

W.A(MD) No.1783 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 03.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

W.A(MD) No.1783 of 2021

and

C.M.P.(MD)No.7657 of 2021

R.Chelladurai

... Appellant / Writ Petitioner

Vs

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
- 2.The Sub Collector,
Padmanabhapuram,
Thuckalay,
Kanyakumari District.
- 3.The Block Development Officer,
Thuckalay Panchayat Union,
Thuckalay,
Kanyakumari District.
- 4.The Executive Officer,
Muthalakurichi Village Panchayat,
Muthalakurichi-629 802,
Kanyakumari District.



W.A(MD) No.1783 of 2021

5. The Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.

6. Jebin Raj

... Respondents/ Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to call for the records pertaining to the order dated 12.02.2021 passed by the learned single Judge in W.P.(MD)No.2591 of 2021 and set aside the same and allow the writ appeal.

For Appellant : Mr.C.Kishore

For Respondent : Mr.K.Balasubramani
Special Government Pleader
for R1 to R4
: Mr.A.Albert James
Government Advocate (Crl.side)
for R5
: Mr.S.R.Anbarasu
for R6

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

The appellant herein filed W.P.(MD)No.2591 of 2021 to direct the District Collector, Kanyakumari District, Nagercoil and the Sub Collector, Padmanabhapuram to forebear the 6th respondent herein from

2/10



W.A(MD) No.1783 of 2021

using the petition mentioned premises as a place of public religious worship. The writ petition was dismissed by the learned single Judge vide order dated 12.02.2021. Challenging the same, this writ appeal has been filed.

2. When the matter was taken up for hearing, the learned counsel appearing for the contesting respondents questioned the very maintainability of the writ appeal as well as the writ petition. He pointed out that the father of the sixth respondent filed W.P.(MD)No.27198 of 2019 and it was allowed on 20.12.2019. He submitted that the appellant herein had conveniently suppressed the said order. The learned Special Government Pleader made available the copy of the said order. It is seen that one Thiru.Selvaraj had filed the said writ petition with the following prayer.

“Prayer:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondents not to harass the petitioner and his family members for conducting prayer in petitioner's house bearing Door No.39/2 situated at Kottankachivilai, Muthalankurichi, Thiruvithankodu Post, Kanniyakumari District.”

The writ petition was disposed of in the following terms:-



W.A(MD) No.1783 of 2021

“9. In W.P.(MD)No.710 of 2019, dated 11.01.2019 filed by a person,

WEB COPY similarly placed as that of the petitioner this Court has held as follows:

“14. Following the above decisions and the fundamental rights guaranteed under the Constitution of India to the citizens, in the opinion of this Court, there is no need to get prior permission from any authority for assembling and conducting prayers in a dwelling place without causing nuisance or disturbance to others and without causing hindrance to the general public. It is the duty of the authorities to safeguard the protection of every citizen of this Country to practise constitutional rights guaranteed under the Constitution of India. However, in a civilized Society in the name of religion, activities, which disturb others, in any manner and for bona fide reasons, cannot be permitted and hence, if there is any nuisance caused due to noise pollution or for any other bona fide reasons, it is always open to the authorities to take necessary action under the provisions of the relevant statutes. But, before resorting to any action, the authorities, on the basis of concrete evidence, should arrive at a subjective satisfaction that there exists infringement of a right of others, under the Constitution of India, to enforce public order.”

10. In the above order of this court had referred to earlier orders of this court passed in similar circumstances.

a) CDJ 2007 MHC 5279 (Sadhu C.Selvaraj Vs. The Collector, Kanyakumari) b) 2005 4 CTC 171 (Albert Raj Vs. The District Collector, Kanyakumari District at Nagercoil)

c) Order, dated 14.08.2012, made in WP(MD)No.10782 of 2006, of the Madurai Bench of the Madras High Court.

d) Order, dated 13.08.2007, made in WP(MD)No.6732 of 2007, of the Madurai Bench of the Madras High Court.

e) Order, dated 30.04.2008, made in WP.No.4151 of 2008, of the Madras High Court.

f) Order, dated 14.12.2012, made in WP(MD)No.13336 of 2007, of



WEB COPY



W.A(MD) No.1783 of 2021

the Madurai Bench of the Madras High Court.

g) Judgement, dated 03.01.2017, made in WA(MD)No.1349 of 2013, of the Madurai Bench of the Madras High Court.

h) Order, dated 28.11.2011, made in CrI.OP(MD)No.15462 of 2011, of the Madurai Bench of the Madras High Court.

i) Order, dated 31.08.2018, made in WP(MD)No.18955 of 2018, of the Madurai Bench of the Madras High Court.

j) Order, dated 09.03.2018, made in CrI.OP(MD)No.3039 of 2018, of the Madurai Bench of the Madras High Court.

