



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.15897 of 2020

N.Rajathasaia

: Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District.

2.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of 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.6/178 A, bearing R.S.No.195/3A at Killiyur Village, Semmuthal desam, Kudi jenmam Killiyur Taluk, Kanyakumari District, on the basis of the representation given by the petitioner, dated 29.09.2020.

For Petitioner : Mr.A.Samidurai

For Respondents: Mr.R.Srinivasan,
Government Advocate

O R D E R

The prayer in this writ petition is to forbear 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.6/178 A, bearing R.S.No.195/3A at Killiyur Village, Semmuthal desam, Kudi jenmam Killiyur Taluk, Kanyakumari District, on the basis of the representation given by the petitioner, dated 29.09.2020.

2.The case of the petitioner is that he is the owner of the residential property situated in the above said address by virtue of a registered sale deed dated 07.05.1997 vide document No.782 and he had constructed house after obtaining necessary approval from the Panchayat. According to the petitioner, he is conducting prayer in the said house without causing any disturbance to the public for the past 2½ years. While so, due to enmity one of his relatives had given trouble in conducting the prayer in the house of the petitioner and therefore, the petitioner has given a representation dated 29.09.2020 to the respondents to conduct prayer in his house



peacefully without any hindrance. Since there is no response on the said representation, the present writ petition.

3.The learned counsel for the petitioner would submit that the prayer is being conducted at the petitioner's residence and the same is being attended by the petitioner and his relatives and friends belonging to the same community. Further, 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 unfounded complaints, the petitioner is prevented from conducting prayers.

4.The learned counsel for the petitioner would further submit that the Constitution of India guarantees fundamental rights and mandates that all persons are equally entitled to freedom of conscience and to exercise 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. In support of his contention, he would rely upon the order of this Court passed in W.P.(MD)No.26891 of 2019, dated 18.12.2019.

5.The learned Government Advocate (Crl. side) would 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.Heard Mr.A.Samidurai, learned counsel appearing for the petitioner and Mr.R.Srinivasan, learned Government Advocate (Criminal Side) appearing for the respondents and also perused the materials available on record.

7.In the decision relied on by the learned counsel for the petitioner in W.P.(MD)No.26891 of 2019, dated 18.12.2019, this Court in similar circumstances has held as follows:

"8.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 unfounded complaints the petitioner is prevented from conducting prayers.

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



this Court has 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 statues. 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."

10. 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 CrI.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 CrI.OP(MD)No.3039 of 2018, of the Madurai Bench of the Madras High Court.

11. 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.



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12.This writ petition is disposed of with the direction to the respondents 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.4/189, Viveka Nagar, Navinipatty Village, Melur Taluk, Madurai District. 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. No costs.

8. In my considered opinion, the above decision is squarely applicable to the facts and circumstances of the present case. Therefore, this writ petition is disposed of with the direction to the respondents not to interfere with the right of the petitioner, in conducting the prayer along with his family members and relatives in the residence of the petitioner situated in Door No.6/178 A, bearing R.S.No.195/3A at Killiyur Village, Semmuthal desam, Kudi jenmam Killiyur Taluk, Kanyakumari District. 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 respondents police are at liberty to take appropriate action. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Superintendent of Police,
Kanyakumari District.



2.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K. SAMIDURAI, Advocate (SR-21953[F] dated 11/11/2020)

W.P.(MD) No.15897 of 2020

11.11.2020

NA (CO)

NR (20/11/2020) 5P : 5C