



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6951 of 2020

R.Joseph

... Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Tahasildhar,
Ramashwaram Taluk,
Rameshwaram.

3.The Inspector of Police,
Rameshwaram Police Station,
Rameshwaram District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents in any way interfering with the peaceful conducting of prayer in the house of the petitioner along with the family and friends of the petitioner at No.17/40, Thambiyan Kollai, Rameshwaram, Ramanathapuram District.

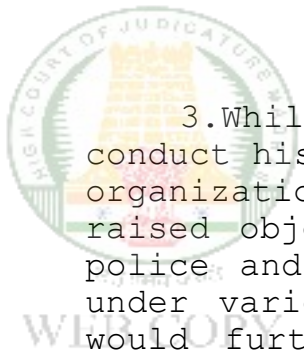
For Petitioner : Mr.M.Gowthaman
For Mr.C.Solomon

For Respondents : Mr.P.Mahendran,
Additional Government Pleader.

O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondent.

2.The case of the writ petitioner is that he is a permanent resident of Rameswaram. He is professing Christianity. He formed a trust in the name of Nalla Meipar Jeba Maiyam and has also registered the same. The petitioner claims that he is serving the poor and needy. The petitioner states that in the petition mentioned premises, they have been conducting prayers every week. The petitioner would specifically claim that such conducting of prayers has never caused any hindrance to the members of the general public.



3. While so on 21.03.2020 when the petitioner was about to conduct his usual Saturday's prayer, certain persons belonging to an organization by name Hindu Munnani trespassed into his house and raised objections. Thereupon, the petitioner contacted the local police and thereafter case in Crime No.71 of 2020 was registered under various provisions against the trespassers. The petitioner would further allege that instead of taking prosecution to its logical conclusion, the authorities had advised him not to conduct any prayer. They also had stated that if prayers are conducted, action would be taken. These developments had led to the institution of the present writ petition. The prayer in the writ petition is for forbearing the respondent from interfering with the peaceful conducting of prayers in the petition mentioned house by the petitioner along with his family and friends.

4. The learned counsel appearing for the petitioner apart from reiterating all the contentions set out in the affidavit filed in support of the writ petition would also state that such conducting of prayers is nothing unusual in this country. He states that in Hindu homes on particular days prayers are organized in worship of particular deities. Therefore, conducting of the instant prayer meetings by the petitioner cannot be said to be illegal. He further states that the attitude of the respondents amounts to an interference with the religious rights of the petitioner guaranteed under Article 25 of the Constitution of India.

5. The learned Additional Government Pleader appearing for the respondents on written instructions states that the petitioner herein had not obtained any prior permission from the District Collector.

6. The petitioner's counsel drew my attention to the order dated 31.01.2020 in W.P.(MD)No.1819 of 2020. A learned Judge of this Court after referring to a number of orders had disposed of the writ petition with a direction to the authorities not to interfere with the rights of the petitioner for conducting prayer along with relatives and friends at her residence. Of course, a caveat has been added that the petitioner therein would ensure that such prayer does not in any way cause hindrance to the general public and does not in any way give rise to law and order problem. The learned counsel appearing for the petitioner states that the present petitioner would give a similar undertaking.

7. I am not persuaded by any of the submission made by the learned counsel appearing for the petitioner.

8. The petitioner is residing within the limits of Rameswaram. Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972 reads as under :

"(4) No site be used for the construction of a building intended for public worship or religious



purposes, without the prior approval of the Collector of the district who may refuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order.

Provided that an appeal shall lie against the Collector's decision to the Government who may issue such orders as they deem fit."

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9.This Rule was specifically dealt with by the Hon'ble Division Bench of this Court in W.P.(MD)No.6493, 6494 and 6495 of 2019. By order dated 19.09.2019, the Hon'ble Division Bench to which I was a party held as follows:-

"5.In the case on hand also, the statute has expressed the requirement in a negative language. The Rule starts with the expression "No site be used". It is also well settled that if penal consequences have been prescribed for not adhering to a requirement, then it shall be construed as a mandatory requirement. Section 317 of the Tamil Nadu District Municipalities Act, 1920 levies penalty if the construction or reconstruction of any building is carried on or completed in contravention of any lawful order or in breach of any provision contained in the Act or in the Rule made thereunder. Thus, a violation of Rule 6(4) will invite penal action in terms of Section 317 of the parent Act. That apart, an illegally put up building will invite demolition also.

6.The expression used in the Rule is "prior approval". The term "prior" has been defined in Black's Law Dictionary, (Eighth Edition) as "preceding in time or order". Therefore, a person intending to use a site for putting up a building for religious purposes will have to take the approval of the District Collector before commencing the construction. The Collector can refuse approval if in his opinion it is likely to endanger public peace and order. An appeal shall lie against the Collector's decision to the Government. The fact that an appeal is provided in the statute is a clear indicator of the importance attached to the entire scheme. The provision does not talk of "post approval". One cannot put up a temple in violation of this Rule and then present the authority with a fait accompli.

7.If the law prescribes that something is to be done in a certain manner, it shall be done in that manner and not in any other manner. The consequence has been clearly, categorically and unambiguously laid down. One must take the prior approval of the District Collector for the construction of a building intended for public worship



and religious purposes and only thereafter start construction. The meaning of the Rule is simple and plain. It only requires strict implementation and application. If a building for public worship or religious purpose has been constructed without the prior approval of the District Collector, then law will have to take its own course."

10.It was further observed by the Hon'ble Division Bench that if this Court issues mandamus as prayed for, it would be calling upon the authorities not to enforce the law. The Hon'ble Supreme Court in the decision reported in **(1996) 9 SCC 309 (State of U. P. and others vs. Harish Chandra and others)** held as follows :

"10.....Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law."

11.In view of the aforesaid of the decision of the Hon'ble Division Bench, I am not in a position to follow the order dated 31.01.2020 made in W.P.(MD)No.1819 of 2020. When a decision of a single Judge is not consonance with the decision of the Hon'ble Division Bench, another single Judge is bound to follow only the Hon'ble Division Bench decision and not that of coordinate bench. In the case of hand, it is obvious that the petitioner has been utilizing the petition mentioned premises for religious purposes. As per the statutory Rule, the petitioner ought to have obtained prior approval of the District Collector before putting the premises to such use. The petitioner's intention is manifest and therefore, if I issue mandamus, I will be directing the authorities to ignore the positive mandate of law. I am therefore of the view that the writ petition is not maintainable. The writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AS)

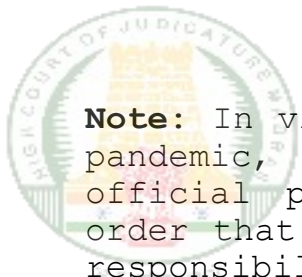
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Sub Assistant Registrar(CS)

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To:

- 1.The District Collector,
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- 2.The Thasildar,
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- 3.The Inspector of Police,
Rameshwaram Police Station,
Rameshwaram District.

+1 CC to M/s.GP (SR-15117[F] dated 27/08/2020)

W.P. (MD)No.6951 of 2020

25.08.2020

AP(03/09/2020) 5P 5C