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W.P.No.24101 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.24101 of 2019

and W.M.P.Nos.23903, 23904 and 27396 of 2019

S.Gunasekaran

.. Petitioner

Vs

- 1.The National Commission for Scheduled Caste,
rep. by its Chairman,
5th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003.
- 2.Hon'ble Mr.Murugan,
M.L., (International Law & Organs) &
Ph.D., (Human Rights and Department of Studies)
Vice-Chairman,
5th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003.
- 3.The National Commission for Scheduled Caste,
State Office, rep. by its Director,
Sastri Bhavan-II, Nungambakkam,
Chennai.



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4.The District Collector,
Collectorate, Thirupur & District.

5.The Tahsildar,
Tirupur South Taluk Office,
Tirupur & District.

6.The Assistant Commissioner,
Hindu Religious & Endowment Board,
Tirupur & District.

7.The Executive Officer,
A/m. Kailasanathar Kovil,
Alagumalai & (Po), Tirupur South Taluk,
Tirupur & District.

8.Chinnasamy Goundar

9.Alagumalai Arulmighu Kailasa Nathar Prathosa
Vazhipattu Mandram,
rep. by its Secretary N.Boopathy Raj,
No.4/464, Kulavakattu Thottam,
Alagumalai Vidyalaya School Backside,
Aalampalayam, Kandiyankovil Post,
Tiruppur South Taluk,
Tiruppur District-641 665.

.. Respondents

[Respondent No.9 impleaded vide order dated 22.11.2022
made in WMP. No.29466 of 2022]

Prayer : Petition filed under Article 226 of the Constitution of India
seeking issuance of a writ of certiorarified mandamus and called for the
records pertaining ultra recommendation dated Nil given by the 2nd



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respondent and followed by the impugned order F.No.23/39/2018 Res dated 17.12.2018 passed by the 3rd respondent and it followed the 4th respondent passed an order, Na.Ka. 16584/2018/Ka.3 dated --.12.2018 and to quash the same and consequently remove the “Untouchability fence” entirely and permanently erected by the 6th and 7th respondents and also retrieve back the lands and buildings constructed by the 8th respondent in Panchami Lands” in S.No.31/1B2 (Old S.No.31/1B) & Patta No.1338, S.No.31/1B 3-E (31/1B3) & Patta No.1357 (8.50 Ares = 20 cents) and Patta No.1337.

For Petitioner	: Mr.P.Vijendran
For Respondents	: Mr.A.Edwin Prabakar State Government Pleader for respondent Nos.4 and 5
	: Mr.S.Ravichandran Addl. G.P. (HR & CE) for respondent No.6
	: Ms.G.Sumitra for respondent No.7
	: Mr.A.Akshay Kumar for respondent No.8
	: Mr.S.Karthikei Balan for respondent No.9



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ORDER

(Order of the Court was made
by SENTHILKUMAR RAMAMOORTHY,J.)

The petition is directed against the recommendations of the National Commission for Schedule Castes, Chennai, dated 17.12.2018. The petitioner also seeks consequential relief of removal of the fence erected by the sixth and seventh respondents in the lands bearing Survey No.31/1B2 (Old S.No.31/1B) and Survey No.31/1B 3-E (31/1B3).

2. The petitioner asserts that residents of the villages adjoining Alagumalai Eswaran temple had access through the temple earlier and that such access has been impeded by constructing a fence/gate.

3. Learned counsel for the petitioner submits that this has the effect of preventing free movement and is discriminatory. He relies upon Article



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338 of the Constitution of India and, in particular, clause 9 thereof to contend that the Union and every State Government is under an obligation to consult the National Commission for Scheduled Castes on all major policy matters affecting the Scheduled Castes. He also contends that the decision to erect the fence/gate was taken without consulting the local panchayat.

4. Learned counsel for respondent No.7 relied upon several photographs of the temple, the temple chariots and the mud and tar roads to point out that access is available to all the villagers through the tar road.

5. Learned counsel for respondent No.9 submits that the gate/fence was put up pursuant to the recommendations of the National Commission for Scheduled Castes. He also submits that the gate is kept open throughout the day and that the same is closed only after 7.00 p.m., after the temple closes. He submits that the measure has been taken to protect the temple from miscreants and anti-social elements. The said statement



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is recorded as an undertaking to the Court. Learned counsel for respondent No.9 also points out that such statement has also been made in paragraph 9 of the counter-affidavit filed by respondent No.9.

6. In response to this submission, learned counsel for the petitioner states that only part of the gate is opened and that free access is not available.

