



W.P.(MD).No.4203 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 27.07.2022

ORDER PRONOUNCED ON : 29 .08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.4203 of 2016
and WMP(MD).No.3760 of 2016**

Rev.T.P.Swamidoss
Pastorate Chairman and Correspondent
2D/1, CSI Christ Church Parsonage
Mission School Street
Kalakad
Tirunelveli District

...Petitioner

Vs

1.The District Collector
Tirunelveli District

2.The Superintendent of Police
Tirunelveli District

3.The Revenue Divisional Officer
Cheranmahadevi
Tirunelveli District

4.The Tahsildar
Nanguneri Taluk
Tirunelveli District

....Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 28.12.2015 in Mu.Mu.C2/7861/13 passed by the first respondent and quash the same as illegal and consequentially direct the first respondent to grant approval for the construction of the Church.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein under which the request of the petitioner seeking permission for construction of the Church has been rejected.

2.According to the writ petitioner, he is the Chairman of Kalakadu Pastorate which is under the control and administration of Tirunelveli Diocese were conducting Christian prayer meetings at Naduchalai Pudur Village. The said prayers were conducted in the residential house of one Chellaiyah from the year 1977 onwards. The prayer meeting were conducted on every Sunday and on the festival days without using any loud speaker.

3.The petitioner has further submitted that since the number of members got increased, Tirunelveli Diocese had purchased 21 cents of land in



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an approved site by way of registered document dated 19.07.2007. After obtaining building plan approval from the concerned Panchayat on 25.03.2010, they have started putting up construction of the Church. When the construction was half-way through, the respondents 2 to 4 had visited the site and objected to the construction, on the ground, that without obtaining prior approval from the first respondent, construction activities cannot be proceeded with.

4.The petitioner had given a representation on 28.10.2010 to the first respondent herein seeking permission to utilise the said site for the purpose of constructing a Church. Thereafter, the first respondent had called for a report from the fourth respondent herein. The fourth respondent by his report dated 21.01.2011 had recommended for granting permission for the construction of the Church. On 30.12.2011, the third respondent herein has also recommended for granting permission for the Church on the ground that there is no objection from any one nearby. However, the first respondent by his order dated 24.06.2012 had rejected the request for permission on the ground that there is a likelihood of law and order problem, if the construction of a Church is permitted. The petitioner had further contended that he had given a detailed representation again to the first respondent on 19.02.2013. Based upon the said representation, a reminder was also sent by the petitioner on



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13.04.2015. Thereafter, the first respondent had again called for a report from the respondents 2 to 4. The second respondent by his report dated 29.03.2014 and 21.10.2014 had objected to the construction of a Church on the ground that several complaints have been received from the locality objecting to the construction of the Church and the same create a law and order problem. The Sub Collector, Cheranmahadevi has also submitted a report that permission may not be granted. Based upon the said report and after a personal hearing on 06.11.2015, the first respondent has passed the impugned order on 28.12.2015 rejecting the request of the petitioner. The said order is under challenge in the present writ petition.

5. The learned counsel for the petitioner had contended that just because certain individuals have raised objection for construction of the Church, the same cannot be denied by the first respondent. He had further pointed out that the site and building plan has already been approved by the concerned Panchayat for construction of a Church. The prayers are being conducting in the said Village from the year 1977 onwards. There is no disharmony or any law and order problem due to the said prayer meeting which were conducted in a private house. The learned counsel had further contended that in his order dated 30.12.2011, the first respondent has pointed out that two individuals have given complaints to him on the grievance day



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which was conducted on 29.11.2010. Only based upon the said complaints, the first respondent had rejected the request on an earlier occasion on 24.06.2012.

6.The learned counsel for the petitioner had further contended that the former leader of a religious organisation had objected to the construction of the prayer hall and the same cannot be an impediment for the District Collector to analyse the present law and order situation in the Village and grant permission for construction of the prayer hall. A few individual in a Village cannot have a veto power to stop construction of a public worship building in a Village. The petitioner also relied upon a Division Bench Judgement of our High Court made *in W.A(MD).No.1349 of 2013 dated 03.01.2017 (The District Collector, Kanyakumari District and others Vs. A.Suresh Rajan)*. The learned counsel also relied upon a judgement of our High Court reported *in (2006) M.L.J.158 (Pastor.Vinil Sathish, President and Chief Bishop, Full Gospel Pentecostal Church, Kanyakumari District Vs. The State of Tamil Nadu, represented by the Secretary to Government, Home Department, Chennai and others)* to contend that the constitutional rights of one particular religious group cannot be made to suffer just because a few persons from the locality object to the construction of a prayer hall. Hence, he prayed for allowing the writ petition.



