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W.P..No.18325/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.18325 OF 2021

AND

W.M.P. NOS. 19537 & 19538 OF 2021

Mohammed Noorullah Sherif

.. Petitioner

- Vs -

Brigadier
Station Commander
Station Head Quarters
PIN (Army) 900432, Fort St. George
Chennai 600 009.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records of the respondent ending with 4022/Dargha/A31 dated 29.6.2021 made on the representation dated 19.10.2020 and quash the same.

For Petitioner : Mr. N.A.Nissar Ahmed, SC
For I.Kowser Nissar



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For Respondent : Mr. R.Prasath, ACGSC

ORDER

Assailing the order passed by the respondent in and by which the mosque, which is present within the Cantonment area has been delineated strictly for the purpose of men connected with Uniformed Service by barring it for worship by the general public, the present petition has been filed.

2. W.M.P. No.19537/2021 has been filed praying to dispense with the production of the impugned proceedings of the respondent dated 29.6.2021 made in 4022/Dargha/Q31 on the representation dated 19.10.2020 and being satisfied with the reasons shown therein, this miscellaneous petition is ordered as prayed for.

3. It is the case of the petitioner that the Masjid E Aalishaan mosque, situate in T.S. No.1449/1, Usman Lane (Munro Lane), St.Thomas Mount, Chennai – 16, is a wakf notified under the Wakf Act published in the



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Government Gazette on 17.12.1958 which is used for worship by the defence personnel as also the civilian muslims since 1877. The land on which the mosque is situate is classified as A-1 Defence Land and the maintenance of the mosque premises lies with the regimental committee of the Officers Training Academy and the maintenance of the mosque lies with the Managing Committee of the mosque.

4. It is the further averment of the petitioner that the petitioner filed W.P. No.12149/1998 seeking a mandamus to forbear the respondent herein and others from interfering with the petitioner's land and putting up construction of a compound wall, which petition was allowed on 21.4.08 against which W.A. No.1208/08 was preferred in which the Division Bench of this Court permitted construction of a boundary wall around the mosque and issued a slew of directions in relation to the worship to be carried out in the mosque, the relevant portion of which is as under :-

"5. We have heard the learned senior counsel appearing on behalf of the cantonment board and the learned senior



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appearing for the Union of India and the respondent-mosque and also perused the record. In view of the fact that the land in question is classified as A-1 defence land and the management is under the local military authorities and that the maintenance of the mosque premises lies with the regimental committee of the Officers Training Academy and the appellant has agreed to construct a boundary wall upto a height of three feet, if so required and that the aforesaid fact has been accepted by the learned counsel for the mosque, we are of the view that in public interest, in the interest of the military and Muslim community in general, the following directions will suffice:-

1) The appellant, including the competent authority of the cantonment board/Local Military Authority is allowed six months time to construct a boundary wall, minimum three feet high, around the mosque. It will be open to the cantonment board/Local Military Authority to construct a pucca road in front of the mosque by extending the existing road from East to West.

2) The cantonment board/Local Military Authority and its competent authority will maintain the boundary wall, premises of the mosque; but so far as



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the mosque is concerned, the management will maintain the mosque.

3) The cantonment board/Local Military Authority and its authorities should open one of the gate at 4.30 a.m., everyday, for Muslim community (followers of Islam) to offer nawaz at 5.00 a.m. The front gate of the mosque should be closed by 9.00 p.m., everyday, except during the period of Ramzan when it should be kept open upto 10.30 p.m.

4) The respondent mosque, its management, its followers, who offer nawaz within the mosque are prohibited from taking any vehicle or other carrier inside the premises of the mosque without the prior permission of the cantonment board/Local Military Authorities and in case of disabled persons, the competent authority of the cantonment board/Local Military Authority may provide wheel chairs to carry disabled persons inside the mosque.

5) The order is passed in the interest of Muslim community, but in case of emergency, if any direction is given by superior authority of Indian Army or Union of India, it will be open to the cantonment board to make appropriate changes as per the emergent situation and, thereafter, inform the matter to the



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court, if any objection is raised by any party. Further, we make it clear that the management of the mosque will co-operate with the appellant in case of emergency need within the mosque as the land belongs to the Army and for security and defence of the country.

