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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.12.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21143 of 2014

and

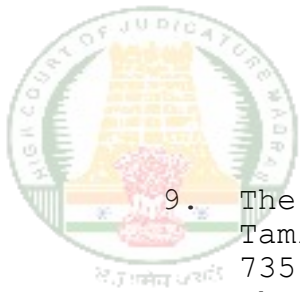
M.P.No.1 of 2014

1. K.Ramesh
2. K.Saravanan
3. G.Kaliaperumal
4. R.Pavadaisamy
5. M.Panchavarnam

...Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Home Department,
Fort St. George, Chennai - 600 005.
2. The Director General of Police,
Chennai.
3. The District Collector,
Nagapattinam.
4. The Superintendent of Police,
Nagapattinam.
5. The District Revenue Officer,
Nagapattinam.
6. The Deputy Superintendent of Police,
Sirkazhi, Nagapattinam District.
7. The Tahsildar,
Sirkazhi.
8. The Inspector of Police,
Poombuhur Police Station,
Sirkazhi Taluk,
Nagapattinam District.



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9. The Chairman,
Tamil Nadu State Minorities Commission
735, Anna Salai, LLA Building,
Chennai - 600 002.

...Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to take over the matter in relating to Crime No.120 of 2012 on the file of the 8th respondent and transfer the same to some other agency and entrust the same to a competent officer not below the rank of Deputy Superintendent of Police to investigate the same and file a final report within a stipulated period of time as fixed by this Hon'ble Court, further directing the respondents to give a proper protection to the petitioners and their family to lead their normal and peaceful life in their village at Vanagiri, Sirkazhi Taluk, Nagapattinam District.

For Petitioners	:	Mr.R.Ezhilarasan
For Respondents	:	M/s.N.Senthilselvi Government Pleader [For R1 to R9]

ORDER

The relief sought for in the present writ petition is to direct the respondents 1 to 4 to take over the matter in relating to Crime No.120 of 2012 on the file of the 8th respondent and transfer the same to some other agency and entrust the same to a competent officer not below the rank of Deputy Superintendent of Police to investigate the same and file a final report within a stipulated period of time.

2. The petitioners state that they are permanently residing at Tsunami Nagar, Vanagiri, Sirgazhi Taluk, Nagapattinam District. The petitioners and their relatives, consisting five families, converted to Christianity.

3. The grievances of the writ petitioners are that the villagers are raising objections for their conversion to Christianity and practicing Christianity in their residence.

4. The learned counsel for the petitioners made a submission that the petitioners are being harassed by the



religious festivals or religious practices in a common manner, appropriate permission must be obtained from the competent authority under the provisions of the Act. In other words, Church activities or common religious activities by many persons or religious festivals cannot be conducted without obtaining proper permission from the competent authority and in residential places, if anybody wants to construct any Church or otherwise, then also, appropriate permission must be obtained from the competent authorities.

10. In respect of the religious rights contemplated under Article 25 of the Constitution of India and for constructing religious building in the residential area, this Court elaborately considered the issues in W.P.No.887 of 2015 dated 26.10.2021 with reference to the fundamental rights of citizen as well as the rules in force for the purpose of construction of such religious building in residential areas. The relevant paragraphs are extracted here under:

"18. The larger issue to be considered by this Court is about the religious right to be exercised by the citizen under Article 25 of the Constitution of India. Article 25 sub-clause (1) unambiguously stipulates that subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Thus, the fundamental right under Article 25 of the Constitution of India is subject to public order, morality and health.

19. Right to life under Article 21 is an absolute fundamental right and exercise of fundamental right under Article 25 is undoubtedly subject to the right to life enunciated under Article 21 of the Constitution of India. Thus, every citizen while exercising the right under Article 25 is duty bound to borne in mind that the right to life of other citizen is to be respected. In the event of any violations, such violations or otherwise are actionable. Thus, Article 25 imposes certain conditions for exercise of religious rights subject to public order, morality and health includes many issues in the interest of public and the Authorities Competent in the event of violations are empowered to initiate action. Thus creating nuisance is an offence punishable under the Indian Penal Code. Noise pollution over and above the prescribed level is also an offence which all are actionable under the relevant provisions of the Act and Rules. Construction of any Religious Institutions without proper approval



under relevant Statute is actionable, for the purpose of initiation of action to demolish any such unauthorised construction or religious institutions.

