



W.P.No.3182 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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St.Xaviers Church

Rep. by its Member of Church, S.Regis

S/o Soosai, No.3/193, North Colony Street

Sembiyakudi Village, Kulamanickam Post

Virakaalur via Ariyalur Taluk and District.

.. Petitioner

Vs

- 1 The Additional Chief Secretary to Government
Highway and Minor Ports Department
St. Fort George, Secretariat
Chennai - 600 009.
- 2 The District Collector
Office of Collectorate
Ariyalur.
- 3 The Divisional Engineer (Highway)
(Construction and Maintenance)
Ariyalur.
- 4 The Assistant Divisional Engineer (Highway)
(Construction and Maintenance)
Ariyalur.



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5 The Assistant Engineer (Highway)
(Construction and Maintenance)
Ariyalur.

6 Mariyanantham

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the 5th Respondent's issuance of notice in reference dated 09.01.2023 vide Ka.No. 115(4)/2022/U.Po.1 and quash the same by directing respondents 2 and 5 to suspend the removal of the flagpole of church.

For the Petitioner : Mr.J.Ram Kumar

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent Nos.1 to 5

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

St. Xavier's Church, represented by its member S.Regis, son of Soosai, a resident of No.3/193, North Colony Street, Sembiyakudi Village, Ariyalur Taluk, has filed this writ petition challenging the impugned notice dated 9.1.2023 issued by the fifth respondent , whereby the fifth respondent directed the petitioner to



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remove the flag post and the encroachment made on the road area, which is causing nuisance to the road users.

2. Firstly, learned counsel for the petitioner contended that the impugned notice directing to remove the flag post of the petitioner's church has been issued without giving any prior notice whatsoever to the petitioner. Secondly, the flag post of the petitioner's church is in existence prior to laying of the highway and the flag post in question is not causing any nuisance to the vehicular traffic.

3. The next plank of the argument of learned counsel for the petitioner is that since there is sufficient distance between Thirumalabadi-Pullambadi highway and the flag post, there is no need or necessity to remove the flag post in question. Further, one Mariyanantham, who has been arrayed as sixth respondent herein and native of the same area, has encroached beyond his own land and built up a house to cause disruption. Due to act committed by the sixth respondent, commotion was created during the celebration



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of festival. The sixth respondent is in the habit of creating such problems to many people in and around the town, as he is an influential person.

4. Lastly, learned counsel for the petitioner urged that since the respondent authorities failed to issue any prior notice and the fifth respondent has issued the impugned notice arbitrarily, the same is liable to be set aside.

5. Learned State Government Pleader appearing for respondents 1 to 5 submitted that the first contention of learned counsel for the petitioner that there was no prior notice given to the petitioner is absolutely wrong. He submitted that more than three times notices were given to the petitioner. In support of his submission, learned State Government Pleader has placed on record the written instructions of the Assistant Divisional Engineer (Highways) dated 8.2.2023 and submitted that the petitioner was served three prior notices on 29.9.2022, 10.10.2022 and 23.11.2022 indicating that the petitioner has put up the flag post



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illegally on the highway causing nuisance to the general public and, therefore, the same has to be removed.

6. Learned State Government Pleader further submitted that when action was initiated for removal of the flag post on 12.1.2023, a commotion erupted and a peace committee meeting was held on the same day at 4.00 P.M., in which the sixth respondent Mariyanantham belonging to Sembiyakudi and other villagers, including S.Regis (who has filed the writ petition), have participated. Therefore, the petitioner is very well aware of the process initiated by the highways for removal of the encroachment viz., flag post on the highway road in question.

7. On a perusal of the written instructions dated 8.2.2023 produced before this Court, it is seen that notices for removal of encroachment dated 29.9.2022, 10.10.2022 and 23.11.2022 were issued to the petitioner and pursuant thereto, peace committee meeting was also held on 12.1.2023 at 4.00 P.M., wherein the Assistant Divisional Engineer, Highways, Ariyalur, Special Sub-



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Inspector, Village Administrative Officer, Zonal Deputy Tahsildar and Revenue Inspector as "A" party and the affiant, namely S.Regis, and Velanganni, Arokiaraj, Sagayaraj, Arokiasamy as "B" party have participated.

8. The written instructions further make it clear that, in the peace committee meeting, an agreement was arrived at between the parties to the effect that "B" party shall remove the flag post on or before 30.01.2023 after consulting the Parish Priest. However, these facts have not been stated in the affidavit filed in support of the writ petition. Therefore, it is a clear case of non-disclosure of material facts. Thus, the petitioner has approached this Court with unclean hands by suppressing the prior notices issued to them and the proceedings of the peace committee meeting dated 12.1.2023 held qua the removal of the flag post in question.

9. That apart, when the flag post of the Church is on the highway causing disturbance to general public/vehicular traffic, it is the bounden duty of the highways authorities to remove the same.



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Further, no revenue record has been produced by the petitioner to show that the land on which the flag post is erected is their patta land. On the other hand, the petitioner has no legal right to raise any construction or erect a flag post on the highway land. Therefore, taking a serious note of the fact that the petitioner has not placed before this Court all relevant facts, but only those facts which were in their favour, while dismissing the writ petition, we are inclined to impose costs on the petitioner.

10. In the result, the writ petition is dismissed with costs assessed at Rs.10,000/- (Rupees Ten Thousand only) payable by the petitioner to the credit of Madras High Court Advocate Clerks' Welfare Association within a period of two weeks from the date of receipt of a copy of this order. Consequently, W.M.P.No.3240 of 2023 is closed.

(T.R., ACJ.) (D.B.C., J.)
09.02.2023

Index : No
Neutral Citation : No
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To:

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