



W.P. (MD) No. 13341 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 13341 of 2015

R.Vijayendran

... Petitioner

-VS-

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Superintendent of Police,
Kanyakumari District,
Nagercoil.
- 3.The Revenue Divisional Officer,
Thuckalay Division,
Kanyakumari District.
- 4.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.
- 5.The Executive Officer,
Thirparappu Selection Grade Town Panchayat,
Thirparappu,
Kanyakumari District.
- 6.Paster Antony Micheal,
C/o.Paster Steepan,



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Door No.16-129A,
Alexanderpuram, Thumbakcodu,
Kulasekaram,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 5 not to allow any other religious worshipping places in and around Achaleeswarar Temple by adhering the clauses mentioned in the Justice Venugopal Commission Report followed by G.O. No.916, Public (Law & Order) Department dated 29.04.1986 based on the petitioner's representation dated 18.02.2015 within the period stipulated by this Court.

For Petitioner	:	Mr. T.Ramasamy
For R1 & R4	:	Mr. D.Gandhiraj Special Government Pleader
For R2	:	Ms. M.Aasha Government Advocate (Crl.Side)
For R6	:	Mr. K.Samidurai

ORDER

Heard Mr. T.Ramasamy, Learned Counsel appearing for the Petitioner, Mr. D.Gandhiraj, Learned Special Government Pleader appearing for the First to Fourth Respondents, Ms. M.Aasha, Learned Government Advocate (Criminal Side) appearing for the Second Respondent and Mr. K.Samidurai, Learned Counsel for the Sixth Respondent and perused the materials placed



on record, apart from the pleadings of the parties.

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2. It is the case of the Petitioner that he is a resident of Alexanderpuram, Thumbakcodu, Kulasekaram, Kanyakumari District, where Arulmighu Achaleeswarar Temple is in existence for more than 250 years, and that the Sixth Respondent, who has purchased a small piece of land close to that Temple and he has put up a room with asbestos sheet as a prayer hall and he is trying to convert people of Hindu religion in Thumbakcodu Village to Christianity using sound system, which is disturbing the smooth conduct of poojas in the said Temple. Though the Petitioner had made representation dated 18.02.2015 to the First to Fifth Respondents relying on G.O. Ms. No. 916, Public (Law and Order – B) Department dated 29.04.1986 issued by the Government of Tamil Nadu to take immediate action so as to prevent any law and order problem arising out of the said illegal activities of the Sixth Respondent, it has not evoked any response, which has necessitated the filing of this Writ Petition.



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3. The First Respondent in his Counter-Affidavit filed in February 2023

has stated as follows:-

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4. I submit that the Writ Petitioner has making allegation that the Fifth Respondent herein has got permission for constructing have in Alexanderpuram, Thumbakcodu, Kulasekram, Subsequently along with the house, a Christian Prayer Hall was constructed without getting proper permission from the District Administration.

5. I submit that after filing the Writ Petition made complaint to the Fourth Respondent Tahsildar and the Fifth Respondent Executive Officer regarding the conducting of prayer in Door No. 16/129A at Alexanderpuram, Thumbacode.

6. I submit that the Fifth Respondent Executive Officer, Thirparappu Town Panchayat has submitted the report stating that the Writ Petitioner namely Antony Micheal is having one house in that Village Alexanderpuram within the limit of the Thirparappu Town Panchayat i.e. Door No. 16/129A.

7. I further submit that the said Sixth Respondent obtained only permission for the house alone and not for any prayer hall



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4. The Second Respondent in the Counter-Affidavit dated 08.09.2015 has deposited as follows:-



