

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

WP(MD)No.710 of 2019

WMP(MD)No.611 of 2019

R.Jeganathan Israel
Jeya Christhu Arputha Viduthalai Assembly
Kumbakonam, Thanjavuar District Petitioner

Vs

1. The Superintendent of Police, Thanjavur
2. The Tahsildar cum Executive Magistrate
Kumbakonam, Thanjavur
3. The Inspector of Police, Kumbakonam Police Station
Thanjavur Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records, relating to the order of the 2nd Respondent, dated 22.12.2018, bearing Na.Ka.No. 1429-2018-A6 and to quash the same, and consequently, to forbear the Respondents from interfering with the peaceful conducting of prayer in the house of the Petitioner, along with his family Members and relatives, situated in Door No.43, Kooturavu Nagar, Dharasuram, Kumbakonam, Thanjavur District.

For Petitioner : Mr.K.Samidurai

For Respondent : Mr.R.Anandharaj, APP

ORDER

By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal, at the admission stage itself. Mr.R.Anandharaj, the learned Additional Public Prosecutor takes notice for the Respondents.

2. The prayer in this Writ Petition is to quash the order of the 2nd Respondent, dated 22.12.2018 and consequently, to forbear the Respondents from interfering with the peaceful conducting of prayer in the house of the Petitioner, along with his family Members and relatives, situated in Door No.43, Kooturavu Nagar, Dharasuram, Kumbakonam, Thanjavur District.

3. The facts, in a nutshell, as set out in the affidavit filed in support of this Writ Petition, necessary and germane, for disposal of this Writ Petition, are as follows:-

a. The Petitioner, who belongs to the Christian Religion, along with his family Members and relatives, had been conducting regular prayers in a peaceful manner, for the past 13 years, in the petition mentioned property, namely, No.43, Kooturavu Nagar, Dharasuram, Kumbakonam, Thanjavur, which is the own property of one Charlot Mani and she had, by letter of consent, dated 01.06.2005, permitted the Petitioner to use the premises to conduct prayer along with his friends and relatives. While so certain persons in the area have given complaints to the 3rd Respondent Police, as if there was a law and order problem due to conducting of such prayers, in the said property and thereby, a summon, dated 19.12.2018, was issued to him by the 2nd Respondent, calling him to appear for a Peace Committee Meeting to be held on 20.12.2018. Strangely, during the Peace Committee Meeting, an

undertaking was obtained under compulsion by the 3rd Respondent and later, the Petitioner was informed that the prayer should be conducted in the house individually and not along with the friends and relatives.

b. Thereafter, the 2nd Respondent, by the impugned order, has observed that in the peace committee meeting held on 22.12.2018, no amicable consensus was arrived at between the parties and that till an order is obtained from the Court concerned, the Petitioner shall not conduct group prayers, along with other persons, in the petition mentioned property. However, the Petitioner was permitted to conduct individual prayer alone in the petition mentioned property and in the same order, the persons, who were opposing the conducting of prayers, were directed not to conduct any agitation or demonstration against the Petitioner.

c. Since the impugned order was passed by the 2nd Respondent against various orders of this Court, regarding conducting house prayers by obtaining an undertaking from the Petitioner under compulsion of the 3rd Respondent, the Petitioner had, by way of a representation, dated 02.01.2019, sought for permission to conduct prayer in the House, without using loud speakers or musical instruments and without causing any disturbance to anybody. Since the 1st Respondent had not responded, the Petitioner, contending that there is no need to get prior permission from any Authority for conducting prayers, in such places, along with his family Members and relatives, in view of various decisions of various High Courts and the Honourable Supreme Court and also in the light of the Article 25(1) of the Constitution of India, has filed this Writ Petition, seeking the relief, as stated

above.

4. This court heard the learned counsel on either side and also perused the materials placed on record.

5. The learned counsel for the Petitioner, relying on various orders of the Principal Bench of this Court and this Court and also Article 25(1) of the Constitution of India, would submit that there is no need to get any prior permission from any authority for assembling and conducting prayers in a dwelling place and hence, the Respondents may be restrained from interfering with the peaceful conducting of prayer in the house of the Petitioner, along with his family Members and relatives, situated in Door No.43, Kooturavu Nagar, Dharasuram, Kumbakonam, Thanjavur District.

6. With regard to the averments of the affidavit filed in support of this Writ Petition and also the above said submissions of the learned counsel for the Petitioner, the learned Additional Public Prosecutor was heard. The learned Additional Public Prosecutor, while supporting the impugned order, would submit that no religion prescribes that prayers should be performed by disturbing the peace of others and that it is always open to the Authorities concerned to take necessary action under the provisions of the relevant statutes, in the event of any nuisance being caused due to noise pollution or for any other bona fide reasons or in the event of any law and problem being created, while conducting such prayers and only to avert any such situation, such an order has been passed.

7. I have carefully considered the submissions of the learned counsel on either side and also the provisions of the relevant statutes, including

various decision of various High Courts and the Honourable Supreme Court.

8. The Petitioner belongs to Christianity. The petition mentioned premises has been functioning for conducting prayers for more than 13 years. The issue revolves around the conducting of prayers by the Petitioner in the petition mentioned premises, along with his family Members and relatives. It was opposed by the opposite party on the ground of nuisance and disturbance to public. In the peace committee held by the Respondents, it was directed to obtain necessary permission or orders from the Court concerned or from the authority for conducting such prayers. The objection of the Respondents is that if such a dwelling house has to be transformed into a place of worship for the people of the locality to assemble, then there must be a prior permission, which is questioned in this Writ Petition.

