Jothi Basu

O R D E R

This petition has been filed seeking for a direction to the respondents from interfering with the peaceful conducting of prayer in the house of the petitioner along with his family members and relatives, situated in Door No.7/70, Nachiyarpatti Village, Srivilliputtur Taluk, Virudhunagar District.

2.The case of the petitioner is that he is the owner of the residential property at new S.No.294/2C3, Door No.7/70, Nachiyarpatti Village, Srivilliputtur Taluk, Virudhunagar District. The said property was purchased from one G.Thamaraikannan on 11.08.2008 and he had constructed a house after obtaining approval



from the Panchayat. The petitioner is conducting prayer in the said house without causing any disturbance to the public for more than 10 years and that the 4th respondent is interfering with the conduct of prayer at the house of the petitioner and thereby the petition is filed seeking for a direction.

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3.The learned counsel for the petitioner would submit that false complaint has been given by one Raj Naicker/fourth respondent to the third respondent, as if, there is a law and order problem due to conducting prayer in his house. He would further submit that the petitioner has given a petition on 22.01.2018 to the District Collector, Virudhunagar to permit him to construct a new Church or prayer house in the said property and the petition is pending before the District Collector. In the meantime, he has been conducting prayer in the said house with his family members, friends and relatives. Whereas, the third respondent is compelling the petitioner to get permission from the authorities even for conducting prayer in his house. He would further submit that this Court, in several writ petitions, have permitted the respective petitioners to conduct prayers in the residence/houses without causing nuisance or disturbance to others and to general public, using speaker and sound system within the permissible limits. He would further submit that the petitioner has also given an undertaking to the third respondent stating that he will not use any speaker or sound system or create any disturbance to the general public.

4.The learned counsel for the fourth respondent would submit that the petitioner is not a resident of the village and he has come to the village along with other persons and the petitioner, by conducting prayer in the house, is creating law and order problem. He would further submit that the petitioner has also filed a civil suit in O.S.No.110 of 2017, on the file of the Principal District Munsif Court, Srivilliputtur and the same is pending as against the fourth respondent.

5.The learned Government Advocate (Crl. side) would submit that in respect of the dispute between the petitioner and the fourth respondent, proceedings u/s107 of Cr.p.c has been initiated against the petitioner herein. She would further submit that if prayers are conducted within the residence of the petitioner without causing disturbance to the general public and without using any speaker or sound system, the police will not have any objection in permitting such prayers. However, if the petitioner in the name of prayer, tries to spoil the peace and harmony in the place, then certainly the police will have to interfere to restore normalcy.

6.The learned counsel for the petitioner would submit that the Constitution of India guarantees fundamental rights and mandates that all persons are equally entitled to freedom of conscience and their right to freely profess practice and propagate



religion and therefore, the petitioner and his brethren belonging to the Christian community are also having such fundamental right and the same cannot be interfered by the respondent police.

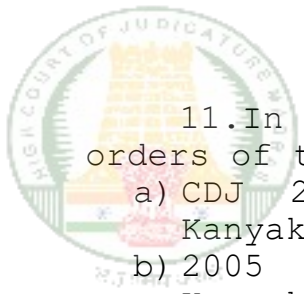
7.The learned counsel for the petitioner would in support of his contention rely on the earlier orders of the Principal Bench of this Court and this Court in W.P.No.2149 of 2018, dated 14.06.2019, W.P.(MD).No.18955 of 2018, dated 31.08.2018 and W.P.(MD)No.710 of 2019, dated 11.01.2019 and would reiterate that the petitioner cannot be prevented from conducting prayer in his residence/house.

8.Heard Mr.K.Samidurai, learned counsel for the petitioner, Mrs.S.Bharathi, learned Government Advocate (criminal side) for the respondents 1 to 3 and Mr.M.Jothi Basu, learned counsel for the 4th respondent.

9.The specific case of the petitioner is that the prayer is being conducted at his residence and the same is being attended by the petitioner and his relatives and friends belonging to the same community. Further case of the petitioner is that these prayers are not going to cause any nuisance or hindrance to the others living in the locality and no loud speaker or sound system is being used for conducting the said prayers, whereas on the basis of the complaint of the fourth respondent, the petitioner is prevented from conducting prayers.

10. In W.P.(MD)No.710 of 2019, dated 11.01.2019 filed by a person, similarly place as that of the petitioner 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."



11. In the above order of this court had referred to earlier orders of this court passed in similar circumstances.

- a) CDJ 2007 MHC 5279 (Sadhu C.Selvaraj Vs. The Collector, Kanyakumari)
- b) 2005 4 CTC 171 (Albert Raj Vs. The District Collector, Kanyakumari District at Nagercoil)
- c) Order, dated 14.08.2012, made in WP(MD)No.10782 of 2006, of the Madurai Bench of the Madras High Court.
- d) Order, dated 13.08.2007, made in WP(MD)No.6732 of 2007, of the Madurai Bench of the Madras High Court.
- e) Order, dated 30.04.2008, made in WP.No.4151 of 2008, of the Madras High Court.
- f) Order, dated 14.12.2012, made in WP(MD)No.13336 of 2007, of the Madurai Bench of the Madras High Court.
- g) Judgement, dated 03.01.2017, made in WA(MD)No.1349 of 2013, of the Madurai Bench of the Madras High Court.
- h) Order, dated 28.11.2011, made in Crl.OP(MD)No.15462 of 2011, of the Madurai Bench of the Madras High Court.
- i) Order, dated 31.08.2018, made in WP(MD)No.18955 of 2018, of the Madurai Bench of the Madras High Court.
- j) Order, dated 09.03.2018, made in Crl.OP(MD)No.3039 of 2018, of the Madurai Bench of the Madras High Court.

12. In view of the above and under such circumstances, this Court does not find any reason as to why the petitioner should not be permitted to conduct such prayers in his own residence.

13. This writ petition is disposed of with the direction to the third respondent not to interfere with the right of the petitioner, conducting prayer along with relatives and friends at the residence of the petitioner situated at Door No.7/70, Nachiyarpatti Village, Srivilliputtur Taluk, Virudhunagar District.

14. The petitioner shall ensure that this prayer does not in any way cause any hindrance to the general public and does not in any way give rise to any law and order problem. If any law and order problem is created, then certainly, the respondent police is at liberty to take appropriate action.

15. This Writ Petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



sj1

To

1.The Superintendent of Police,
Virudhunagar District.

2.The Tahsildar,
Srivilliputtur Taluk,
Virudhunagar District.

3.The Inspector of Police,
Taluk Police Station,
Srivilliputtur,
Virudhunagar District.

+1 CC to M/s.G.M.LAW ASSOCIATES, Advocate (SR-104324[F] dated
11/12/2019)

+1 CC to Mr.K.SAMIDURAI, Advocate (SR-104571[F] dated 11/12/2019)

WP. (MD)No.1151 of 2019
10.12.2019

MK (08.01.2020) 5P 6C