



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2020

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THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD) No.5560 of 2020

A.Jacob Sahariah

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Superintendent of Police,
Kanyakumari District,
at Nagercoil.

3.The Deputy Superintendent of Police,
Thauckalay, Kanyakumari District.

4.The Sub Inspector of Police,
Kottricode Police Station,
Kanyakumari District.

5.Sugumaran

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the respondents to provide permission for thrice a week for conducting prayer meeting at Erichamamottu Vilai, C.S.I. Church Kothanallur Village, (Now Kumarapuram Village), Kalkulam Taluk, Kanyakumari District in Survey No.552/1 within the time frame fixed by this Hon'ble Court.

For Petitioner : Mr.T.Lajapathy Roy,
for M/s.C.Prithviraj

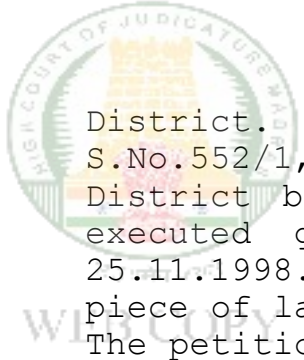
For R1 to R4 : Mrs.M.Ananthadevi,
Government Advocate (Crl.side)

ORDER

Heard the learned counsel on either side.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The petitioner is the District Secretary, CSI Church, Erichamamottu Vilai, Kotticode, Kumarapuram Post, Kanyakumari



District. The petitioner's case is that the property comprised in S.No.552/1, Kothanallur Village, Kalkulam Taluk, Kanyakumari District belonged to one Savrimuthu and that the said Savrimuthu executed gift deed in favour of Diocese vide Document dated 25.11.1998. The building was put up in the year 1998. An adjoining piece of land was also purchased by the Church on the very same day. The petitioner wants this Court to direct the respondents Nos.1 to 4 to grant permission for conducting prayer meeting thrice a week.

3.The learned counsel for the petitioner submitted that it will be a closed door meeting and that the number of participants will not exceed 25. He further submitted that they will not install any sound amplifier system. The learned counsel calls upon this Court to take note of decision made in a case of **Paul Thankom Vs. State of Tamil Nadu**, in which it has been held that no permission is required to conduct prayers. The learned counsel reiterated all the contentions, both factual and legal set out in the affidavit filed in support of the writ petition.

4.The prayer made in the writ petition is strongly opposed by the learned Government Advocate(Crl.side).

5.I carefully considered the rival contentions and went through the material on record.

6.The land in question was purchased in two parcels by the petitioner Diocese on 25.11.1998 and thereafter, the Church authority applied for building plan approval. It is admitted in the affidavit that the request for putting up a church building was rejected by the authorities. But as on date, a building with asbestos roofing is standing in the land in question. Now question that arises for my consideration is whether the prayer in this writ petition deserves to be allowed or not.

7.The petitioner fairly enclosed the orders passed by this Court on two earlier occasions. One A.Jacob Saharia filed a writ petition in W.P.(MD)No.14698 of 2010 with the following prayer:

Writ petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, forbearing the respondents 1 and 2 from interfering or disturbing the putting of asbestos roof on the existing building of Erichamamoottu Vilai CSI Church situated in R.S.No.552/1 of Kottanallur Village in Kanyakumari District.

The said writ petition was dismissed by a lengthy order by a learned Single Judge of this Court on 10.02.2011. The said order had become final. It does not been challenged.

8.Last year, one Rt.Rev.G.Devakadashyam, filed a writ petition in W.P.(MD)No.8934 of 2019 with the following prayer:



Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the entire records pertaining to the first respondent proceedings Na.Ka.No.41624/2004, dated 13.08.2005 and direct the respondent to approve the building plan for the Sunday School in R.S.No.552/1 of Kottanallur Village, Kanniyakumari District forthwith.

The said writ petition was dismissed by another learned Single Judge vide order dated 20.02.2019.

9. When the two learned Judges of this Court had negatived the prayer made by the respective writ petitioners, I fail to understand as to how it will be open to me to even consider the petitioner's request. This is because even before his Lordship Mr. Justice Abdul Quddhose, the prayer made was to permit starting a Bible study center in the land in question. Very same request is now made. Of course, in the present writ petition prayer is for permitting the petitioner to conduct prayer meetings.

10. The reasons which impelled the learned Judges to dismiss the either writ petitions will hold good in the present case also. This is because Rule 4 (3) of the Tamil Nadu Panchayat Building Rules, 1997 reads that no site shall be used for the construction of a building intended for public worship or religious purpose without prior approval of the Collector of the District. Thus, the restrictions are not only for putting up a building for public worship, but also using a site for religious purpose.

11. The petitioner wants to conduct a prayer meeting. It is obviously a religious purpose. Therefore, unless the petitioner is having prior permission from the District Collector, this Court will not be justified in issuing a writ of mandamus. It is well settled that no Court has authority or jurisdiction to issue a mandamus contrary to law.

12. When Rule 4(3) of the Tamil Nadu Panchayat Building Rules, 1997 is clear that site cannot be used for religious purpose without prior approval of the District Collector, this Court will not be justified in issuing mandamus. It is not the case of the petitioner that the petitioner is having prior approval of the District Collector for using the site in question for holding prayer meeting. If the petitioner is having the said approval, he will be justified in invoking jurisdiction of this Court for writ of mandamus. Writ of mandamus can be issued only for enforcing legal rights by directing authority to perform their public duty. In this case, the petitioner is not having any legal right in terms of aforesaid Rule. Therefore, for the foregoing reasons namely, the dismissal of the earlier two writ petitions in W.P(MD)Nos.14698 of 2010 & 8934 of 2009 and Rule 4(3) of the Tamil Nadu Panchayat Building Rules, I am



not in a position to grant relief to the petitioner. The writ
petition is dismissed, accordingly. No costs.

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Sd/-

Assistant Registrar ()

/ /2020
Sub Assistant Registrar(CS)

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To

- 1.The District Collector,
Kanyakumari District,
at Nagercoil.
- 2.The Superintendent of Police,
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- 3.The Deputy Superintendent of Police,
Thauckalay, Kanyakumari District.
- 4.The Sub Inspector of Police,
Kottricode Police Station,
Kanyakumari District.

+1 CC to M/s.C.PRITHVIRAJ, Advocate (SR-12347[F] dated 18/03/2020)

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NR(11.06.2020) 4P 5C