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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD)No.1513 of 2017

and

C.M.P. (MD)Nos.12117 of 2017 & 3451 of 2018

S.J.Fruitcin Praisor

... Appellant/Writ Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil - 629 001.

2.The Superintendent of Police,
Kanyakumari District,
Nagercoil - 629 001.

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

... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the order passed by this Court in W.P.(MD)No.23410 of 2015, dated 13.11.2017.

Prayer in WP(MD). 23410 of 2015 :

Writ Petition is filed under Article 226 of the Constitution of India to issue a Certiorarified Mandamus calling for the records relating to the impugned order of the 1st respondent in D.Dis.C3/40391/15 dated 19.11.2015 quash the same and consequently forbearing the respondents from interfering with the peaceful conduct of house prayer of the petitioner in S.No.280/17 and now RS.No.280/17A1 situated at Kannanur Village, Kannanur Desom, Viyanoor, Kalkulam Taluk, Marthandam, Kanyakumari District.



For Appellant : Mr.R.Russel Raj
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

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JUDGMENT

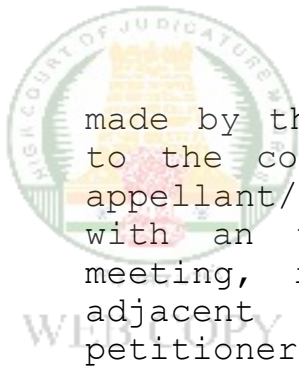
(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J**)

The appellant/writ petitioner belongs to Christian Community and according to him, he used to conduct regular prayers in his home along with his family members, friends and relatives and recently, his mother - J.Jeyarani, purchased a small piece of land in S.No.280/17 (R.S.No.280/17A1), situated at Kannanur Village, Kannanur Desom, Viyanoor, Kalkulam Taluk, Marthandam, Kanyakumari District, admeasuring 2 cents through a registered sale deed for a sale consideration of Rs.74,061/- (Rupees Seventy Four Thousand and Sixty One Thousand only). After purchasing the said property, the parents of the appellant/writ petitioner had put up a small dwelling house and in that house, they used to conduct prayers along with his friends and relatives and also came to know that the vendor of the appellant/writ petitioner also conducted similar prayers for 25 years without mike and other arrangements. Since the vendor of the appellant/writ petitioner faced some trouble, W.P(MD)No.13644 of 2015 was filed praying for a writ of Mandamus to forbear the respondents therein from interfering with the conduct of prayers in his house and the attention of this Court was also brought to the order dated 16.09.2015 passed in W.P(MD)No.13644 of 2015 and it was given disposal by granting opportunity to the appellant/writ petitioner to give a fresh representation and to pass appropriate orders within a stipulated time.

2. The appellant/writ petitioner would further state that the respondents 2 and 3 objected to grant permission for conducting prayers in the house of the appellant/writ petitioner in the light of G.O.No.916, Public (Law & Order) Department, dated 29.04.1986 and it came to be passed as per the decision of the One Man Commission (the Honourable Mr.Justice P.Venugopal), who conducted an enquiry into the Mandaikadu Incident.

3. The first respondent, in respect of the permission sought for by the appellant/writ petitioner, vide proceedings dated 19.11.2015, has rejected the said request in the interest of public order and challenging the same, the appellant/writ petitioner filed W.P(MD)No.23410 of 2015.

4. The learned Single Judge, while taking up the matter for final disposal, has also taken into consideration the submissions



made by the learned Counsel for the appellant/writ petitioner as to the confinement of prayer and also the request made by the appellant/writ petitioner to appear before the authority concerned with an undertaking affidavit to the effect that no prayer meeting, in general, permitting the third parties as well as adjacent residents will be conducted and the appellant/writ petitioner and his family members alone will take part in the prayer, directed the first respondent to consider the claim of the appellant/writ petitioner in the event of filing an undertaking affidavit and accordingly, disposed of the writ petition.

5. Challenging the legality of the said order dated 13.11.2017, passed in W.P(MD)No.23410 of 2015, the present writ appeal was filed and it was entertained. The appellant/writ petitioner also filed C.M.P(MD)No.3451 of 2018 in W.A.(MD)No.1513 of 2017 and the Division Bench of this Court, vide order dated 26.04.2018, has granted an order of ad-interim injunction as prayed for, however, put a rider that the duty is cast upon the appellant/writ petitioner not to give any disturbance or nuisance to any general public and not to use any cone speakers while conducting prayer meetings.

6. The learned Counsel for the appellant/writ petitioner would submit that in terms of the interim order dated 26.04.2018, passed in C.M.P(MD)No.3451 of 2018 in W.A.(MD)No.1513 of 2017, no untoward incident had happened and the prayer meetings are going on peacefully and he would further submit that the right to practice religion is also a fundamental right guaranteed under the Constitution of India and no authority can interfere with the same.

