



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.03.2023

Pronounced on : 09.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.4138 of 2023

and

WMP(MD)No.3960 of 2023

Shekar @ Sasi

... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District.
- 2.The Superintendent of Police,
Kanyakumari District.
- 3.The Deputy Superintendent of Polce,
Colachel Sub Division,
Kanyakumari District.
- 4.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

5.C.Mohan
(R5 suo motu impleaded vide
order dated 28.02.2023)

... Respondents



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Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for records pertaining to the impugned order in Pa.Mu.C3/401807/2022 dated 26.01.2023 on the file of the first respondent and quash the same as illegal and consequently direct the respondents 1 to 4 to grant permission to conduct “Pathukavali Festival” from 05.30 PM to 10.00 PM on a future date fixed by this Court.

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

For Respondents : Mr.M.Sidharthan,
Additional Government Pleader for R1

Mr.B.Thanga Aravindh
Government Advocate (Crl.side)
for R2 to R4

Mr.H.Velavadhas for R5

ORDER

Heard the learned counsel on either side.

2.The question that calls for consideration is whether the petitioner can be permitted to conduct the petition-mentioned festival. His application was rejected by the District Collector, Kanyakumari. The rejection order is put to challenge in this writ petition.



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3.It is pointed out that when the jurisdictional Deputy Superintendent of Police negated the plea and it was challenged in WP(MD)No.24957 of 2022, this Court vide order dated 08.11.2022 had permitted the petitioner to submit a fresh representation before the District Collector who was directed to pass appropriate order in the light of ***Gulam Abbas and ors v. State of U.P (1982) 1 SCC 71***. It is argued that the impugned order makes no reference to the said decision. Reliance is also placed on the order dated 16.08.2022 made in ***WP(MD)No.18554 of 2022 (P.Seeni v. the District Collector, Virudhunagar)*** in which this Court had held that for conducting religious meetings, there is no need to take permission from the authorities. The learned Senior Counsel wanted this Court to quash the impugned order and grant relief subject to appropriate terms and conditions.

4.I pointed out to the learned Senior Counsel that the petitioner was represented by Rev.Fr.George Ponnaiah before the District Collector, Kanyakumari who is accused of having delivered a hate speech against Hindus. Since the District is communally sensitive, I wondered if the presence of the said figure in a contentious event may further exacerbate the situation. Thereupon, the petitioner filed an undertaking affidavit



that Rev.Fr.George Ponnaiah would keep himself out of the event. The gesture shown by the petitioner did appeal to me and that is why, I reserved orders to consider if his request can be entertained.

5.Before I go into the issue, I must clarify that reliance on *Seeni* decision is misplaced. I had only held that traditional religious observances do not require official permission. I had in fact added that if there is possibility of breach of law and order or public order, the police authorities can always intervene. The case was about conducting an age old temple festival. If the petition mentioned event would also come under similar category, certainly, there is no need to obtain official permission. I take judicial notice of the fact that Santhanakoodu festivals are conducted by the Islamic community for more than a century. It is for such events, *Seeni* judgment will apply. The case on hand will not come under the said category. Kanyakumari is a communally sensitive area where demography has undergone a fundamental change. As per the census figures, the population of the Hindus in the said district has fallen below 50%. The District Administration as well as the police authorities therefore deny permission for construction of new religious structures whether it is temple or mosque or church. They also do not want to upset



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the status quo. This cannot be labelled as “play safe” approach. On the other hand, it is well grounded on field inputs. The impugned order does not infringe the individual rights of any person. One can continue to profess and practice the religion of one's choice. The authorities have only declined permission to conduct a public religious event at a site which has not been permitted to be used for such purposes.

6. There is also no merit in the contention that the District Collector has not taken note of the ratio laid down in ***Gulam Abbas v. State of U.P.*** In *Gulam Abbas*, it was held that the authority should ascertain who is having the legal right and come down on those who are interfering with the exercise of the right. The District Collector, Kanyakumari may not have explicitly culled out the ratio from *Gulam Abbas*. But he has clearly referred to the results of the civil litigation. The learned counsel appearing for the fifth respondent has filed a typed set of papers. It can be seen therefrom that the fifth respondent herein filed a representative suit in O.S No.28 of 1991 on the file of the District Munsif Court, Padmanabhapuram seeking permanent injunction restraining the Parish Priest of R.C Church of Mulagumoodu from constructing any church or making any construction in the suit property and for restraining the local



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body from granting any permission. Witnesses were examined on either side and documents were marked. After contest, the suit was decreed as prayed for on 31.07.1996. The aggrieved church filed A.S No.70 of 1997 before the Sub Court, Padmanabhapuram. Vide judgment and decree dated 31.12.2008, the judgment and decree passed by the trial court was confirmed and the appeal was dismissed. SA(MD)No.268 of 2009 was also dismissed on 14.08.2019. Thus, a decree is operating in favour of the fifth respondent and against the writ petitioner. If the District Collector had granted permission, that would have run counter to the decree passed by the trial court which was confirmed by the High Court. Since the petitioner has not shown the existence of a legal right, the question of applying Gulam Abbas does not arise at all.

7.In the building rules governing local bodies, whether it is panchayat or town panchayat or municipality, prior permission has to be obtained for putting up a religious structure. The expression “prior” is significant. One cannot put up a religious structure in defiance of the rule and thereafter seek regularization in the guise of permission. From the materials on record, one can conclude that the land was originally an agricultural land and that it was gifted in the name of the Parish Priest for



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putting up a church. Admittedly, no permission was granted by the District Collector to put up any religious construction. Therefore, the current existence of Kurusadi cannot confer legitimacy. If the Chapel had been in existence, say for more than fifty years, then it would be a different matter altogether. That is not the case here. The Kurusadi was put up without getting permission and in defiance of the statutory rules. Certain photographs have been shown. The structure is only a house and not a church.

8. These are matters in which the court has to necessarily go by the stand of the law enforcing authorities. In this case, the District Collector and the police authorities are of the view that the petition-mentioned event should not be allowed to be conducted. The operation of the decree of the civil court would also come in the way. This Court would not be justified in ignoring a binding civil court decree. The order impugned in this writ petition is a well considered one. The location of the site and the existence of temples in the vicinity and the consistent opposition to the petitioner's proposal for almost three decades and the registration of criminal cases and various other relevant aspects have been taken into account by the authority. There has been due application of mind. The impugned order does not call for any interference.



9.This writ petition stands dismissed. No costs. Connected

miscellaneous petition is closed.

09.03.2023

Index : Yes / No

Internet : Yes/ No

SKM

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G.R.SWAMINATHAN, J.

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