11. In view of the above and under such circumstances, this Court does not find any reason as to why the petitioner should not be permitted to conduct such prayers in his own residence.

12. This writ petition is disposed of with the direction to the respondents not to interfere with the right of the petitioner, conducting prayer along with relatives and friends at the residence of the petitioner situated at Door No. 39/2 situated at Kottankachivilai, Muthalankurichi, Thiruvithankodu Post, Kanniyakumari District. The petitioner shall ensure that this prayer does not in any way cause any hindrance to the general public and does not in any way give rise to any law and order problem. If any law and order problem is created, then certainly, the respondent police is at liberty to take appropriate action.”

3. The moot question that calls for consideration is whether this order will operate as impediment for us to hear the writ appeal. We are



W.A(MD) No.1783 of 2021

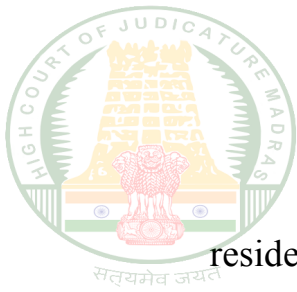
clearly of the view that answer is in the negative. This is because, Selvaraj had impleaded the Superintendent of Police, Nagercoil and the Inspector of Police, Thuckalay Police Station alone as the respondents in the said writ petition. He had not impleaded the District Collector, Kanyakumari as one of the respondents. In fact, the District Collector, Kanyakumari District was a necessary party.

4. It is not in dispute that the petition mentioned premises are located within the limits of the village panchayat. Rule 4(3) of Tamil Nadu Panchayat Building Rules, 1997 is as follows:-

“4. Application for approval of sites for building 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 of the site and buildings is likely to endanger public peace and order.”

5. It is also beyond dispute that Thiru.Selvaraj had approached the local body and obtained the building plan approval only for putting up a residential building. It is well settled that a building can be put to use only for that purpose for which approval was granted. When only a



W.A(MD) No.1783 of 2021

residential building was permitted to be constructed, it was not open to the 6th respondent to put it to any other use. Of-course, normal religious activities involving one's family and relatives is always permitted. But a mere look at the materials on record would show that the petition mentioned premises had been converted into a full-fledged church. The learned Judge who disposed of W.P.(MD)No.27198 of 2019 was not fully appraised of all the relevant and material facts. In any event, no order of the court can run counter to the statutory rule.

6. We repeatedly queried the learned counsel for the sixth respondent as to whether prior approval from the District Collector was obtained for putting up the petition mentioned premises for public religious purposes. No answer is forthcoming. On the other hand, the official respondents categorically stated before this Court that no such approval was obtained. The learned single Judge had omitted to take note all these aspects.



W.A(MD) No.1783 of 2021

WEB COPY

7. In this view of the matter, the order impugned in the writ petition is set aside. The sixth respondent is restrained from using the petition mentioned building as a place of public religious worship and it is the duty of the official respondents to enforce this order. The writ appeal is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

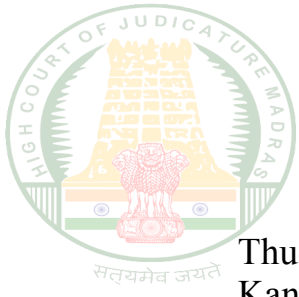
(G.R.S., J.) (M.J.R., J.)
03.04.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
rmi

To

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
- 2.The Sub Collector,
Padmanabhapuram,
Thuckalay,
Kanyakumari District.
- 3.The Block Development Officer,
Thuckalay Panchayat Union,

8/10



W.A(MD) No.1783 of 2021

WEB COPY

Thuckalay,
Kanyakumari District.

4.The Executive Officer,
Muthalakurichi Village Panchayat,
Muthalakurichi-629 802,
Kanyakumari District.

5.The Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.



WEB COPY



W.A(MD) No.1783 of 2021

G.R.SWAMINATHAN, J.

AND

M.JOTHIRAMAN, J.

rmi

W.A(MD) No.1783 of 2021

03.04.2025