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20. No person can be allowed to commit any illegality merely on the ground of sentiments of the people or under the guise of religious rights, any such sentiments leading to illegality can never be tolerated by the State and its Authorities. Any leniency would lead to infringement of fundamental rights of the other citizen and therefore, the State is duty bound to ensure that all such religious rights are being exercised by any citizen in the manner contemplated and to the extent permissible under the Constitution of India. Merely by creating sentiments in the public or in any religious places, no person can be allowed to carry on any such illegal activities or otherwise. Encroachments, usage of loudspeakers causing disturbance and nuisance are to be viewed seriously and all necessary actions are to be initiated for the purpose of restraining such persons from creating such nuisances or disturbances to the public at large.

21. Unity in diversity is the principle enunciated under the Indian Constitution. Unity can be preserved only when the Authorities controlled the illegalities being committed in the name of the religion or otherwise. Thus, the religious rights are subject to conditions and subject to the rights of the other citizen and hence, it is to be borne in mind that religious right under Article 25 can never be an absolute fundamental right and subject to the rights of other citizen and subject to the laws in force. The laws enforceable are to be considered by this Court.

22. For construction of Religious Institutions, the Tamil Nadu District Municipalities Act, Tamil Nadu Panchayats Act or respective Corporation Acts are providing procedures and conditions. Building Plan Approval is to be obtained for construction of Religious Institutions. The manner in which such applications are to be considered also enumerated under the provisions of the Act and the Rules. All such applications submitted for construction of Religious Institutions are to be considered strictly in accordance with the provisions of the Act and the Rules. Construction of Religious Institutions should not affect the peaceful living of the people in that particular locality. Thus, the Authorities are expected to be cautious, while granting permission to construct



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Religious Institutions and in the name of religion, the people should not venture into such activities, which all are detrimental to the public order or affecting the peaceful living of the people in that locality. Therefore, approval for construction of Religious Institutions are to be regulated in such a manner respecting the constitutional rights of all citizens and the Authorities cannot deal with such applications in a casual manner. Thus, every such application submitted for construction of Religious Institutions must be considered in the manner contemplated under the provisions of the Act and the Rules and also taking into consideration the fundamental rights of the citizens, including the right to life enunciated under Article 21 of the Constitution of India.

23. More elaborately the consideration of application cannot be confined with reference to the provisions of the Act and the Rules, in view of the fact that Article 25 of the Constitution of India imposes conditions of public order, morality and health. Thus, beyond the scope of the provisions of the Act and the Rules, the spirit of the constitution must prevail over and the spirit and perspectives involved in Article 25 of the Constitution must be taken into consideration by the Authorities Competent, while considering any such application for grant of permission for construction of Religious Institution and performance of the religious activities. Each word in Article 25 denotes and provides larger implications and rights of the citizen. When freedom to exercise religious right is subject to public order. Likelihood of disputes, likelihood of religious disheartening and various other related acts are to be considered. While considering application for the purpose of grant of permission for construction of religious institutions, morality perhaps would provide and keeping all other aspects, health is of more importance. Now health being an integral part of Article 21 of the Constitution of India, the rights of children, sick and aged people and the rights of citizen in general for good health are all to be taken into consideration.

24. In our country, it is most common that many such Religious Institutions are causing nuisance and disturbances. Imagine a situation of any person after hard work going to bed for sleep and during mid night or early morning if he is disturbed on account of usage of loudspeaker certainly it creates not only mental agony but also leads to mental depression. Thus,



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peaceful living and health can be ensured only if such irregular and illegal activities are controlled by the Authorities. Every citizen has got fundamental right of peaceful living and health being integral part of Article 21 which provides right to life. Thus the Authorities must ensure that such valuable right to life for all the citizen is protected and it is the duty of the State to provide such protection to every citizen of this Great Nation.

25. Coming to the relevant Rules with reference to the writ petition on hand, the Tamil Nadu Panchayat Building Rules, Rule 4 sub-clause (3) stipulates that "no site shall 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."

26. The above said Rule is in consonance with the conditions enumerated under Article 25 sub-clause (1) of the Constitution of India. The Rule itself contemplates that the approval is to be granted only if there is any likelihood to endanger public peace and order and thus, if there is any public likelihood of endanger of public peace and order, then no permission is to be granted for the construction of a building intended for public worship or for religious purposes.

