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W.P.(MD)NO.13822 OF 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 27.06.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P.(MD)No.13822 of 2024 AND**

**W.M.P.(MD)No.12161 of 2024**

Rev.Dr.Y.John Kutty

... Petitioner

Vs.

1. The District Collector,  
Kanyakumari District  
at Nagercoil.
2. The Sub Divisional Judicial Magistrate  
cum Revenue Divisional Officer,  
Padmanabhapuram,  
Kanyakumari District.
3. The Tahsildar,  
Thiruvattar Taluk,  
Kanyakumari District.
4. M.Raja  
(R-4 is *suo motu* impleaded vide order dated 27.06.2024)

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in A2/M.C.16/2026 dated 20.06.2024 issued by the 2<sup>nd</sup> respondent in Para No.6 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondents to allow the petitioner to reinstate as a Pastor in the Church of South India



Assemblies of God Southern District situated at Pallikuzhivilai, Attoor, Thiruvattar Taluk, Kanyakumari District in the Church within the time frame stipulated by this Court.

For Petitioner : Mr.P.Krishnasamy  
For R-1 to R-3 : Mr.K.Balasubramanian,  
Special Government Pleader.  
For R-4 : Mr.P.T.Ramesh Raja

\* \* \*

### **ORDER**

Heard both sides.

2. The Revenue Divisional Officer, Padmanabhapuram in her capacity as Executive Magistrate passed the impugned order under Section 107 Cr.P.C and Section 117 Cr.P.C. Rev.Dr.John Kutty was appointed as Pastor in Pallikuzhivilai Pastorate, SDSIAG. According to the fourth respondent, the petitioner was transferred to Attoor.

3. The grievance of the fourth respondent is that the petitioner failed to vacate the church premises and that gave rise to the present cause of action. I do not want to go into the merits of the rival claims in this writ petition.



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4. The impugned order is liable to be set aside for the following two reasons:-

i) The second respondent had directed the jurisdictional police to remove the petitioner from the pastorate house and also seize the documents etc. from him and hand over the same to the new pastor. Such extraordinary directions could not have been issued by the second respondent. Sections 107 and 117 of Cr.P.C. read as follows:-

**“107. Security for keeping the peace in other cases.—**(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a



breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

...

**117. Order to give security.**—If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided that—

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.”

The Executive Magistrate can only take bond from the noticee and nothing more.

ii) The other ground is that in the impugned order, both the “A” party as well as “B” party have been shown and it has been held in hundreds of cases that when action is taken under Section 107 Cr.P.C.,



notice should be issued to only one party. Involving both the parties, composite order cannot be passed under Section 107 Cr.P.C. I hold that the second respondent acted illegally.

5. The impugned order is set aside. As regards the consequential prayer, I do not want to go into the issue in this writ petition. The rights of the parties are left open. This writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

**27.06.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes/ No  
PMU

**Note : Issue order copy on 28.06.2024.**

**To:**

1. The District Collector,  
Kanyakumari District at Nagercoil.
2. The Sub Divisional Judicial Magistrate  
cum Revenue Divisional Officer,  
Padmanabhapuram, Kanyakumari District.
3. The Tahsildar,  
Thiruvattar Taluk,



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Kanyakumari District.

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**G.R.SWAMINATHAN,J.**

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