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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.10.2021

PRONOUNCED ON : 27.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.13841 OF 2021

AND

CRL.M.P.NO.7552 OF 2021

Mother of Mercy Church,
Rep. by its Parish Priest Fr.Rev.Alexis Manohar,
Door No.4/102, A MGR Street,
Srinivasapuram,
Kundrathur Taluk,
Kancheepuram District - 600 122. ...Petitioner

Vs.

1.The Tasildhar,
Kundrathur Taluk,
Chengalpattu District.

2.The Inspector of Police,
SRMC-T-15, Police Station,
Iyyappanthangal,
Kancheepuram District.

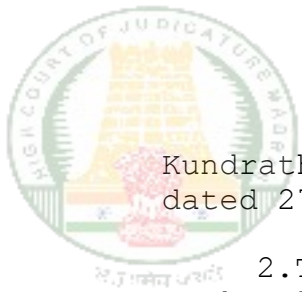
3.C.Wilson Jacob ...Respondents

PRAYER : Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records of the 1st respondent in R.C.No.01/2021/A1 dated 27.07.2021 and quash the order of the 1st respondent dated 27.07.2021.

For Petitioner	:	Mr.R.C.Paul Kanagaraj for Mr.M.Sivavarthan
For R1 & R2	:	Mr.A.Damodaran Additional Public Prosecutor
For R3	:	Mr.R.Edwin Solomon

O R D E R

This Criminal Original Petition is filed to call for the records and set aside the order passed by the Tashildar,



Kundrathur Taluk, Chengalpattu District in R.C.No.01/2021/A1 dated 27.07.2021.

2.The contention of the petitioner is that the petitioner is a Church under the Roman Catholic Diocese of Chengalpet and part of Iyappanthangal Parish and it is represented by its Parish Priest. The said Iyappanthangal Parish was formed in the year 2011, for Srinivasapuram area. There was a demand for a new Church building to offer their daily prayers and for weekly mass prayer. Hence, the Chengalpet Diocese was looking for suitable land for the Church. The Diocese of Chengalpet came to know that portion of vacant land measuring about 11968 Sq. ft. comprised in Survey No.91/14 B and 91/14 A at Srinivasapuram Village, Kundrathur Taluk, Kancheepuram District was available and it was suitable for petitioner's activities. The said property was originally occupied by a Society known as "Maranatha Full Gospel Association". The said Society is a registered one with Registration No.51/1975. The Society is a Christian Missionary and it was doing various religious and charitable activities and it was running an orphanage in the name of "Maranatha Orphanage Children Home". The Society was issued patta for the land in S.No.91/14. The land was originally classified as Gramanatham. In the year 1992, as per Natham Settlement Scheme, patta was granted to the said Maranatha Full Gospel Association in Patta No.68, in the name of Maranatha Orphanage Children Home.

3.The Society was in continuous possession and enjoyment of the land in S.No.91/14, by constructing building and running the orphanage and doing other religious and charitable activities. The said Society decided to dispose of the property and following the by-laws of the Society. The Society passed a resolution in its extraordinary general body meeting and thereafter appointed one J.Philomen, as its Power of Attorney, by a registered Document No.1739/2018, dated 05.01.2018. The said Philomen, represent the Society, sold 5850 Sq.ft. of land to one Komala Venkatesan and 2600 Sq.ft. of land to one C.Kumar, 4143 Sq.ft. of land comprised in S.No.91/14 in favour of J.Philomen, who was granted Power of Attorney in Document No.19939/2019 dated 04.12.2019.

4.The Diocese of Chengalpet purchased vacant land measuring about 11968 Sq.ft. comprised in old S.No.91/14 at Srinivasapuram Village, Kundrathur Taluk, from the said Kumar, Komala Venkatesan and Maranatha Full Gospel Association, by way of a sale deed Document No.5996/2020, dated 07.06.2020. Thereafter, the Diocese Church is in possession and enjoyment of the above said land. The worshippers of Srinivasapuram area wanted a new Church building for offering their prayers and therefore a temporary shed using metal sheets were put up initially in the



8. The third respondent admits that he had served in the Maranatha Full Gospel Association, which is the Apex body, which takes care of Maranatha Orphanage Children Home. Objecting for the sale of land to the petitioner, third respondent sent false complaints and also filed writ petitions and also made representation to the Revenue authorities and police authorities. This Court in a W.P.No.16656 of 2020, directed the Revenue Divisional Officer to conduct enquiry, after giving opportunity and to dispose the representation of the third respondent. As on date, the land purchased for valued consideration is not disputed, standing in the name of the



petitioner. Further petitioner applied to CMDA for building permission and obtained permission, thereafter, constructed the Church. The Church is ready to be blessed and dedicated to the public. The first respondent passed an impugned order, without following the procedure contemplated under Section 145 Cr.P.C.