27. As far as the writ petitioner is concerned, the Planning Permission was obtained on 07.09.1998. The petitioner had intended to develop the Church by carrying out renovation and by constructing additional building. The application was submitted in the year 2014. However, the said application was not considered so far. Meanwhile, law and order problems were created. The people of that village raised objections. The Peace Committee Meetings were conducted. In the meanwhile, the petitioner carried out construction in peace meal.

28. This being the factum established, this Court is of the considered opinion that the petitioner cannot continue the construction works without getting approval of Building Plan from the Competent Authorities. The Competent Authorities are duty bound to consider the application strictly in accordance with the Act and the Rules and also taking into consideration the conditions imposed under Article 25 of the Constitution of India in respect of maintenance



of public order, morality and health of the people residing in nearby vicinity and the people of that village.

30. It is relevant to consider the Noise Pollution (Regulation and Control) Rules, 2000, which was published in the Gazette of India vide S.O. 123(E) dated 14.02.2000 and subsequently amended on 22.11.2000, 11.10.2002, 19.09.2006 and 11.01.2010 under the Environment (Protection) Act, 1986.

31. Under the Noise Pollution (Regulation and Control) Rules, 2000, the Authorities are bound to initiate action if violations are brought to their notice or complaints are made. Rule 2(c) defines 'Authority' means and includes any authority or officer authorized by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer not below the rank of the Deputy Superintendent of Police designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force".

32. Rule 5 imposes restrictions on the use of loud speakers / public address system and sound producing instruments. Sub Rule (1) contemplates "a loud speaker or a public address system shall not be used except after obtaining written permission from the authority". Sub Rule (2) denotes "a loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, banquet halls or during a public emergency".

33. Rule 7 stipulates 'complaints to be made to the Authority'. Sub Rule (2) to Rule 7 contemplates "the Authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force".

34. Rule 8 provides "power to prohibit etc. continuance of music sound or noise" and Schedule provides "Ambient Air Quality Standards in respect of Noise".

35. In respect of the actions to be initiated



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Environment (Protection) Act, 1986, more specifically Section 15 provides 'Penalty for Contravention of the Provisions of the Act and the Rules, Orders and Directions'. The noise pollution, regulation and control rules are notified under the provisions of the Environment (Protection) Act, more specifically, by invoking Section 25. Thus if any violations of such Rules or directions are established/ proved, then penalty for contravention of the provisions of the Act and also the Rules are to be imposed.

36. Sub section (1) to Section 15 of the Environment (Protection) Act, 1986 contemplates "whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention".

37. Therefore, laws in force are to be enforced by the public authorities. It is not as if the laws are enacted for the purpose of keeping it in Books. Thus the Authorities are to be sensitised to protect the fundamental rights of every citizen of this Great Nation. Our country had enacted effective and efficient laws in order to protect the rights of the citizen. However, its implementation lacks. Thus, the Authorities are to be sensitised. They can never be allowed to take a partisan attitude in the matter of implementing the laws in force. Non implementation or improper implementation must be viewed seriously as it infringes the rights of the citizen at large.

38. In a vibrant democracy, the rights of the citizen are valuable and paramount importance. Of course fundamental duties are to be borne in mind and reminded off. Fundamental duties under Article 51-A of the Indian Constitution must go together with the rights and the duties are corresponding in nature and thus, exercise of rights is to be done only keeping in mind the duties involved. Any Religious Institution exercising their right must be reminded off their duties towards other citizen, upon whose rights are also to be protected. Unfortunately such situation is



not prevailing in this Great Nation in view of the lackadaisical approach of the Authorities in the matter of dealing with the violations and infringement of the rights.

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39. One may form an opinion that it would be sensitive if any actions are initiated. However, they are forgetting the other side that inaction will lead to further chaos. Thus actions then and there on noticing the irregularities and illegalities are of paramount importance, which is the duty mandated on the authorities.

40. Importantly, Section 19 of the Environment (Protection) Act, 1986 contemplates 'cognizance of offences'. Accordingly a complaint is to be made by the persons. Thus sub clause (b) to Section 19 empowers the any person given a complaint by issuing notice of not less than 60 days. Thus any person is empowered to send complaint in the manner prescribed.