3. It is submitted that the Sixth Respondent is residing in the house bearing Door No. 16-129A in Survey No. 397/2 at Alexanderpuram, Thumbacode-B Village, Kalkulam Taluk within Kulasekaram Police Station Limit. The Sixth Respondent has obtained permission No. 9/2003 on 24.04.2003 from Thirparappu Panchayat to build this house. The Sixth Respondent converted his house into a Pentecostal prayer hall and conducted prayers by inviting his supporters. So the Hindu from of Kulasekharam area strongly objected the action of the Sixth Respondent and lodged a complaint petition at Kulasekaram Police Station requesting to stop the unlawful conduct of Pentecostal prayers. The Inspector of Police, Kulasekharam circle caused enquiries and warned the Sixth Respondent as to not to conduct such Christian prayers in the residential house without proper permission from the district administrative authorities. It is also true that one “Yatchiamman Temple” and another “Atchleeswarar Temple” are located at a distance of 100 feet and 200 feet away respectively from the house of the Sixth Respondent. If any permission is granted to



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5. Though it is claimed by the Sixth Respondent in his Counter-Affidavit dated 24.02.2023 that he has obtained planning permission for the building where he is said to be conducting prayers, there is nothing to show that the requisite 'no objection' certificate from the District Collector has been obtained under Rule 4(3) of the Tamil Nadu Panchayat Building Rules, 1997, which reads as follows:-

4. Application for approval of sites for buildings and huts:-

....

(3) No site shall 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.

....

It has been brought to notice that Rule 74 of the Tamil Nadu Combined Development and Building Rules, 2019, has repealed the Tamil Nadu



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Panchayat Building Rules, 1997, which has come into force with effect from 04.02.2019, after the filing of this Writ Petition on 27.07.2015, and that clause (6) of Annexure-XVII forming part of Rule 19 of the Tamil Nadu Combined Development and Building Rules, 2019, provides as follows:-

Development Prohibited or Restricted areas

....

(6) Construction of religious buildings

The competent authority shall not entertain any building application for construction of buildings in relation to any religious institution unless such application is accompanied with a No Objection Certificate obtained from the District Collector concerned.

Explanation- For the purpose of this rule, the religious institution shall mean any temple, math, mosque, church or any other place of worship, which is dedicated for the benefit of or used as of right, by the public as a place of religious worship.



In other words, it is not in dispute that the requirement in law to obtain 'no objection' certificate from the District Collector for use of any building for public worship still continues to be in force as on date.

6. At this juncture, reference must be made to the decision of the Hon'ble Supreme Court of India in ***Church of God (Full Gospel) in India -vs- K.K.R.Majestic Colony Welfare Association*** [(2000) 7 SCC 282], where after considering the relevant statutory provisions under the Madras City Police Act, 1888, and the Madras Town Nuisances Act, 1889, and the Noise Pollution (Regulations and Control) Rules, 2000, framed by the Central Government under the provisions of the Environment (Protection) Act, 1986, read with Rule 5 of the Environment (Protection) Rules, 1986, it has been observed as follows:-



13. In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to “public order, morality and health” are not required to be dealt with in detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observations made by the Constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in ***Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj -vs- State of Gujarat*** [(1975) 1 SCC 11]. After considering the various contentions, the Court observed that: (SCC p. 20, para 30)

“No rights in an organized society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right



7. It is equally settled law that though right to freedom of religion and manage religious affairs on any denomination are undoubtedly fundamental rights under Articles 25 and 26 of the Constitution, the same are subject to public order, morality and health, which would not prevent the State from acting in appropriate manner in larger public interest as held by the Hon'ble Supreme Court of India in *Adi Saiva Sivachariyargal Nala Sangam -vs- State of Tamil Nadu* [(2016) 2 SCC 725].

8. In view of the foregoing discussion, the conduct of public worship by prayer meetings causing disturbance to the neighbourhood by the Sixth Respondent, cannot be permitted. As its corollary, the Sixth Respondent is bound to ensure while conducting public worship in his building that no hindrance or disturbance is caused to the general public, and for that purpose, it would be incumbent upon the concerned authorities on the basis of subjective satisfaction with concrete evidence in the event of any nuisance being caused due to noise pollution or for violation of any statutory provisions or for any *bonafide* reasons, to take necessary action under the provisions of the relevant statutes in accordance with law.



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9. In the upshot, the Writ Petition is ordered on the aforesaid terms. No costs.

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Index : Yes/No

Internet : Yes/No

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Copy to

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P.D.AUDIKESAVALU,J.

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