



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2019

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. (MD)No.25413 of 2018

V.Thinakaran

... Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District.

2.The Tahsildar,
Thovalai Taluk,
Boothapandi,
Kanyakumari District.

3.The Inspector of Police,
Aralvaymozhi Police Station,
Kanyakumari District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.A4/2734/2015 dated 02.11.2018 and quash the same and consequently, forbearing the respondents from interfering with the peaceful conducting of prayer in his house situated in Plot No.12, N.S.No.118/2B in Chenbagaraman Pudhoo (Po), Thovalai Taluk, Kanyakumari District.

(Prayer amended vide Court order dated 21.01.2019 in WMP.(MD) No.858/2019)

For Petitioner : Mr.K.Samidurai

For Respondents : Mr.R.Anandharaj

Additional Public Prosecutor

O R D E R

This petition has been filed to quash the impugned order passed by the second respondent in Na.Ka.No.A4/2734/2015 dated 02.11.2018 and consequently, to forbear the respondents from interfering with the peaceful prayer conducted in his house situated in Plot No.12, N.S.No.118/2B in Chenbagaraman Pudhoo (Po),



Thovalai Taluk, Kanyakumari District.

2. The learned counsel for the petitioner would submit that the petitioner purchased the aforementioned Plot and constructed a house with the approval of Panchayat. Thereafter, he is conducting prayer in his house, without causing any disturbance to the general Public for the several years. He further submitted that on a false complaint, the third respondent summoned the petitioner for conducting enquiry. On enquiry, the third respondent directed the second respondent to conduct a peace committee meeting. In the said peace committee meeting, the second respondent has passed a resolution that no prayer should be conducted, until getting permission from the District Collector under the Tamil Nadu Panchayat Building Rules for the construction of prayer house. He further submitted that there is absolutely no need to get prior permission from any authority for assembling and conducting prayer in the dwelling place. In support of his contention, he relied upon the judgment of this Court in W.P.(MD)No.10782 of 2006 dated 14.08.2012, in which, this Court held as follows:-

"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 house. However, 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 other, under part III of the Constitution of India to enforce Public order. Frivolous complaints to restrict freedom to practice and process any form of religion should not be entertained, as it would be affecting the constitutional right of a person. No body has a right to affect the religious practice of a person. Reasonable restrictions, can be imposed only in cases, falling under "Public order or morality and health and rights guaranteed under part III of the Constitution of India. So long as the petitioner or the members of her family and others do not indulge in any activity forbidden under law, or their actions are contrary to public order, morality and health (2) other provisions of part III of the Constitution; (3) any law regulating or restricting any economic, financial or political or other secular activity, there cannot be interference with a right to practice and profess any religion. Conducting prayers collectively by the members belonging to a particular sect of a religion cannot

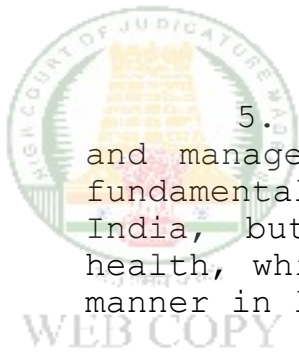


be restricted as it would amounting to interfering with their constitutional right to practice and propagate religion of their choice. This Court is not inclined to grant any blanket direction in the nature of mandamus as prayed for, and holds that it is always open to the official respondents to take appropriate action against the petitioners and others, if there are strong and credible materials available against them, to arrive at a conclusion that they have indulged in any activity forbidden by law, as explained in the judgments stated supra.

10. Before parting with the case, this Court wishes to reproduce the words of the Hon'ble Apex Court: "Our tradition teaches tolerance: our philosophy preaches tolerance: our constitution practices tolerance: let us not dilute it:"

3. Per contra, the third respondent filed a counter contending that on the complaint received from one Raman, dated 21.10.2018 accompanied with the signatures of 43 general public alleging that the petitioner used to conduct prayer in his house by preventing outsiders and also using loud speakers and drums. They also used to conduct prayer meeting at night with loud and noisy manner. He propagating the slogans as against the Hindus to instigate the religious clash. Therefore, after inspection, the third respondent forwarded the said complaint before the Revenue Divisional Officer, Kanyakumari for further action. On the permission, the second respondent issued summons to the petitioner to conduct peace committee meeting on 30.10.2018 and the same was conveyed by the second respondent, in which, the petitioner advised to conduct prayer for his family alone and if he wants to conduct prayer for the outsiders, he has to get permission from the District Collector. Now, the petitioner without getting any prior permission from the concerned District Collector, wants to conduct prayer meeting, without using loud speakers and drums. Therefore, he prayed for dismissal of the Writ Petition.

4. A perusal of the materials placed on record shows that, the petitioner conducted prayers in his dwelling house for the past several years. While being so, on the complaint received from the third party, the third respondent has conducted the enquiry and referred the complaint before the Revenue Divisional Officer for conducting peace committee meeting. Thereafter, the Revenue Divisional Officer, directed the second respondent to conduct peace committee meeting between the petitioner and other rival parties. In the Peace Committee Meeting, dated 30.10.2018, the petitioner was directed to obtain prior permission from the concerned District Collector to conduct prayer in the dwelling house with outsiders.



5. It is a well settled that the right to freedom of religion and manage religious affairs on any denomination are undoubtedly fundamental rights under Articles 25 and 26 of the Constitution of India, but 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.

6. This Court repeatedly held that the fundamental rights are guaranteed under the Constitution of India to the citizens and there is no need to get prior permission from any authority for assembling and conducting prayer in the dwelling place *per se* without causing nuisance or disturbance to others or without causing hindrance to the general Public of the locality. However, in a civilized society, in the name of religious activity, disturbed others in any manner and for *bona fide* reason cannot be permitted. As such, if there is any reason caused due to noise or any *bona fide* reasons, it is always open to the authorities to take necessary action under the provisions of the relevant statutes.

7. In the light of the aforesaid legal principles, the question of requiring the petitioner to get appropriate permission, from the District Collector to conduct prayer in his dwelling house does not arise. However, it should be without causing noise or disturbance to others and without causing any hindrance to the general public of the locality by using loud speakers and drums.

8. Accordingly, this Court deems fit to direct the third respondent not to interfere with the right of the petitioner to conduct prayer in his house in Plot No.12, N.S.No.118/2B in Chenbagaraman Pudhoo (Po), Thovalai Taluk, Kanyakumari District. If the petitioner causes any hindrance to the general public and causes any law and order problem, it is open to the third respondent to take appropriate action as against the violators.

9. In view of the above, the impugned order passed by the second respondent in Na.Ka.No.A4/2734/2015 dated 02.11.2018 is hereby quashed and this writ petition is allowed. No costs.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

dss



To

- 1.The Superintendent of Police,
Kanyakumari District.
- 2.The Tahsildar,
Thovalai Taluk,
Boothapandi,
Kanyakumari District.
- 3.The Inspector of Police,
Aralvaymozhi Police Station,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

W.P. (MD) No.25413 of 2018
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