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7.Per contra, the learned Additional Government Pleader appearing for the respondents herein had relied upon the counter and contended that the request of the writ petitioner was considered with reference to the ground reality in the locality and a detailed enquiry was also conducted. According to the learned Additional Government Pleader, the said hamlet is part of Kovilammalpuram Village, consisting of 180 Hindu families and 10 Christian families. Two temples namely Ayyavali Kovil and Mutharamman Kovil are located in a distance of 100 meters from the eastern side of the proposed prayer hall. Another temple by name Yoikattu Sudalai Poodam is also located within 75 meters from the southern side of the proposed prayer hall. He had further contended that the proposed prayer hall will certainly create a law and order problem in the Village. He further contended that the said provision under the Panchayat Act has been enacted only with an object to maintain communal ceremony in the Village. In the present case, since there is an objection from many quarters, the request of the petitioner was rejected. Hence, he prayed for dismissal of the writ petition.

8.I have considered the submissions made on either side and perused the materials available on record.

9.There is no dispute that the petitioner being a Chairman of Kalakadu Pastorate, has purchased 21 cents of land in Naduchalai Pudur hamlet. The



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petitioner has also obtained building approval from the concerned Panchayat for putting up construction. As per Rule 4(3) of the Tamil Nadu Panchayat Building Rules 1997, no site shall be used for construction of a building intended that to be worship or religious purpose without prior approval of the District Collector. Without obtaining prior permission from the first respondent herein, the petitioner has already started to put up construction based upon the building plan approval granted by the concerned Panchayat. Based upon the objection from certain organisations and general public, the respondents 2 to 4 have interfered and stopped further construction activities and advised the petitioner to get approval from the first respondent herein.

10. Only when the construction activities were stopped, the petitioner has approached the first respondent for approval. The fourth respondent herein in his report dated 21.01.2011 had recorded that none of the people in the locality have raised any objection. He had further recorded that within 100 meters there are no temples, mosques or any other religious institutions. Hence, he had recommended for grant of permission. The third respondent in his report dated 30.12.2011 has also endorsed views of the fourth respondent herein and he has recommended for granting permission. However, the first respondent by an order dated 24.06.2012 had relied upon the report of the second respondent and rejected the permission. For the reasons best known to the petitioner, the said order was not put to challenge.



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11.The petitioner thereafter started sending representations to the first respondent on 19.02.2013 and on 13.04.2015 requesting the first respondent herein to reconsider his order dated 24.06.2012. In view of the persistent representations made by the petitioner herein, the first respondent had sought for a fresh report from the respondents 2 to 4 . The second respondent herein has once again not recommended for grant of permission. The Sub Collector by his report dated 10.12.2015 has also not recommended for grant of permission. Based upon the said report, the first respondent has passed the impugned order.

12.The learned counsel for the petitioner had vehemently contended that just because few persons or some organisations raised objection for grant of permission, the revenue and police authorities cannot be carried away or get threatened by such objection and proceeded to reject the request for construction of a prayer hall.

13.Rule 4(3) of the Tamil Nadu Panchayat Building Rules 1997 is extracted as follows:

“No site shall be used for the construction of a building intended for public worship or religious purposes without the prior



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approval of the Collector of the district who may refuse such approval, if in his opinion, the use of the site and buildings is likely to endanger public peace and order”

14.A careful perusal of the above said rule clearly divulges that the prior permission of the District Collector is required for using a site to construct a building intended for public worship or religious purpose. The District Collector has got discretion either to grant or refuse such approval and it is not a mere formality to seek permission of the District Collector. The District Collector has to formulate an opinion whether the usage of said site and the building is likely to endanger the public peace and order. In the present case, without waiting for the prior approval of the District Collector, already construction activities had started and they were going on for nearly seven months even as per representation of the petitioner dated 19.02.2013. The first respondent herein has to rely upon the report of the revenue and police authorities to arrive at a finding whether there is a likelihood of disturbance to public peace and order.

15.In the present case, the second respondent herein by his reports dated 29.03.2014 and 21.10.2014 has pointed out that within 100 meters of the proposed prayer hall, two temples by name Ayyavali Kovil and



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Mutharamman Kovil are located. Another temple by name Yoikattu Sudalai Poodam is located within 75 meters from the proposed prayer hall. He had further pointed out that very near to the proposed prayer hall, the residential houses of the Hindus are located. He had further pointed out that in the same hamlet, there are 180 Hindu houses and 10 Chirstian houses. According to the said report, in case of granting of permission for the construction of a Church, there is likelihood of law and order problem in view of the objection raised by the various people from the said hamlet.