9. Invoking Article 25 of the Constitution of India, assailing the impugned order, reliance is placed by the learned counsel for the Petitioner on the following orders/judgements of this Court and the Principal Bench of this Court, made 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 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.

10. For ready reference, Article 25 of the Constitution of India is reproduced here under:-

“25. Freedom of conscience and free profession, practice and propagation of religion. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II. In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

11. In the decisions relied on by the learned counsel for the Petitioner, various decision of various High Courts and the Honourable Supreme Court have been relied on and followed. The sum and substance of all the said decisions, are that in our Country, which is a free, democratic and secular country, people of all religions, castes and communities are equal under the Constitution of India, vide Articles 14 to 18. In India, every Citizen is having the right to have his own religious faith and propagate the same. However, enforcement of the constitutional rights in favour of a Citizen should be of paramount importance of the Authorities.

12. It is mandated under Article 25(1) of the Constitution of India that subject to public order, morality and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion. All persons are entitled to freedom of religion. Hence, every member of a religious denomination is entitled to the fundamental right of freedom of religion. It necessarily follows that every sect or denomination is entitled to freedom of religion. It is undisputed that under Article 26(b) a denomination is entitled to manage its own affairs in matters of religion. Article 25(1) guarantees such religious freedom, however, subject to public health.

13. While the right to freedom of religion and to manage the religious affairs of any denomination is undoubtedly a fundamental right, the same is subject to public order, morality and health and further that the inclusion of such rights in Part III of the Constitution of India will not prevent the State from acting in an appropriate manner, in the larger public interest, as mandated in the

Articles 25 and 26 of the Constitution of India, as has been held in AIR 2016 SC 209:2016 2 SCC 725 (Adi Saiva Sivachariyargal Nala Sangam Vs. Government of Tamil Nadu).

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 statues. 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.

15. In view of the fundamental right guaranteed to the Citizens under our Constitution, viz. freedom of conscience and the right freely to profess, practise and propagate religion, which right is not restricted or prohibited to a particular locality or religion, the impugned order is against the fundamental rights conferred under the Constitution of India and hence, it is illegal,

unconstitutional and liable to be quashed.

16. In the result, this Writ Petition is allowed, as prayed for. The impugned order is quashed and consequently, the Respondents are restrained from interfering with the peaceful conducting of prayer in the house of the Petitioner, along with his family Members and relatives, situated in Door No.43, Kooturavu Nagar, Dharasuram, Kumbakonam, Thanjavur District. At the same time, the Petitioner shall ensure that conducting of such prayers would not in any way cause any hindrance or disturbance to the general public. It is also made clear that it is open to the Authorities concerned to take necessary action under the provisions of the relevant statues, in accordance with law, in the event of any nuisance being caused due to noise pollution or for any other bona fide reasons, while conducting such prayers. No costs. Consequently, the connected MP is closed.

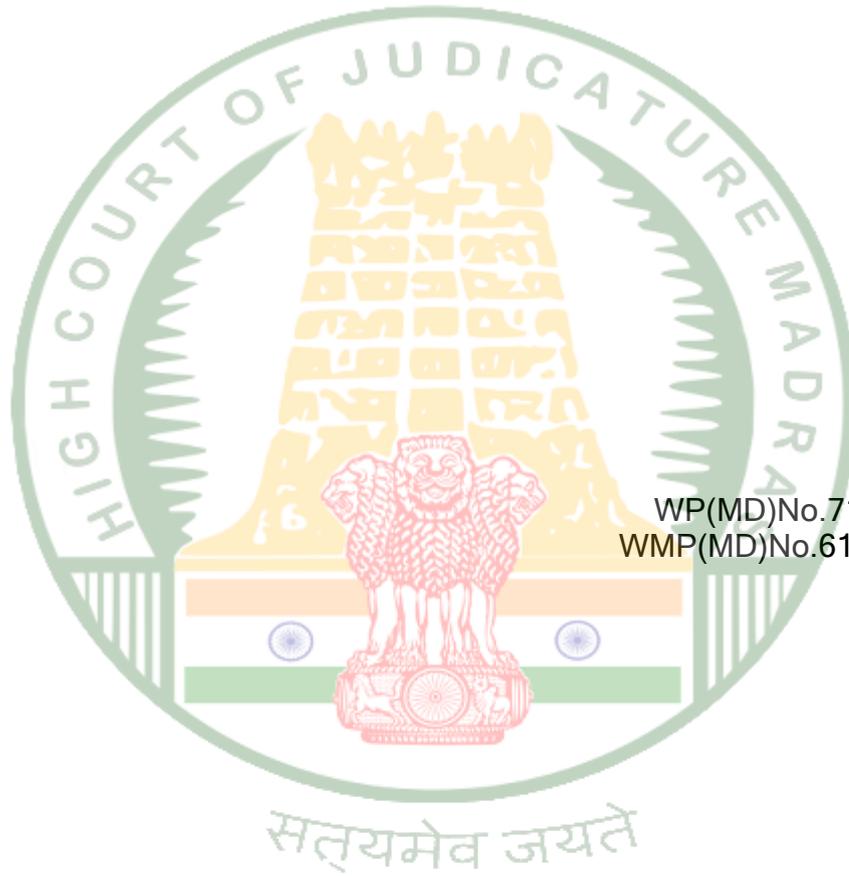
11.01.2019

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To:

1. The Superintendent of Police, Thanjavur
2. The Tahsildar cum Executive Magistrate, Kumbakonam, Thanjavur
3. The Inspector of Police, Kumbakonam Police Station, Thanjavur

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