



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.18056 of 2019

R.Kanthavel
Founder Trustee,
Mustakkuruchi Pasumpon
Muthuramalinga Thevar Charitable Trust,
Mustakkuruchi & Post-623 603
Ramanathapuram District

... Petitioner

-Vs-

The District Collector,
District Collector Ramanathapuram,
Ramanathapuram District.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondent herein to consider and pass orders on the petitioner's representation dated 10.07.2019 seeking to grant necessary permission to erect of Bronze statue of Thiru.Pasumpon Muthuramalinga Thevar at Door No.2/68 of Mustakkuruchi Village Panchayat situated in Survey No.532/4 at Mustakkuruchi Village, which is owned by the petitioner-Trust.

For Petitioner : Mr.E.V.N.Siva

For Respondent : Mr.M.Rajarajan
Government Advocate

ORDER

The prayer sought for in this writ petition is for a Mandamus, to direct the respondent herein to consider and pass orders on the representation of the petitioner, dated 10.07.2019 seeking permission to erect a Bronze statue of Thiru.Pasumpon Muthuramalinga Thevar, at Door No.2/68 of Mustakkuruchi Panchayat, situated in Survey No.532/4 at Mustakkuruchi Village, which is owned by the petitioner-Trust.

2.Heard Mr.E.V.N.Siva, learned counsel appearing for the petitioner and Mr.M.Rajarajan, learned Government Advocate appearing for the respondent.



3.With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

4.The petitioner is a Registered Trust and it has decided to erect the statue of the Freedom Fighter, Thiru.Pasumpon Muthuramalinga Thevar, at Survey No.532/4, Mustakkuruchi Village Panchayat, which land has been acquired by the petitioner sangam by way of registered gift deed, dated 28.02.2012 in Doc No.259/2011 at the concerned Registration Office.

5.The petitioner sangam, in order to construct building and to unveil the statue of the said freedom fighter, had approached the village panchayat i.e, Mustakkuruchi Village Panchayat. The said village panchayat, after having considered the request of the petitioner, issued an order on 09.07.2012 by way of permission to construct the building.

6.Insofar as the erection of the statue is concerned, on 09.07.2012 the said panchayat passed a resolution, which reads thus:-

பொருள்:4

தீர்மானம்

முஸ்டக்குறிச்சி ஊராட்சியை சேர்ந்த தீர்மான எண் 73ல்
முஸ்டக்குறிச்சி கிராமத்தில் சர்வே அங்கீகரிக்கப்பட்டது.
எண்.532/4ல் உள்ள காலி மனை இடத்தில்
புதியதாக சமுதாயக்கூடமும் அதன் மாடியில்
பசும்பொன் திரு.முத்துராமலிங்கத்தேவர்
திருஉருவச் சிலை அமைத்தல் R.கந்தவேல்,
259-எண் டிரஸ்டி டிரஸ்டி சிலை பாதுகாப்பு
பொறுப்பு ஆவார். இதற்கு ஊராட்சி மன்றம்
ஏகமனதாக அனுமதிக்கு.

7.Pursuant to which, building was constructed and in order to erect the statue and to unveil the same, the petitioner approached the respondent i.e., the District Collector for getting necessary permission, even though such permission is not required if the statue of National Leader is to be erected in private patta land. However, the petitioner, with abundant caution, seems to have made an application to the respondent on 10.07.2019. In this context, the learned counsel for the petitioner has relied upon the Division Bench judgment as well as the judgment of a learned judge of this Court.

8.In the first judgment, a Division Bench of this Court in **W.A (MD) .Nos.1079 and 1402 of 2016**, by order dated 14.06.2017, in the matter of **Vijayan, President/Founder, Gounder Maha Jana Sangam, (regd.No.128/87), Kalaivanar Nagar, Thanichiyam Road, Vadipatti Taluk, Madurai District Vs., The District Collector, Madurai District, Madurai and two others**, has passed a detailed order, where the Division Bench has given the following findings :-



"19. Having steered clear of the legal position, we have now to test the correctness of the submissions made by the official respondents. The sheet anchor of the respondents is pitched upon the two Government Orders in G.O.(Ms) No.248, Rural Development (C2) Department, dated 23.11.1998 and G.O.(Ms) No.186, Municipal Administration (M) Water Distribution (N.Ni.5) Department, dated 21.09.1998. The validity, efficacy and enforceability of these Government Orders were decided by this Court in the case of **P.Maniyarasan** and **N.E.Rajasudhan** (supra). One of which is a Judgment of the Division Bench, wherein it has been categorically held that the official respondents have no right to impose restrictions on the erection of statue in private properties. We are in entire agreement with the view expressed in the case of **P.Maniyarasan** and **N.E.Rajasudhan** (supra). Therefore, the arguments advanced by the learned Special Government Pleader based on the above two Government Orders does not merit consideration.