16.The Sub Collector by his report dated 10.12.2015 has categorically stated that there is a likelihood of communal disharmony, in view of various complaints from the general public of the hamlet. The public peace and order as contemplated under Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997 means a State and security that is needed in a Society. It should be pursued by the State so that all citizens could exercise their constitutional rights resulting in harmonious developments of the society. The second respondent herein in his report had found that within 100 meters two Hindu temples are located. However in the representation of the petitioner dated 19.02.2013, he has categorically contended that the temples are located beyond 1500 meters. However, the report of the second respondent relating to the location of the two temples within 100 meters and another temple



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within 75 meters has not been disputed in the affidavit filed in support of the writ petition. Though the contention of the petitioner that the objection of few persons in the locality should not be taken into consideration is an attractive argument, the report of the second respondent as culled out in the impugned order states that objections have been raised from many residents of the said hamlet. The first and second respondents herein are the ultimate authorities to maintain law and order within a particular District. Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997 empowers the first respondent to assess the likelihood of endangerment to the public peace and order by usage of a particular building for the religious purpose. In the present case, the first respondent has relied upon the report of the second and third respondent herein and arrived at a finding that there is a likelihood of breach of peace in a hamlet which is inhabited by 180 Hindu families and 10 Christian families.

17.The Hon'ble Supreme Court in a judgment reported *in (2004) 4 SCC 684 (State of Karnataka and another Vs. Dr.Praveen Bhai Thogadia)* in Paragraph No.6 has held as follows:

“6.Courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and to



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handle the situation depending upon the peculiar need and necessities within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order.....”

18.The Hon'ble Supreme Court in a judgment reported ***in (2004) 7 SCC 467 (Commissioner of Police and others Vs. C.Anita)*** in Paragraph No.12 has held as follows:

“ 12.The true distinction between the areas of law and order and public order lies not merely in the nature of quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case, it might affect specific individuals only, and, therefore, touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different”

19.The Hon'ble Supreme Court in a judgment reported ***in (1970) 1 SCC 98 (Arun Ghosh Vs. State of West Bengal)*** in Paragraph No.3 has held



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as follows:

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“3.....Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different.....”

20.The Hon'ble Division Bench of our High Court in a judgment reported ***in (2004) 5 CTC 554 (Rama.Muthuramalingam, State Propaganda Committee Members, Tiruvarur District Vs. The Deputy Superintendent of Police, Mannargudi, Tiruvarur District and others)*** in Paragraph No.10 has held as follows:

“10.Maintenance of law and order is ordinarily an executive function and it is ordinarily not proper for the judiciary to interfere in this matter. The administrative authorities have expertise in law and order problems through their long experience and training, and the Courts should not ordinarily interfere in such type of matters. The judiciary must therefore exercise self-restraint and not try to interfere

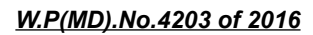


with the functions of the executive or the legislature. By exercising self-restraint it only enhances its prestige”.

21.A perusal of the above said judgments of the Hon'ble Supreme Court and the judgment of our High Court will clearly indicate that as far as the issue of law and order or public order is concerned, it is for the administrative authorities to arrive at a particular finding. They have expertise in handling law and order problem and the Court should not ordinarily interfere in such matters unless it is established that the action of those authorities are actuated by malice or in violation of statutory provisions of law. In the present case, there is no allegation on the side of the petitioner that the order impugned in the writ petition is in violation of statutory provision or it has been actuated by malice. In such view of the matter, this Court has got very limited scope to interfere in the subjective finding arrived at by the first respondent herein with regard to the likelihood of threat to the public order.

22.Article 25 of the Constitution of India is extracted as follows:

“25. Freedom of conscience and free profession, practice and propagation of religion: (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.



(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

***Explanation I:-** The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.*

23. The right to freedom of conscience and free profession, practice or propagation of religion is always subject to public order, morality and health and to the other provisions of part three of Constitution of India. Hence, the right to freedom of religion expressed by way of congregation in a Church is always subject to public order and the said constitutional rider is incorporated in Rule 4(3) of the Tamil Nadu Panchayat Building Rules 1997.



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24. In view of the above said facts, this Court is not in a position to entertain the present writ petition under Article 226 of Constitution of India and cannot substitute the opinion of the respondents 1 and 2 relating to the issue of public order in a particular hamlet. The first respondent has arrived at a subjective opinion based upon the concrete materials furnished by the revenue and police authorities after giving personal hearing to the writ petitioner.

25. In view of the above said discussion, the writ petition is devoid of any merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2022

Internet : Yes/No
Index : Yes/No
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To
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Pre-delivery order made in

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