7. It is the further submission of the learned Counsel for the appellant/writ petitioner that no such undertaking was given before the learned Single Judge and therefore, the impugned order passed on the alleged undertaking cannot be sustained and prays for interference.

8. Per contra, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the respondents would submit that Mandaikadu Incident is a reminder as to the difference of opinion between the people belonging to two major religions and taking into consideration the recommendations made by the One Man Commission, the Government has passed a comprehensive order in G.O.No.916, Public (Law & Order) Department, dated 29.04.1986 and the first respondent, taking into consideration the law and order problem and, public order problem, had rightly passed the said order and it cannot be faulted with and would further urge that the learned Judge, based on the representation made by the petitioner, had granted such a liberty and if it is the stand of



the appellant/writ petitioner that no such undertaking was made before the learned Judge, the remedy is to file a Review Application before the learned Judge to review the order and not by way of a writ appeal and prays for the dismissal of this writ appeal.

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9. This Court has carefully considered the rival submissions and perused the materials placed on record.

10. It is a well settled position of law that all fundamental rights are subject to reasonable restrictions and though it is the stand of the learned Counsel for the appellant/writ petitioner that in the light of the fundamental right being guaranteed under Article 25 of the Constitution of India, no statutory authority can interfere with the same, in the considered opinion of this Court, the said submission lacks merit for the reason that the rights are always given with reasonable restrictions and it is also laid down in catena of decisions that the fundamental rights are also subject to reasonable restrictions.

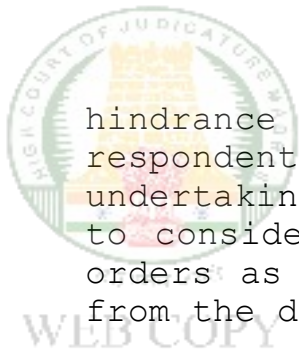
11. The learned Judge in paragraph 5 of the impugned order, which is the subject matter of challenge in this writ appeal, has taken into consideration the submissions made by the learned Counsel for the appellant/writ petitioner as to the permission to appear before the first respondent with an undertaking affidavit.

12. If the opinion of the appellant/writ petitioner, no such argument has been advanced, the remedy open to him is to file a review and not by way of an appeal.

13. According to the appellant/writ petitioner, he belongs to Pentecost and he is merely conducting the prayer meetings under the weekends in a small house.

14. No doubt, the appellant/writ petitioner is having the right to conduct prayer meetings in his house, but, at the same time, such prayer meetings shall not cause nuisance, noise pollution or other inconvenience to the nearby residents. Sometimes, the prayer hall is also converted as a place of religious structure and in the light of the law and order problem, and public order problem only, the Government thought fit to issue the above said Government Order.

15. It is also the duty of the District Administration as well as the Law and Order Machinery, to prevent commission of offences and disturbances. If the appellant/writ petitioner is really interested in conducting the prayer meetings in a peaceful manner without causing any kind of nuisance/inconvenience/



hindrance to the neighbours, he can always appear before the first respondent with an undertaking affidavit and, as and when such an undertaking affidavit is filed, the first respondent is directed to consider the same in an objective manner and pass appropriate orders as expeditiously as possible and not later than six weeks from the date of receipt of such undertaking.

16. The learned Counsel for the appellant/writ petitioner undertakes to file an undertaking affidavit before the first respondent within a period of two weeks from the date of receipt of a copy of this order and till the first respondent - District Collector, Kanyakumari District, takes a decision on the undertaking affidavit to be filed by the appellant/writ petitioner, the arrangement in terms of the interim order, dated 26.04.2018, passed in C.M.P(MD)No.3451 of 2018, shall continue.

17. In the result, this writ appeal is **dismissed**, confirming the order, dated 13.11.2017 passed in W.P.(MD)No.23410 of 2015, subject to the above observations. Consequently, the interim order, dated 26.04.2018, passed in C.M.P(MD)No.3451 of 2018 stands vacated and accordingly, C.M.P(MD)Nos.3451 of 2018 and 12117 of 2017 are also dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RSB

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 District Collector,
Kanyakumari District,
Nagercoil - 629 001.

2.The Superintendent of Police,
Kanyakumari District,
Nagercoil - 629 001.

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



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

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+1 CC to M/s.GP (SR-13733[F] dated 06/08/2020)

W.A. (MD) No.1513 of 2017

and

C.M.P. (MD) Nos.12117 of 2017 & 3451 of 2018

04.08.2020

db(CO)

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