



WP(MD)No.11127 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2024
PRONOUNCED ON: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.11127 of 2024 and

WMP(MD)NOs.9909 & 9910 of 2024

Arulmighu Devi Sri Muthaaramman Thirukovil and
Sudalaimaadaswami Kovil Hindu
Nadar Samuthaya Vakai Trust,
Sarakkalvilai represented by its President,
M.Baskar

... Petitioner

Vs.

1.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

2.The District Collector,
Kanyakumari District,
Nagercoil.

3.The Inspector of Police,
Kottar Police Station,
Kottar, Nagercoil,
Kanyakumari District.

4.The Tahsildar,
Agastheeswaram Taluk,
Kanyakumari District.

5.Anil Kumar
6.R.Sathiya Rooban

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorafified Mandamus calling for records related to the impugned proceedings of the Tahsildar, Agasteeswaram Taluk dated 04.05.2024 in C.No. 6210/2023 and quash the same and consequently direct the respondent police to provide adequate police protection for the annual Arulmighu Devi Shri Mutharamman Thirukoil Chitirai Kodai Vizha to be celebrated on any four days to be determined by this Court in the light of their representations dated 09.04.2024.

For Petitioner : Mr.N.Dilip Kumar

For Respondents: Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor
for R1 to R3

: Mr.P.T.Thiraviam

Government Advocate for R4

: Mr.J.Barathan for R6

: No appearance for R5

ORDER

The petitioner claims to be the President of Sri Aulmigu Devi Sri Mutharamman Thirukovil and Sudalaimaadaswami Kovil Hindu Nadar Samuthaya Vakai Trust has filed this writ petition challenging the orders of the Tahsildar, Agasteeswaram / 4th respondent permitting the 6th respondent to conduct chithirai festival in Arulmigu Mutharamman Thirukovil and Sudalaimaadaswami Kovil.



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2.The petitioner with a similar request for conducting festival in the above said temples had already filed a writ petition in WP(MD)No.28155 of 2023 on 27.11.2023. In the meantime the 6th respondent herein filed a writ petition in WP(MD)No.27922 of 2023 in the month of March 2023 seeking police protection for conducting karthigai festival in the temple. Since both writ petitions were filed for the same relief for conducting karthigai kodai festival, this court heard both writ petitions together and dismissed those writ petitions as infructuous by order dated 30.04.2024 and the same is extracted as under:

"These writ petitions have been filed for conducting a festival during the year 2023.

2.The petitioners in both the petitions are rival claimants, claiming right for conducting temple festival. The prayer sought for in these writ petitions have become infructuous, since the period is already over.

3.Hence, these writ petitions are dismissed as infructuous. The petitioners in both the writ petitions have to work out their remedy before the civil forum or before the HR and CE Department, as to their entitlement in conducting the festival. There shall be no order as to costs."



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3. In these circumstances the petitioner herein has made a request to the Inspector of Police, Kottar Police Station / 3rd respondent on 03.05.2024 seeking police protection for conducting chithirai festival in Arulmigu Mutharamman and Sudalaimadasamy Temples. This request of the petitioner was rejected by the Inspector of Police by order dated 03.05.2024 by referring to the earlier orders of this Court in WP(MD)Nos.28155 and 27922 of 2023, dated 30.04.2024. This rejection order dated 03.05.2024 was served on the petitioner on 03.05.2024 at about 9.37pm.

4. While so, on the same day, the 6th respondent has made a similar request seeking police protection for conducting festival on 08.5.2024 and on 09.05.2024 in the subject temples. This request of the 6th respondent alone was referred to the Tahsildar, Agasteeswaram / the 4th respondent on 03.05.2024 itself, the day on which the petitioner's similar request was rejected. Based on this request of the Inspector of Police dated 03.05.2024, the Tahsildar / 4th respondent herein has conducted a peace committee meeting on 04.05.2024 and a decision has been taken in the peace committee



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meeting by the Tahsildar to permit the 6th respondent to conduct the chithirai festival on 07.05.2024 and 08.05.2024. The Tahsildar has also directed the Inspector, Hindu Religious and Charitable Endowments Department to supervise the temple festival. Challenging the same this writ petition has been filed.