41. This Court is of the considered opinion that all Religious Institutions must adhere to the Rules of law for the purpose of conducting their respective religious activities. Any such religious activities affecting the rights of the other citizen and any infringement of rights under the Constitution of India must be viewed seriously and all appropriate actions are to be initiated in the event of any complaint or otherwise.

42. The prevailing situation cannot be brushed aside by this Court. The prevailing situation though painful is to be improved only through effective actions of the Public Authorities. There are many Religious Institutions across the State of Tamil Nadu are violating the noise pollution and Regulation Control Rules and the provisions of the other Statutes. However officials are insensitive in the matter of initiation of actions regarding such violations. Thus, the State is duty bound to sensitise the Authorities for the purpose of protection of the fundamental rights of the citizen of our Great Nation.

43. Enacting the Laws or insufficient implementation of Laws are to be deprecated. Laws are enacted to protect the rights of the citizen under the Constitution. If such Laws are not implemented effectively, then also we are committing an act of unconstitutionality. Thus, unconstitutionality is not



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only relatable to the provisions of the Statute, but also relatable to an ineffective or non-implementation of the Statutes resulting violations of rights ending unconstitutionality. Thus, the State must act in consonance with the constitutional principles and the laws enacted for the purpose of protecting the rights of the citizen, more specifically, with reference to the religious rights.

44. In view of the fact that many such complaints are raised across the State of Tamil Nadu and many people are hesitating to inform and submit complaint in these aspects as they are afraid of giving such complaints on account of religious sentiments, and due to fanatic approach of few fringe groups.

45. It is the duty of the State to issue appropriate orders regulating the activities of the Religious Institutions and to ensure the right of the citizen in general. One cannot recuse that common men are afraid of giving complaint against Religious Institutions. In such circumstances, the State being the custodian is duty bound to initiate action under the relevant provisions of law and for this purpose, this Court is inclined to suo motu impleaded the Chief Secretary to Government State of Tamil Nadu, Secretariat, Fort St. George, Chennai-600 009, for the purpose of issuing necessary directions/circulars/instructions to all the Competent Authorities across the State of Tamil Nadu, so as to ensure all appropriate actions are initiated in respect of the illegalities and irregularities and violations in the matter of religious activities, including noise pollutions and building violations etc. Mr.K.M.D.Muhilan, learned Government Advocate took notice on behalf of the impleaded eighth respondent."

11. In view of the principles considered in the above judgment, people belong to various religions and following religious practices must be allowed to continue their religious practices in a peaceful manner. Respecting each others fundamental right is of paramount importance. However, if anybody wants to propagate a religion in a particular manner commonly, then appropriate permission or approval of the competent authorities are required. In the present case, the writ petition is filed merely stating that the people of that locality conducted an agitation. When the large number of people conducted agitation, the authorities conducted Peace meeting and passed certain resolutions. Under these circumstances, no doubt, the right of the petitioners are to be protected. Equally, their



activities are to be monitored by ensuring that the sentiments and the religious practices of other people are also respected by the persons concerned. Mutual respect of rights is the constitutional mandate and in the event of violation by any person, the competent authorities are bound to initiate all appropriate actions in the manner known to law. In respect of the criminal case, the authorities competent are bound to proceed in accordance with law as expeditiously as possible.

12. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

nti/kak

To

1. The Secretary,
Home Department,
Fort St. George,
Chennai - 600 005.
2. The Director General of Police,
Chennai.
3. The District Collector,
Nagapattinam.
4. The Superintendent of Police,
Nagapattinam.
5. The District Revenue Officer,
Nagapattinam.
6. The Deputy Superintendent of Police,
Sirkazhi,
Nagapattinam District.
7. The Tahsildar,
Sirkazhi.



8. The Inspector of Police,
Poombuhur Police Station,
Sirkazhi Taluk,
Nagapattinam District.

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9. The Chairman,
Tamil Nadu State Minorities Commission
735, Anna Salai, LLA Building,
Chennai - 600 002.

+1cc to Mr.R.Ezhilarasan, Advocate, S.R.No.69427

+1cc to the Government Pleader, S.R.No.69739

W.P.No.21143 of 2014

EV(CO)
SU(12/01/2022)