9. In this case, there is no dispute between any groups and there exist any breach of peace or likely hood of law and order problem with regard to the Church. The second respondent in his communication to the first respondent has not stated anything with regard to the breach of peace and on the day of reference, except for the representation of the third respondent, no other counter complaint was available and no reason given regarding the likely hood of breach of any peace. Further the order of the first respondent refers of Writ Petition in W.P.No.16969 of 2020, i.e. with regard to the allegation that unlawful construction in the property has been put up, which is not within the purview of first respondent to be decided under Section 145 Cr.P.C.

10. From the impugned order, it is seen that the petitioner had purchased the property through sale deed Document No.5996 of 2020 dated 07.06.2020, having patta No.186. Further, the CMDA approval No.1198/2021/A3, obtained, there is no violation of any statutory law or rule. This being the case, the first respondent erroneously was of the view that W.P.No.16969 of 2020 is pending and proceedings are pending before the Revenue Divisional Officer and civil disputes are pending, which is beyond the scope of 145 Cr.P.C. proceedings and jurisdiction of the first respondent. No where in the order it states that there is any likely hood of breach of peace. It is admitted that the petitioner is in possession of the property, built a Church and it is ready for dedication and for public prayer.

11. Further citing COVID-19 restriction for conducting prayers, Impugned order is passed. The petitioner had never violated any directions issued by the authorities during COVID-19 and shall abide by the Standard Operating Procedure issued by the Government and authorities. Nowhere, it is violated. Further conducting enquiry before passing final order, preliminary order is to be passed, which is mandatory. In this case, there is violation of mandatory procedures. In view of the same, the impugned order is to be set aside.

12. The first respondent, Tashildar, filed his counter. From the counter affidavit, it is seen that on verification of the revenue records Natham Settlement Fair Chitta, it is found that the land measuring 0553 sq. meter in S.No.91/14A and also measuring 00485 sq. meter in S.No.91/14 B2 is classified as Village site manai in patta No.186, is registered in the name of Diocese Society of petitioner.



13. On the report of the second respondent in No.T-15 SRMC, dated 27.07.2021, Peace Committee was formed, Peace Committee meeting held, both party's representation were recorded. Further considering the period of dedication and congregation, COVID-19 restriction imposed by the Central Government and the Government of Tamil Nadu, in conducting Religious Worships in Temple, Church and Mosque, congregation of public is not allowed. Further there is a dispute over the title of the above property between two parties, which might lead to disturbance of peace. Hence, the first respondent on 27.07.2021, by impugned order, directed to stop temporarily the opening of the Church named Irakkatin Annai Alayam. It is submitted that now the local body election is to be conducted during October, 2021 and it is the duty of the District Administration, to be vigilant to avoid law and order problem.

14. The second respondent submitted that on receipt of the complaint from the petitioner and the third respondent and also assessing the ground reality, found likely hood of law and order problem and public peace was imminent, further there are several CSR pending between the parties, the dispute and animosity between two groups is escalating day by day, having no other alternative, the second respondent informed the first respondent to initiate proceedings under Section 145 Cr.P.C. Thereafter, on the same day, the first respondent conducted enquiry, both the petitioner and the third respondent appeared submitted their version and thereafter, the first respondent had directed the petitioner to post-pone the blessing and congregation of the Church. Further COVID-19 restriction is issued by the Government, with regard to the place of worships and religious places due to congregation. In view of the prevailing restrictions, any congregation would not be advisable.

15. The third respondent filed his counter and submitted that the third respondent is a care taker of Maranatha Orphanage Children Home for the past 40 years. He is defending the above illegal sale of the petitioner. The above said sale led the orphan children to streets. In the above petition, the necessary parties are not impleaded. In fact, the petitioner claimed that they have purchased the property from on Mrs.Komala Venkatesan, Mr.Kumar and M/s.Maranatha Full Gospel Association represented by Mr.Philomen, who does not have the title over the public charitable orphan home property. The fact remains is that the said Philomen, the staff of M/s.Maranatha Full Gospel Association, claiming himself as power agent of Maranatha Full Gospel Association, sold the property of Maranatha Orphanage Children Home. The revenue records pertaining to the land, patta and chitta stand in the name of Maranatha Orphanage Children Home and not in the name of Maranatha Full Gospel Association. Thus, it is evident that the Society does not have



any right over the subject property. Hence, sale of property to the petitioner is not proper.

16.The above said property was entrusted by the villagers to the Orphanage Home, considering the welfare of the orphan children. Now due to the act of the petitioner, the orphans are forced to stay away. The old Church, their school building and hostels were demolished and sold to the petitioner. Based on the long possession, enjoyment of the orphanage home, the District Revenue Authorities issued pattas in the name of Maranatha Orphan Children Home. The said Society, vendor to the petitioner has not purchased the property with their own funds, that is the reason Society name is not reflected in any of the Revenue records. The petitioner paid huge sums of money, which was received by Philomen for his personal gain and business activities, not for the welfare of the Maranatha Orphanage Children Home.