6) The relevant portion of the key plan/map showing the mosque within the area, as produced by the appellant-cantonment board is annexed as 'Annexure – A'."

5. It is the further averment of the petitioner that due to COVID-19 Pandemic, prayers were not permitted inside the mosque since March, 2020, which came to be relaxed on 30.08.2020 and vide proceedings dated 15.9.2020, the respondent accorded permission for opening the mosque for the purpose of prayer subject to restrictions imposed by the State/Central Government. However, the mosque lock was not allowed to be opened inspite of undertaking to comply with all the restrictions imposed by the Government.



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6. It is the further averment of the petitioner that vide letter dated 19.10.2020, request was made to open the lock of the mosque, which was not considered, which resulted in the filing of W.P. No.18630/2020 and the said writ petition was disposed of directing the respondent to consider the representation of the petitioner dated 19.10.2020 and pursuant to the order, by the impugned order dated 29.06.2021, the representation of the petitioner was rejected holding that the place is within the military area and not for use of outsiders and non-military persons. It is the further averment of the petitioner that the impugned order is in gross violation of the orders of this Court in WA No.1208/2008 and, therefore, aggrieved by the said order, the present writ petition has come to be filed.

7. Learned senior counsel appearing for the petitioner submitted that the impugned order passed by the respondent is in gross violation of WA No.1208/2008, wherein the Division Bench of this Court had permitted the petitioner to use the mosque for offering prayers. Without the said order being modified in any manner by a higher judicial forum, the closure of the



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mosque during the pandemic period cannot be continued and once the restrictions are lifted, the mosque ought to have been opened for the use of the petitioner. However, on wrong premise, the impugned order had come to be passed. It is the further submission of the learned senior counsel that the closure of the mosque during pandemic period cannot be allowed to continue once the restrictions are lifted post-covid period as the order of the Division Bench would get enured. However, the impugned order had come to be passed without proper reference to the order passed by the Division Bench and, therefore, the impugned order deserves to be set aside.

8. Per contra, learned standing counsel appearing for the respondent submitted that the order in W.A. No.1208/08 had come to be passed not on merits, but on the religious sentiments of the community so as to permit them to offer their prayers. It is the further submission of the learned standing counsel that permitting the petitioners and other muslim fraternity causes grave security concerns and after the pandemic, the respondent had



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thought it fit to pass the order permitting worship only to the members of the armed forces.

9. It is the further submission of the learned standing counsel that even in the earlier round of litigation it has been recorded that the mosque is within the military cantonment area and that the civilians had been allowed to enter and offer nawaz and only considering the religious sentiments, in the earlier writ appeal, the respondent had permitted the members of the muslim community to offer prayers. However, the need for securing the mosque for security purposes and also prohibiting the members from laying a claim for greater property, the impugned order had come to be passed, which does not warrant any interference at the hands of this Court.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the order passed by the Division Bench of this Court in W.A. No.1208/2008.



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11. To appreciate the stand of either side, it would be just and necessary to refer to the relevant portion of the order passed by the Division Bench in W.A. No.1208/08, dated 27.04.2009, wherein the following observation has been made :-

“4. Learned senior counsel appearing on behalf of the respondent-mosque, relying on the sketch produced by the cantonment board submitted that a road in between the army quarters, which goes through East to West could be extended even upto the mosque premises, i.e., in front side of the mosque and they be allowed to construct a boundary wall surrounding the rest of the portion.

An affidavit has been filed by the appellant giving all the details taking specific plea that the mosque is situate in the defence land classified as A-1 defence land under the management of the local military authorities. The maintenance of the mosque premises lies within the regimental committee of Officers Training Academy and the boundary wall upto a height of three feet, if requierd, to be constructed and maintained by them, i.e., local military authorities. This has not been disputed by the respondent mosque or their counsel. In fact, learned senior counsel for the



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respondent mosque accepted that they agree for construction of three feet height boundary wall by the regimental committee of Officers Training Academy, but it was submitted that the main gate, which generally opens at 6.00 a.m., should be allowed to be opened at 4.30 a.m., so that the Muslim community may offer nawaz in the early morning at 5.00 a.m.