5.This Court has entertained this writ petition in the vacation court on 08.05.2024 and has granted an order of interim stay and this Court has also directed the Tahsildar / 4th respondent to be present before this Court. However on 19.06.2024 when the matter was taken up for hearing, neither the Tahsildar was present nor had he filed any counter affidavit. Considering the manner in which the order has been passed by the Tahsildar, superseding the order dated 30.04.2024 passed by this Court in WP(MD)Nos.28155 and 27922 of 2023, this Court has issued a bailable warrant to him. Thereafter the Tahsildar appeared before this Court and has filed a counter affidavit stating that 6th respondent is in the administration of the temple and he only conducted festival in the year 2019. He has also stated that on 04.05.2024 both groups were present before him and the entire village people have stated before him that the 6th respondent shall



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conduct the chithirai festival. Therefore, he has passed the impugned order permitting the 6th respondent to conduct the chithirai festival, since the majority of the people were supporting the 6th respondent.

6.This Court has also verified with the learned Additional Advocate General, who was present before this Court as to how these peace committee proceedings are conducted. Whether the Tahsildar is having powers to conduct such peace committee meetings, if so, under what provisions of law? The learned Additional Advocate General, who appeared on 27.06.2024, did not appear in the subsequent hearings. The learned Government Advocate, who appears in this case submits that the District Collector has addressed this issue to the Secretary, Personal and Administrative Reforms Department and therefore it is for the P& AR Department has to take a call on this issue.

7.Mr.N.Dilip Kumar, learned Counsel appearing for the petitioner submits that these Sri Aulmigu Devi Sri Mutharamman temple and Sudalaimaadaswami temple are 150 years old temples,



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belonging to the entire village. The temples are also having several own properties and the temples were administered by the village committee. He further submits that in the year 2018, a trust was formed in the name of Sri Aulmigu Devi Sri Mutharamman Thirukovil and Sudalaimaadaswami Kovil Hindu Nadar Samuthaya Vakai Trust, Sarakkalvilai and it was registered as 4/43/2019 before the Sub Registrar, Kanyakumari on 22.02.2019. The 6th respondent had made an attempt to cancel this trust deed by filing an application but the same was rejected by the District Registrar, Kanyakumari.

8.The learned Counsel further submits that in the year 2019 there was a law and order problem in connection with the administration of the above temples and in this regard two criminal cases were registered in Crime Nos.186 and 187 of 2019. Both cases were charge sheeted in STC No.507 of 2019 and in C.C.No.366 of 2021 respectively and are pending before the learned Judicial Magistrate No.II, Nagercoil. In the year 2023 a similar problem arose and both groups have approached this Court seeking police protection to conduct karthigai kodai festival in WP(MD)Nos.28155 and 27922 of 2023. However both these



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petitions were dismissed by this Court by order dated 30.04.2024.

Both groups were directed to work out their remedy before the appropriate civil court or before the HR and CE Department. While so, the Tahsildar has passed this impugned order under the guise of peace committee meeting, circumventing the earlier orders of this Court dated 30.04.2024 passed in WP(MD)Nos.28155 and 27922 of 2023.

9.The learned Government Advocate submits that the majority of the villagers have supported the 6th respondent and therefore, permission was given to the 6th respondent to conduct the festival.

10.The learned Counsel for the 6th respondent fairly submits that the Tahsildar is not having powers to pass the impugned order. However, the learned Counsel submits that to give quietus to this issue, this Court may order for an appointment of a retired District Judge to conduct the election in the village for the Village Committee.

11.This Court considered the rival submissions made and also perused the materials placed on record.



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12. The decision taken by the Tahsildar, Agastheeswaram over a Temple festival is the subject matter of this writ petition. Two issues are involved in this writ petition. One is with regard to the very power / authority of a Tahsildar in conducting a peace committee meeting. The other issue is regarding the conduct of the Tahsildar in taking decisions over the affairs of the Temple, interfering with the administrative powers of the HR & CE Department, as against the orders of this Court.

13. Every action of a State Authority must be in accordance and in conformity with law. The Tahsildar has convened the peace committee meeting and passed orders without any reference to the provisions of law neither in the summon issued nor in the order passed by him. If a power is sought to be exercised by the State Agency, the person receiving a notice must be shown as to under what provision of law it is being done.

