



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2021

Pronounced on : 15.03.2021

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.16459 of 2020

and

W.M.P. (MD) Nos.13766 and 13768 of 2020

Rev.J.Devadhasan

... Petitioner

-vs-

1. The District Collector,
Kanyakumari District, Kanyakumari.
2. The Superintendent of Police,
Office of the Superintendent of Police,
Kanyakumari District at Nagercoil.
3. The Sub Collector,
Nagercoil, Kanyakumari District.
4. The Tahsildar,
Agastheeswaram Taluk,
Agastheeswaram,
Kanyakumari District.
5. The Inspector of Police,
Rajakkamangalam Police Station,
Rajakkamangalam,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent vide his proceedings in Pa.Mu.C3/23949/2018, dated 08.10.2020 and quash the same as illegal and consequently forbearing the respondents No.1 to 5 from interfering into the Prayer Sessions and performance of the religious rituals conducted in the petitioner's building in Survey No.257/18 situated at Ganapathipuram Town Panchayat, Neendakarai "Aa" Village, Agastheeswaram Taluk, Kanyakumari District within the time stipulated by this Court.



For Petitioner : Mr.G.Anto Prince
For Respondents : Mr.M.Sricharan Rangarajan,
Additional Advocate General
assisted by Mr.C.Ramesh,
Special Government Pleader

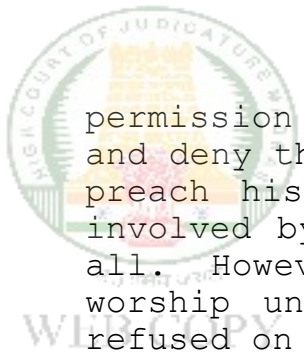
ORDER

The case of the petitioner herein is that he is a designated Priest of "South India Assemblies of God", Berachah A.G.Church, affiliated with Southern District Council, registered vide Registration No.2701 under the Societies Registration Act XXI of 1860. According to him, being a Priest he has been involved in religious preaching and in conducting prayers for promotion of his faith. The act of worshiping and prayer has been conducted in the premises owned by the petitioner and this activity has been going on for the last forty years without any interference or interruption from any of the neighbours and so far, no complaint has been lodged against the religious activities of the petitioner.

2.According to the petitioner, he had proposed to construct a building in Survey No.257/18 situated at Ganapathipuram Town Panchayat, Neendakarai "Aa" Village, Agastheeswaram Taluk, Kanyakumari District, for which he has applied for grant of permission to the first respondent in 2018. However, the first respondent has not passed any orders in response to his application. On the other hand, he was issued with the proceedings of the first respondent dated 08.10.2020 rejecting the permission sought by the petitioner on the ground that there would be a law and order problem affecting public peace.

3.The above order rejecting the permission sought by the petitioner is the subject matter of challenge in the Writ Petition. According to the impugned order, the first respondent appears to have obtained report from the Sub Collector and the Superintendent of Police and the reports have concluded that granting permission to the petitioner to conduct prayers towards promotion of his faith would affect public peace and would also pose law and order problem to the civil and police administration.

4.The learned Counsel appearing for the petitioner would submit that some objections have come from certain vested interests and without a proper appreciation of the legitimate religious activities of the petitioner which has been taking place for the last forty years in the same place without any complaints whatsoever and no public order was ever disturbed nor was there had been any law and order problem, the authority mechanically rejected the request of the petitioner. It is not open to the authorities to refuse



permission on the basis of motivated objections from vested interest and deny the constitutional right of the petitioner to propagate and preach his religion. According to him, the kind of activities involved by the petitioner, no permission, in fact, is required at all. However, by way of abundant caution, to continue his religious worship uninterruptedly when permission was sought, the same was refused on untenable grounds by the authorities.

5.The learned Counsel appearing for the petitioner would also submit that the petitioner is willing to abide by any conditions that may be imposed for sanctioning of permission and the first respondent may be directed to revisit the order afresh by giving an opportunity to the petitioner to explain his point of view towards justification of his religious activity.

6.The learned Additional Advocate General, who appeared in the matter, would submit that the petitioner has not been granted any permission at all in the first place, for putting up the building and in that case, question of conducting prayers in the building did not arise at all. Unless or until a proper permission is given by the authorities concerned, it is not open to the petitioner to carry on his activities which is prohibited under the Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972. The said Rule reads as under:

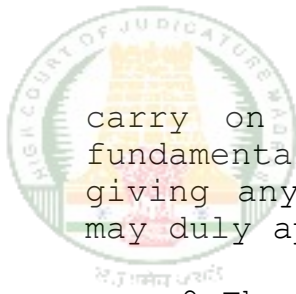
"No site be used for the construction of a building intended for public worship or religious purposes, without the prior approval, of the Collector of the district who may refuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order.

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

7.According to the learned Additional Advocate General, the locality/area wherein activities are sought to be carried on is an extremely sensitive place, which gave rise to a communal riots in 1982 between two opposing communities. The Government, after taking note of the riot, had appointed a One Man Committee headed by former Judge P.Venugopal of Madras High Court and the Commission has recommended a number of measures to be taken by the Government to avoid recurrence of any communal clashes in the place in future. Therefore, the authorities are duty bound to follow the instructions and the statutory rules in regulating any religious activities that may likely to affect public peace and order.

8.At this, the learned Counsel appearing for the petitioner would submit that after 1982 in the past 38 years, there has been not a single incident of riot or clash between communities and people from different faiths have been living peacefully together.