17.The vendors of the petitioner or its predecessor in claiming title, does not possess any independent right, title or interest over the subject property, to sell the same in favour of the petitioner. In this regard, the third respondent had sent several representations to the various authorities and also filed Writ Petition in W.P.No.16969 of 2020, for taking action against the unlawful construction made in the property. Further, he has filed another Writ Petition in W.P.No.26656 of 2020, for seeking cancellation of patta issued in the name of the petitioner and it's vendors. Now the enquiry is conducted by the Revenue Authorities. Further, the vendors of the petitioner ought to have followed the procedure contemplated under the Section 11 and 12 of the Income Tax Act, The third respondent finds that there is a likely hood of law and order problem. The first respondent initiated 145 proceedings and restored peace, which is very much necessary, need of the hour in the given situation. Hence prayed for dismissal.

18.The contention of the petitioner and the third respondent with regard to the manner in which the sale deed executed to the petitioner and objections of the third respondent are now pending before the appropriate authorities and forum. Be that as it may.

19.This Court considered the rival submissions and perused the available materials, Maranatha Orphanage Children Home was functioning in Srinivasapuram, Kundrathur Taluk and is a part of Maranatha Full Gospel Association. It is admitted by the third respondent that he is doing service to the helpless people in the name of Jesus Christ and also looking after the Maranatha Orphanage Children Home as a Pastor/Manager, supervising and also doing needful to the orphan children through Maranatha Full



Gospel Association, which is a registered Society. The Maranatha Orphanage Children Home out of long possession and enjoyment of the said property, patta was issued in the name of the Maranatha Orphanage Children Home. The third respondent had objected for carrying out construction activities. He represented against the construction to various authorities including the Municipal, Environmental, Revenue and others.

20. In this case, there seems to be some dispute between the third respondent and the said Philomen, Power of Attorney, Maranatha Full Gospel Association. The purchase of the property by the petitioner, for which payments have been made through bank all are recorded in the sale deed. Thereafter, the patta has been transferred in the name of the petitioner. The petitioner is doing various religious and charitable activities. The approval from CMDA and other Municipal authorities have been obtained and thereafter, the construction activities have been conducted. As on date patta stands in the name of the petitioner.

21. From the allegation and counter allegation, it is seen that the third respondent, is resisting and opposing the sale. The construction of the Church in the said property appears to be a fight between the two individuals i.e. the third respondent and the Philomen, who executed the sale deed in favour of the petitioner in Doc.No.5996 of 2020, dated 17.06.2020. The petitioner had purchased the property, patta issued in the name of the petitioner in Patta No.186, dated 16.10.2020 and now, Church is constructed. Petitioner has given an undertaking that the COVID-19 Standard Operating Procedure will be followed and dedication to God and congregation will be conducted. In the 145 Cr.P.C. proceedings, petitioners are the third respondent, his wife and his Advocate, counter petitioners are the petitioner, Philomen and two others, apart from them, there is no mention of any group clash or breach of peace or imminent threat. It is apparent that the dispute is between the petitioner and counter petitioner with regard to the issuance of patta and grant of building permission, but no dispute regarding actual possession.

22. In the order passed by the first respondent in Na.Ka.No.01/2021/A1, dated 27.07.2021, there is nothing to show or that there is likely hood of breach of peace. The requisition made by the second respondent on 27.07.2021 does not disclose imminent possibility of breach of peace. Further no preliminary order was passed. The first respondent straight away passed final order, which is not proper. This Court had issued guidelines in initiation and passing orders in 145 Cr.P.C. proceedings. These guidelines are not followed in this case. The first respondent's primary objection seems to be



COVID-19 restriction in opening the Church, which might lead to gathering of people is far fetched.

23.The petitioner had given an undertaking that they would follow COVID-19 protocol and Standard Operating Procedure. As regard to the title of the property, already the District Revenue Officer had initiated proceedings and it is the Civil Court to decide the title and the rights of the parties. As regards 145 proceedings is concerned, who is in possession is the Lis to be decided. It is the admission of the third respondent that the land was sold by the Society to the Diocese and Church has been already constructed. The third respondent's objection is that Vendor to the petitioner M/s.Maranatha Full Gospel Association has no right to sell the property to the petitioner, since patta of the property is in the name of the M/s.Maranatha Orphanage Children Home. It is an intend dispute between them, no where passion is disputed. Hence order passed by the first respondent is beyond its power and authoritative. Hence liable to be quashed.

24.In view of the same, this Court finds that the order passed by the first respondent is not sustainable and the same is to be quashed. The petitioner is directed to follow the Government guidelines and Standard Operating Procedure, whenever the Church dedication and congregation is held. Both the petitioner and the third respondent are directed to resolve their issues before the legal forum in the manner known to law.

25.In the result, this Criminal Original Petition is allowed and the order passed by the Tashildar, Kundrathur Taluk, Chengalpattu District in R.C.No.01/2021/A1 dated 27.07.2021, is hereby quashed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Tasildhar,
Kundrathur Taluk,
Chengalpattu District.



2.The Inspector of Police,
SRMC-T-15, Police Station,
Iyyappanthangal,
Kancheepuram District.

3.The Public Prosecutor,
High Court,
Madras.

Crl.O.P.No.13841 of 2021
and Crl.M.P.No.7552 of 2021

CA(CO)
RVM(22/11/2021)