14. An Executive Magistrate is defined u/s.20 of the Code of the Criminal Procedure as the Officer, who has been appointed for every District and every Metropolitan area. The State Government shall



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appoint one of the Executive Magistrates as the District Magistrate.

The District Collector shall be the District Magistrate of every District. In addition to that, the State Government may also appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have the power of a District Magistrate under the Code. Section 21 of the Code deals with the Special Executive Magistrates. The Executive Magistrates are appointed as Special Executive Magistrates for particular areas or for the performance of particular functions, such of the powers conferred by the Government.

15.Originally, the District Collectors and Sub Divisional Magistrates alone were entrusted to deal with public nuisance u/s. 133, 143 CrPC and public order u/s.144, 145 CrPC. The Government, vide G.O.Ms.1487, Home (Courts II) Department, dated 29.07.1989, has issued a notification appointing all the regular Taluk Tahsildars and Deputy Tahsildars, including Special Deputy Tahsildars of all Districts, as Special Executive Magistrates in the Districts concerned for perennial period and conferred on them all the powers exercisable by the Executive Magistrate under the



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Code and also specifically empowered them to exercise the powers u/s.133, 143, 144 of the Code. Therefore, a Tahsildar, Executive (Class II) Magistrate, is empowered to take action u/s.133, 143, 144 of the Code. The relevant provisions are extracted as under:

"133. Conditional order for removal of nuisance -

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may



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make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure,

substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner

provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court.

143. Magistrate may prohibit repetition or continuance of public nuisance

A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law

144. Power to issue order in urgent cases of nuisance or apprehended danger

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or



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speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to subsection (4) (7) Where an application under sub-section (5), or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing"



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16. Section 107 CrPC, however, vests certain power with the Executive Magistrate with regard to any information on breach of peace by any person and the Executive Magistrate can require such person to show cause to execute a bond. For invoking this provision u/s.107 CrPC, the information must disclose that a person is likely to commit breach of peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquillity.

17. The Executive Magistrate, who is initiating proceedings under this provision under Section 107 CrPC, is expected to pass a preliminary order under Section 111 CrPC and has to conduct an enquiry under Section 116 CrPC and ultimately, the Magistrate can pass an order directing that person to furnish a security / bond for a specific period to maintain peace.

18. Time and again, this Court has reiterated that there is no statutory provision enabling the Tahsildar to conduct a peace committee meeting and that the decisions taken in a peace committee meeting lack statutory value or force. However, since the



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revenue authorities as well as the police authorities are responsible for maintaining law and order, whenever any problem arise, they convene a meeting of all the stakeholders and endeavour to find an amicable solution. Therefore, this action of the authorities cannot be entirely found fault with. At the same time, this cannot be allowed to be conducted as a Kangaroo Court akin to katta panchayats conducted by local musclemen or local politicians, as a threat to the democratic polity and the performance of the fundamental role of the judiciary.

19. Some of the observations made by this Court in this regard are recorded infra.

i) In ***Pinniyakkal v. District Collector, Madurai and Others*** [***WP(MD)No.9704 of 2007, dated 01.09.2008***], Hon'ble Mr. Justice K. Chandru, has held as follows:-

“8. The peace meeting was convened on the plea that there was a disturbance to peace and that a law and order situation had arisen. Neither in the minutes nor in the notice convening the peace meeting, no reference to any legal provision has been made. Even assuming such meeting was convened by the powers vested on him under the Criminal Procedure Code (CrPC) by which the Tahsildar was



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empowered to be an Executive Magistrate, but in the guise of exercising such magisterial powers under CrPC, the third respondent cannot override the rights of parties. No provisions of the CrPC authorises the Executive Magistrate to make such decision as had been made in the present case. ..."

ii) In **Arulmighu Balagurunathasamy Sametha Angala Parameswari Amman Thirukovil v. Assistant Commissioner, HR CE Department and Others [MANU/TN/2835/2017]**, Hon'ble Mr.Justice R.Subramanian, has held as follows:-