<https://hccservices.hccservices.gov.in/hccservices/> learned Counsel, in any case, the petitioner would



carry on his permissible religious activities in tune with the fundamental rights guaranteed by the Constitution of India without giving any room for any law and order problem, if the authorities may duly appreciate his legitimate religious dispensation.

9.The learned Additional Advocate General would submit that the second respondent has also filed an affidavit wherein he has clearly stated that the building which is to be used for the religious purpose, the petitioner has not been granted permission and further for conversion, a special permission is required as residential use of building and religious use of building is not interchangeable in terms of the Tamil Nadu Panchayat Buildings Rules, 1997. It is an admitted position that the petitioner wants to conduct prayers for which prior approval is required under the Panchayat Rules and as on date, without any permission, it is not for the petitioner to carry on his religious activities as the same would be illegal.

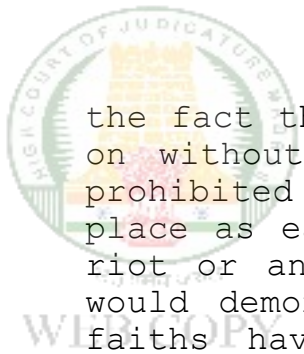
10.This Court considered the submission of the learned Counsel appearing for the petitioner as well as the learned Additional Advocate General appearing for the respondents.

11.The right to propagate, profess and follow different faith is a fundamental right guaranteed under Articles 25 and 26 of the Constitution of India. However, indisputably, such right is also circumscribed by certain limitation, as the exercise of such right may not endanger public peace and order. The fundamental rights guaranteed in the Constitution, as every one is aware of, is not absolute and such right is always subordinated to the maintenance of public peace and social order.

12.As far as the case on hand is concerned, it emerges from the records and the pleadings that the petitioner has not even been granted permission for putting up his building and much less for conducting public worship purported to be in promotion of his faith. Therefore, today, the petitioner cannot legally conduct prayers in the building, which has not been authorized or approved for it to be used.

13.While so, the learned Counsel appearing for the petitioner submitted that he would go before the first respondent and submit a fresh application undertaking to abide by any reasonable conditions that may be imposed by the administration towards grant of permission to the building and the activities to be carried on there. The learned Counsel submitted that he would give an undertaking to the effect that there would not be any misuse of the permission if granted in propagating the petitioner's faith peacefully without giving room for any law and order issue in the neighbourhood.

14.In consideration of the above submission of the learned Counsel appearing for the petitioner and also in consideration of



the fact that when a peaceful religious activities could be carried on without affecting public order and peace, the same cannot be prohibited for an indefinite period of time citing a riot which took place as early in 1982. Admittedly, thereafter, there has been no riot or any communal clashes in the area, since 1982. This fact would demonstrate that people in the District following different faiths have been maintaining cordiality, not succumbing to and falling prey to machination or subterfuge of certain vested interests.

15.Be that as it may, this Court cannot also lose sight of the fact that it is for the administrators to take a comprehensive decision in such sensitive matters as they alone are competent to decide as to the nature of petitioner's proposed worship and its impact on the *inter se* relationship of different religious groups. Therefore, this Court is not inclined to grant any relief to the petitioner on the basis of the averments juxtaposed to the objection of the administrators as it emerged in the present proceedings and at the same time, the petitioner cannot be denied his right to carry on his legitimate religious functions, namely, worship of his faith within the permissible limits along with his fellow members that may be allowed by the officials concerned. In such circumstances, a delicate balance may have to be maintained as between the public order and peace on one hand and citizens fundamental right to worship and propagate their faith in tune with the Constitutional scheme, on the other.

16.In the circumstances, it is for the first respondent to strike a balance and take a call in the matter after taking into consideration all the relevant factors with reference to recommendations of the One Man Committee vis-a-vis the proposed religious activities of the petitioner, read with rule position that govern such matters.

17.As Albert Camus a great 20th Century French Writer has observed:

"Democracy is not the law of the majority, but the protection of minority."

18.In the above circumstances, the impugned order passed by the first respondent vide his proceedings in Pa.Mu.C3/23949/2018, dated 08.10.2020, is hereby set aside.

19.As a consequence of the setting aside of the impugned order the following directions are issued:

(i)The first respondent is directed to hold an enquiry and process the application said to have been filed by the petitioner by providing an opportunity of personal hearing to him and also hear any officials in order to help him to grapple with the issue for his comprehensive understanding

<https://hcservices.hcsc.gov.in/hcservices/> conclusion is reached, while processing of the



application of the petitioner.

(ii) The first respondent in the process may also call for reports from the officials concerned more particularly from the officer in charge of maintenance of law and order.

(iii) While considering the request, in the opinion of the first respondent, any conditions to be imposed on the proposed activities of the petitioner in order to ensure no public peace or order is to be disturbed, such conditions as it deemed to be fit and proper may form part of permission, if to be granted.

(iv) The first respondent is directed to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

20. In the result, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

To

1. The District Collector,
Kanyakumari District, Kanyakumari.
2. The Superintendent of Police,
Office of the Superintendent of Police,
Kanyakumari District at Nagercoil.
3. The Sub Collector, Nagercoil, Kanyakumari District.
4. The Tahsildar, Agastheeswaram Taluk,
Agastheeswaram, Kanyakumari District.
5. The Inspector of Police,
Rajakkamangalam Police Station,
Rajakkamangalam, Kanyakumari District.

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-11227[F] dated 15/03/2021)

+1 CC to M/s.SPL GP (SR-11992[F] dated 17/03/2021)

Order made in
W.P. (MD) No.16459 of 2020
15.03.2021

MJ(CO)

TR(24.03.2021) 6P 8C

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