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24. In the result:

(i) W.A.(MD) No.1402 of 2016 is disposed of with an observation that the respondents cannot insist upon the implementation of the directions contained in Paragraph No.12(ii) and (iv) of the order, dated 17.04.2014 made in W.P.(MD) No.16313 of 2013, in respect of the appellant's case as the statue has been erected much prior to the order in the writ petitions.

(ii) W.A.(MD) No.1079 of 2016 is allowed and the order, dated 08.01.2016 made in W.P.(MD) No.9628 of 2015, is set aside and the respondents are directed to permit the appellant to unveil the statue of the Freedom Fighter erected in the Patta land, by passing appropriate orders to the said effect, within a period of two weeks from the date of receipt of a copy of this Judgment.

(iii) No costs. Consequently, connected miscellaneous petitions are closed."

9. In yet another judgment, in **W.P(MD).No.18998 of 2017, dated 03.11.2017**, in the case of **V.R.Vengan Vs., the State, rep., by its Secretary, Department of Home Secretariat, Fort St.George, Channai-600 009 and 5 others**, a learned Judge of this Court has passed the following order:-

"8.A Careful perusal of the facts and



circumstances of the present case as well as the respective pleadings of the parties and also the above decision of this Court, I am of the view that the impugned order cannot be sustained not only on the reason that such permission is not at all required as found by this Court in the above said decision and also on the reason that even assuming such permission is required, the grounds on which the third respondent has chosen to reject the request of the petitioner are totally based on mere assumption and presumption, without there being any materials to satisfy this Court that such apprehension is well founded. Therefore, I find every justification to allow the writ petition. At the same time, the petitioner should ensure that such erection of statue does not affect the public or free flow of traffic in any manner. The petitioner is also directed to properly fence the statue. Accordingly, the writ petition is allowed and the impugned order is set aside. The petitioner is permitted to erect the statue of Thanthai Periyar in his private land in Survey No.99/4 at Venkatasamuththiram. No costs. The connected Miscellaneous Petitions are closed."

10.By relying upon those decisions, the learned counsel for the petitioner submitted that, the law has been settled in this regard by a number of judgments, as has been quoted above and in this regard, the learned counsel submits that, the petitioner has also paid the property tax in his name for the said property and building, where they proposed to erect the statue of the freedom fighter and therefore, the learned counsel would further submit that, the said request made by the petitioner, dated 10.07.2019 can be considered and decided by the respondent in view of the law declared by this Court in the judgments referred to above.

11.I have heard Mr.M.Rajarajan, learned Government Advocate appearing for the respondent, who would submit that, even though there is no specific rule to prevent the petitioner to erect the statue of a National Leader or Freedom Fighter in the patta land belong to the petitioner, insofar as erection of the Leader' statue is concerned, some guidelines are to be issued by the Government, pursuant to the directive issued in this regard by the Honourable Apex Court in a related case and therefore, the present request made by the petitioner, dated 10.07.2019 would be decided by the respondent on merits, after hearing the petitioner, within a time frame to be stipulated by this Court.

12.I have considered the said submission made by the learned counsel on either side and have perused the materials placed before this Court.



13.As has been rightly pointed out by the learned counsel for the petitioner, the issue on erecting the statue of a National Leader/freedom fighter in private land/patta land is no longer unsettled as there is no restriction from the side of the Government and in this context, the aforesaid judgments, relied upon by the learned counsel for the petitioner, have given clear guidelines.

14.In that view of the matter, since the petitioner also wanted to erect the statue of a Freedom Fighter, that too, in a patta land belong to the petitioner, for which, permission has been granted by the village panchayat by passing resolution to that effect in the year 2012 itself, this Court is inclined to dispose of this writ petition with the following directions:-

"that the respondent is hereby directed to consider the representation of the petitioner, dated 10.07.2019 seeking permission to erect and unveil the statue of the Freedom Fighter Thiru.Pasumpon Muthuramalinga Thevar at the private patta land of the petitioner, in the light of the judgments, as referred to above, as well as the Panchayat resolution passed in the year 2012 by the village panchayat concerned and after affording an opportunity of being heard to the petitioner, final order shall be passed by the respondent/District Collector, within a period of six weeks from the date of receipt of a copy of this order."

15.With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

The District Collector,
District Collector Ramanathapuram,
Ramanathapuram District.



W.P.(MD)No.18052 of 2019

+1 CC to M/s.E.V.N. SIVA, Advocate (SR-82511[F] dated 20/08/2019)

+1 CC to M/s.SPL GP (SR-83146[F] dated 22/08/2019)

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W.P. (MD) No. 18056 of 2019
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