



W.P(MD)No.24957 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2022

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P(MD)No.24957 of 2022

Shekar @ Sasi

...Petitioner

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Nagercoil,
Kanyakumari District.

2.The Deputy Superintendent of Police,
Colachel Sub Division,
Kanyakumari District.

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for records pertaining to the impugned order in Na.Ka.En. 14/Ka.Thu.Ka/Mike/Kula/2022, dated 13.10.2022 on the file of the Respondent No.2 and quash the same as illegal and consequently direct the Respondents 1 to 3 to grant permission to conduct "Pathukavali Festival" from 5.30 p.m. to 10.00 p.m. scheduled on 11.11.2022 to 13.11.2022 within the time stipulated by this Court.



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Mandamus directing the respondents herein to grant permission for conducting the Senthil & Karthick Ninaivu Kulu Kabadi Tournament programme on 21.10.2022 to 23.10.2022 situated at Periyasooriyur Gandhi Thidal, Thiruverumbur Taluk, Trichy District.

For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel
for Mr.J.Pandi Dorai

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order in Na.Ka.En.14/Ka.Thu.Ka/Mike/Kula/2022, dated 13.10.2022 on the file of the Respondent No.2 and quash the same as illegal, consequently direct the Respondents 1 to 3 to grant permission to conduct "Pathukavali Festival" from 5.30 p.m. to 10.00 p.m. scheduled on 11.11.2022 to 13.11.2022 within the time stipulated by this Court.

2.The learned Counsel for the Petitioner submitted that he had sought permission to conduct the programme of Thirupalli, which is celebrated every year as a religious function. During Covid lock down,



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they did not perform Thirupali. During which time, religious activities were not conducted any of the religious places. He further submits that the Petitioner gave representation to the Respondents 1 to 3 seeking permission to conduct our age old "Pathukavali Festival". The second Respondent has rejected the same by proceedings, dated 13.10.2022 stating that there will be a law and order problem. Therefore, they refused to grant permission. The learned Counsel for the Petitioner invited the attention of this Court to the proceedings of the second Respondent and also he invited the attention of this Court to the earlier order passed by the learned Single Judge of this Court, dated 16.08.2022 in different context regarding similar issues. He invited the attention of this Court in paragraph Nos.5 & 6 of the order of the learned Single Judge in W.P(MD)No.18554 of 2022, dated 16.08.2022 as follows:-

"5.Section 42-A of the Tamil Nadu District Police Act, 1859 which provides for the presence of police personnel in any public meeting or assembly or procession states that this requirement will not apply to any assembly or meeting of a purely religious character held in a recognized place of worship. Section 41 of the Chennai City Police Act which contains the power to regulate assemblies, meetings and processions in public places etc., in sub section 8 states that nothing in the Section shall apply to any assembly or meeting of a purely religious



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character held in a recognized place of worship. This provision was the subject matter of reference under Section 438 (2) of the old Cr.Pc before the Division Bench of the Madras High Court in AIR 1959 Mad 63 (C.N.Annadurai v. State). When the learned counsel appearing for the accused argued that the provision was discriminatory and violative of Article 14, the Hon'ble Division Bench held that the exemption granted to marriages, funerals and religious assemblies would constitute reasonable classification. The Hon'ble Division Bench held that religious meetings can be held without taking any permission at all.

6.Of course, the authorities cannot remain a silent spectator if there is breach of public tranquility. If threat to maintenance of law and order is imminent, then also the executive magistrate or the police are bound to intervene. So long as there is no such situation, the authorities have no role in the matter. The scope of this writ petition is confined to a festival that has been celebrated from time immemorial every year in a village. Since the writ prayer is for directing the authorities to grant permission, I hold that no such permission is required.”

3.Also he placed reliance on the Noise Pollution (Regulation and Control) Rules, 2000 and the Rule 5(3), which is as follows:-

"5(3)Notwithstanding any thing contained in sub-rule (2), the State Government may subject to such terms



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and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address system and the like during night hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year. The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative".

4.The learned Counsel for the Petitioner is also invited the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of ***Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*** reported in ***(1982) 1 SCC 71***. The relevant paragraphs are as follows:-

"30.It may be stated that the aforesaid view of the Madras High Court was preferred by the Privy Council to the contrary view of the Bombay High Court. In Manzur Hasan v. Muhammad Zaman and Ors the facts were that Shia Mahomedans in the town of Aurangabad, District Aligarh conducted Muharram a procession bearing religious emblems and pausing from time to time for the performance of "matam" (wailing). From time immemorial the procession performing "matam" had passed along a public street immediately behind a Sunni Mahomedan mosque; in and after 1916 the respondents (Sunnis) interfered to prevent "matam" near the mosque, as they alleged that it disturbed their devotions. The appellants (Shias) brought a suit



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for declaration of their rights to make short pauses behind the mosque for the performance of "matam" and for a permanent injunction against the Sunnis from interfering with their rights. The Judicial Committee upholding the Madras view and rejecting the Bombay view held that in India there is a right to conduct a religious procession with its appropriate observances through a public street so that it does not interfere with the ordinary use of the street by the public, and subject to lawful directions by the Magistrates and that a civil suit for declaration lies against those who interfere with a religious procession or its appropriate observances. These decisions show that legal rights should be regulated and not prohibited altogether for avoiding breach of peace or disturbance or public tranquillity.

31. In [Haji Mohammed Ismail v. Munshi Barakat Ali and Ors.](#) there was a dispute concerning the conduct of a prayer in a mosque, and there being an apprehension of breach of peace the Magistrate under Section 144 drew up a proceeding and eventually recorded an order that ."no man of either party will be allowed to read prayers in the mosque." The Court held that the order was mis-conceived; that the effect of the order was that no Mohammedan would be allowed to say his prayers in the mosque it was not justified under Section 144 and that the proper course was for the Magistrate to ascertain which party was in the wrong and was interfering unnecessarily with the legal exercise of the legal rights of the other party, and to bind down that party restraining them from committing any act which may lead to a breach of peace. (Emphasis supplied).

32. In Madhu Limaye's case (supra) this Court has also expressed the view that the key-note of the power in Section 144 is to free the society from menace of serious disturbances of a grave character and the section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health".



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5. In the light of the above submissions, the learned Counsel for the Petitioner submits that the rejection of the representation by the third respondent is illegal and seeks direction to set aside the same.

6. The learned Additional Public Prosecutor invited the attention of this Court to the copy of the representation enclosed in the typed set of papers, dated 06.10.2022. As per the representation, the Petitioner sought permission to conduct 'Thirupali' from 14.10.2022 to 16.10.2022. But the said date is expired and also the learned Additional Public Prosecutor submits the case in nature, he get appropriate orders from the Revenue Official concerned.

7. The learned Counsel for the Petitioner has also submitted that the function is going to be conducted only out of the premises.

8. The learned Additional Public Prosecutor submits that it is not a Church, it is only Gurusedi. Therefore, he objected.

9. Recording the submission of the learned Counsel for the Petitioner and the learned Additional Public Prosecutor, the Petitioner is



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directed to submit a fresh representation before the District Collector concerned. The District Collector, Kanyakumari, is directed to pass appropriate orders in the light of the reported Ruling **(1982) 1 SCC 71** cited by the learned Counsel for the Petitioner.

10. With the above directions, this Petition is disposed of.

No costs.

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Index :Yes/No
vsd

To

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- 3.The Inspector of Police,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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