5. We have heard the learned senior counsel appearing on behalf of the cantonment board and the learned senior appearing for the Union of India and the respondent-mosque and also perused the record. In view of the fact that the land in question is classified as A-1 defence land and the management is under the local military authorities and that the maintenance of the mosque premises lies with the regimental committee of the Officers Training Academy and the appellant has agreed to construct a boundary wall upto a height of three feet, if so required and that the aforesaid fact has been accepted by the learned counsel for the mosque.....”

12. From the above order passed by the Division Bench, it is implicitly clear that the land on which the mosque is built belongs to the military authorities and to give respect to the religious sentiments of the Muslim community, the Muslim persons were allowed to enter into the cantonment



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area and offer prayers at the mosque. Further, the right and title with regard to the property has not been decided by the civil court, nor any plea was made before the civil court. The said fact has also been accepted by the petitioner.

13. When there is a clear finding by the Division Bench that the mosque is situate in a cantonment area belonging to the respondent and only on religious sentiments, the Division Bench had permitted the utilisation of mosque by civilians to offer prayers, which stood discontinued during the period of the COVID-19 pandemic, if the respondent has passed the impugned order not to permit civilians to offer prayers in the mosque, which is situate in the cantonment area, the said order cannot be said to be arbitrary, perverse or unreasonable.

14. Further, in the impugned order, the following have come to the notice of the respondent :-



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"5. The mosque is located close to the Junior Commissioned Officers/Other Ranks made accommodation. Prior to restrictions on outsider's movement in the premises of the mosque, unmindful of the COVID-19 situation outside visitors/trespassers use to roam around the residential area which is not acceptable. In the past it is observed that vehicles of unauthorised people are found plying in the residential area on the pretext of visiting the mosque, which causes serious threat and intrusion into the defence area.

** * * * **

11. Army is an apolitical organization with a secular fabric. The men are insulated from the normal public in a secured environment where they practice the military way of disciplined life. These religious places of worship are specially maintained by the designated units/establishments for their men, officers, trainee cadets, civilian staffs, etc. These religious institutions are not for outsiders or for non-military persons from the neighbourhood to visit routinely as a place of pilgrimage/worship. The intrusion of outsiders in the confines of military area is likely to compromise on the security and will have debilitating effect on the morale of the troops.

12. It is also see that small request or humanitarian gesture is quoted as a right and large dispensation are sought. Request for place for burial and other demands from time to



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time from the committee are leading to infructuous correspondence with this office. It is thus seen that in the garb of offering prayers at mosque, a case is also being created to lay claim on greater property, which needs to be put to an end immediately.”

15. From the above reasons which have been given in the impugned order, it is patently clear that deep thought has gone into the matter while arriving at a decision to pass the order. Merely on guided sentiments, this Court cannot come to the rescue of the petitioner, as acceding to the request of the petitioner would not only jeopardize the safety and security of the other citizens in the area, but the morale of the military would also be brought down and there would arise a situation, where even a small security lapse could lead to acts of catastrophic proportions.

16. When certain apprehensions, which are made out by materials, are pointed out in the impugned order, this Court, merely on the basis of religious sentiments, cannot allow the petitioner and members of his



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community to have ingress and egress to the mosque, more so, when the said mosque is in a cantonment area and is purely within the control of the respondent. The respondent has thought it fit to pass the impugned order after due deliberation, which cannot be said to be erroneous and security of the area and also of the country being of paramount importance, the said order cannot be said to be erroneous and, therefore, the said order being within the four corners of the order passed by the Division Bench, which was an act of benevolence extended to the petitioner by the Division Bench and not on merits, the petitioner cannot seek the benevolence to continue further in the wake of the apprehensions raised by the respondent. Therefore, no interference is warranted with the order impugned herein and this writ petition deserves to be dismissed.

17. Accordingly, for the reasons aforesaid, there are no merits in the present writ petition and the same is dismissed. Consequently, WMP No.19538/2021 is also dismissed. There shall be no order as to costs.



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Index : Yes / No

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To

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Station Commander
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Chennai 600 009.



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M.DHANDAPANI, J.

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