7. Learned counsel for respondent No.9 also points out that substantially similar relief was requested for by one S.Kandasamy in W.P.No.3629 of 2019 [*S.Kandasamy v. The District Collector, Tirupur District, Tirupur and others*] and that the said writ petition was closed on 09.11.2021 after taking note of the recommendations of the National Commission for Scheduled Castes.

8. In light of the above submissions, the question that arises for consideration is whether a case is made out to quash the



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recommendations of the National Commission for Scheduled Castes.

9. In relevant part, the report and recommendations of the National Commission for Scheduled Castes are as under:

“NCSC visit

That Hon'ble Vice Chairman Shri. L.Murugan, NCSC Head quarters, New Delhi had visited Alagumalai Village, Tiruppur District on 23.11.2018 to inspect the alleged discrimination against SCs by blocking the pathway in the village. Shri.S.Liater, Senior Investigator and Shri.P.Ramasamy, Consultant of NCSC State Office, Chennai accompanied the Hon'ble Vice Chairman during the visit. The District Collector, the Superintendent of Police, Officials of HR & CE Department and other Senior Officials of Tiruppur District were also present in the village.

The Hon'ble Vice Chairman had interacted with the village of SCs & SC converts. The Hon'ble Vice Chairman empirically now that the complaints are no more SCs as they already converted in Christianity. The SCs converts of the village informed that there are more than 100 converted SC families residing on either side of Kailasanathar Temple in Alagumalai. They are residing in front of the temple for decades and use this way to reach Alagumalai – Avinasipalayam Road. However, recently, the HR & CE Department built a fence around the temple. The



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fence prevents them from using the footpath. The District Administration held a Peace Committee Meeting thereafter a part of the fence was removed. Another group of (non converted) SCs of the village alleged that the Temple and the Temple cars are being damaged by the miscreant by throwing liquor bottles and meat garbage waste inside the pathway in the temple until there were not maintained properly. The Hon'ble Vice Chairman ascertained from the Assistant Commissioner, HR & CE Department, Tiruppur District that although the temple land and its surrounding areas are classified as "Grama Natham" the surrounding temple areas are under the maintenance of HR & CE Department as per various Court orders. Therefore, the Hon'ble Vice Chairman directed the HR & CE Officials and the District Administration to ensure the sanctity of the Temple and Temple cars. Hence, protection needs to be arranged.

SCSC RECOMMENDATIONS

The Hon'ble Vice Chairman heard grievances of both sides and held discussion with the District Collector, the Superintendent of Police and other Senior Officials of Tiruppur District after which, the Hon'ble Vice Chairman observed that:

- 1. The question of 'untouchability fence' as alleged by the portion of SCs converts are ruled out as the complainant neither go to Hindu Temple for worship nor they were hopped on any other public utility.*
- 2. In order to safeguard the sanctity of the Temple Cars,*



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the general Public including the complainants have to take steps to protect the Cars from miscreants.

3. The Temple authorities and the District Administration should ensure that protecting the sanctity of the temple from miscreants by preventing the activities like throwing liquor bottles and other meat waste garbage inside the pathway to the temple.

4. As per the Court observation the Grama Natham land in the temple and surrounding areas should be protected by the Hindu Religious Charitable & Endowment Board and the District Administration.

5. Therefore, the Hon'ble Vice Chairman, NCSC Head quarters advocated the District Administration to put a sliding gate on the present open area where the fence was removed (17 mtrs) so as to close the gate in the night hours to protect the unwanted elements through watch and ward staff.

The District Administration is directed that the compliance report may be furnished in 15 days time."

10. From the above recommendations, it appears that the installation of a gate was recommended primarily to protect the temple from miscreants, especially at night. Respondent No.9 has stated categorically that the gate is open until about 7.00 p.m. In view of the



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said statement, it cannot be said that access has been impeded, as alleged by the petitioner. The closure of the gate after 7.00 p.m. appears to be a safety measure to prevent miscreants from causing nuisance or damaging temple property, which appears to be reasonable. No case is made out by the petitioner that access is being denied on grounds of caste, creed or otherwise. Consequently, we see no reason to interfere with the impugned recommendations. In this case, we also note that the action has been taken after consulting the National Commission for Scheduled Castes. Therefore, it cannot be said that Article 338 of the Constitution of India, which was relied upon by learned counsel for the petitioner, was contravened.

11. The writ petition is disposed of on the above terms without any order as to costs. Consequently, all connected miscellaneous petitions are closed.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY, J.)

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Index : Yes/No
NC : Yes/No
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AND
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