"20.In order to find out the legal basis or the statutory power under which the so-called Peace Committee Meetings were held by the Revenue officials, I requested the learned Additional Advocate General to point out any specific Statutory provision or Rule which enables the Authorities to conduct Peace Committee Meetings and thrust their decisions on the participants. He would fairly submit that there is no such Statutory power either under any of the Statutes or under the Rules, which enable the Authorities to conduct such Peace Committee Meetings. It is common knowledge that such Peace Committee Meetings are often used as a tool to thrust the decision of the Revenue Authorities on the participants. Therefore, the convening of Peace Committee Meetings and the failure to reach an amicable



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solution cannot be a ground to take over of the management of the Temple from the persons belonging to a Religious Denomination to whom the Temple has been declared to belong."

iii) In ***Manikandan v. Tahsildar, Thirumayam and Another*** [***WP(MD)No.10860 of 2022, dated 07.06.2022***], Hon'ble Mr.Justice G.R.Swaminathan, has held as follows:-

"4.It is well settled that the peace meeting convened by the Tahsildar or Revenue Divisional Officer are only to ensure the maintenance of law and order and public tranquillity. Those proceedings have no legal sanctity as such. ..."

20.The proceedings of the Tahsildar dated 04.05.2024 is challenged in this writ petition. The Tahsildar has conducted a peace committee based on the request of the Inspector of Police, Kottar on 03.05.2024 and passed the above impugned order dated 04.05.2024. The Tahsildar by this impugned proceedings has permitted the 6th respondent to conduct the chithirai festival based on the earlier proceedings of the Revenue Divisional Officer, dated 10.05.2019. According to the Tahsildar, permission was given to the 6th respondent to conduct the temple festival and suggestion was



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also given to the HR and CE Department to supervise the temple festival along with the Inspector of Police in order to ensure law and order.

21.The Tahsildar in this impugned proceedings has also referred to the orders of this Court in WP(MD)Nos.28155 and 27922 of 2023 dated 30.04.2024 and therefore he is very much aware of the earlier orders of this Court. When a similar request was made for conducting the karthigai festival in the year 2023, this Court was not inclined to decide the rights of the parties in a writ petition filed under Article 226 of the Constitution of India and therefore directed the parties to approach the civil court or the HR and CE Department. Both parties have neither approached the civil Court nor the HR and CE Department. They once again made a similar request before the Inspector of Police, Kottar Police Station seeking police protection for conducting chithirai festival for this year. The Inspector of Police has taken two different stands by rejecting the request of the petitioner by referring the orders of this Court in WP(MD)Nos.28155 and 27922 of 2023 dated 30.04.2024 and referred the request of the 6th respondent to the Tahsildar for conducting peace committee



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meeting. Both parties have made their request on the same day on 03.05.2024. While so, the petitioner's application was rejected on the same day and was served on 03.05.2024 at about 9.37 pm. Strangely, in this rejection order, the Inspector of Police has not referred to the similar request made by the 6th respondent and the reference made by him to the Tahsildar for conducting peace committee meeting. Therefore, it appears that the 6th respondent might have submitted the application after the rejection order of the petitioner's request on 03.05.2024 served at about 9.37 pm. The peace committee meeting was conducted by the Tahsildar on 04.05.2024, on a Saturday. This proceedings refers to the recommendation of the Inspector of Police dated 03.05.2024. The Tahsildar has also conducted the peace committee meeting, interpreted the orders of this Court that it was meant for karthigai festival, granted permission to 6th respondent to conduct the festival by referring the earlier orders of the Revenue Divisional Officer.

22.From the manner in which the orders have been passed in the peace committee meeting and the reference was made by the Inspector of Police, this Court is of the view that the entire



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proceedings have been initiated in order to favour the 6th respondent. By this order impugned, a right has been conferred on 6th respondent for the administration of the temple, without conducting any enquiry and without any authority. The conduct of the 3rd and 4th respondents in this issue are biased and against law which needs to be addressed by their higher officials by initiating departmental proceedings.

23. In view of the above discussion, the impugned order is set aside and this writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

Index : Yes/No
NCC : Yes /No

12.08.2024

DSK



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To

- 1.The Superintendent of Police,
Nagercoil, Kanyakumari District.
- 2.The District Collector,
Kanyakumari District,
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- 3.The Inspector of Police,
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- 4.The Tahsildar,
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