

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESAVALU

W.P. No. 2149 of 2018

and

W.M.P. No. 2675 of 2018

C. Joseph

... Petitioner

1. The District Collector,
Coimbatore District,
State Bank Road,
Gopalapuram,
Coimbatore – 641 018.
2. The Tahsildar,
Office of the Tahsildar,
Coimbatore – North,
Coimbatore – 641 018.
3. The Inspector of Police,
E-3 Police Station,
Saravanampatti,
Coimbatore – 641 035.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorari and Mandamus, calling for the records of the Second Respondent in issuing the impugned notice dated 22.01.2018 in Na. Ka. No. 0494/2018/Aa8 in so far as directing the Petitioner not conduct prayer meetings before peace talk is completed and to quash the same and consequently forbearing the Respondents

from in anyway interfering with the conduct of prayers by the Petitioner at the residential premises situated at 878/8, Chinnavedampatti Village, Coimbatore Taluk, Ka. Sa. 512 present Sub-Division, Ka. Sa. No. 512/2, Sale Deed dated 12.03.2003, in document No. 933 of 2003, measuring 1726 sq. ft.

For Petitioner : Mr. Richardson Wilson

For Respondents : Mr. M. Karthikeyan,
Additional Government Pleader

O R D E R

The Petitioner, who is a Pastor practicing Christianity, complains that at the instance of the Third Respondent, viz., the Inspector of Police, E-3 Police Station, Saravanampatti, Coimbatore, the Second Respondent, viz., the Tahsildar, Coimbatore North had issued notice Na. Ka. No. 0494/2018/A8 dated 22.01.2018 directing the First Respondent to produce the Petitioner before him on 25.01.2018 at 4.00 p.m. for conduct of peace talks and it has been further ordered that till the same was concluded, the Petitioner should not conduct any prayer meetings in his residential premises measuring 1726 sq. ft. situated at No. 87/8, Barathi Street – North, M.R. Nagar, Chinnavedampatti, Coimbatore. In that backdrop, the Petitioner in this Writ Petition has challenged the aforesaid notice Na. Ka. No. 0494/2018/A8 dated 22.01.2018 issued by the Second Respondent and has sought for

consequential direction to forbear the Respondents from interfering with the conduct of prayers by the Petitioner at his aforesaid residential premises.

2. In the Counter Affidavit dated 21.02.2018 filed by the Third Respondent, it is stated that the Petitioner has not obtained necessary permission for construction of prayer hall as required under the provisions of the Tamil Nadu District Municipalities Building Rules, 1972, and that the Petitioner is conducting prayers in the prayer hall without getting permission from the Local Authorities. It is further stated that the Third Respondent has submitted a detailed report as regards the objections relating to creating sound pollution and parking of vehicles on road restricting the free movement of public raised by the Hindu Munnani Party, who had threatened to stage dharna in protest. In order to avoid any untoward incident and maintain law and order in those circumstances, a Peace Committee Meeting was convened on 25.04.2018 at the Office of the Second Respondent, in which the son of the Petitioner has attended.

3. Heard Mr. Richardson Wilson, Learned Counsel for the Petitioner and Mr. M. Karthikeyan, Learned Additional Government Pleader appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

4. It is well settled that the right to freedom of religion and manage religious affairs on any denomination are undoubtedly fundamental rights under Articles 25 and 26 of the Constitution, but the same are subject to public order, morality and health, which would not prevent the State from acting in appropriate manner in larger public interest as reiterated in *Adi Saiva Sivachariyargal Nala Sangam -vs- State of Tamil Nadu* [(2016) 2 SCC 725].

5. The Hon'ble Supreme Court of India in *Church of God (Full Gospel) in India -vs- K.K.R. Majestic Colony Welfare Association* [(2000) 7 SCC 282] while considering the same issue and after referring to the relevant statutory provisions under the Madras City Police Act, 1888, and the Madras Town Nuisances Act, 1889 and the Noise Pollution (Regulations and Control) Rules, 2000 framed by the Central Government under the provisions of the Environment (Protection) Act,

1986, read with Rule 5 of the Environment (Protection) Rules, 1986, has observed as follows:-

“13. In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to “public order, morality and health” are not required to be dealt with in detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observations made by the Constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat [(1975) 1 SCC 11]. After considering the various contentions, the Court observed that: (SCC p. 20, para 30)

“No rights in an organized society can be absolute.

Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a

free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests....”

The Court also observed that: (SCC p. 20, para 31)

“A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole.”

14. *Further, it is to be stated that because of urbanization or industrialisation the noise pollution may in some area of a city/town might be exceeding permissible limits prescribed under the Rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing*

reasonable restrictions including the Rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisances Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced. We would mention that even though the Rules are unambiguous, there is lack of awareness among the citizens as well as the implementation authorities about the Rules or its duty to implement the same. Noise-polluting activities are rampant and yet for one reason or the other, the aforesaid Rules or the Rules framed under the various State Police Acts are not enforced. Hence, the High Court has rightly directed implementation of the same.”

Recently, a Learned Judge of this Court in order dated 11.01.2019 in W.P. (MD) No. 710 of 2019 filed by a person similarly placed to the Petitioner, 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.”

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6. In the light of the aforesaid settled legal principles, the question of requiring the Petitioner to get prior permission from any authority for assembling and conducting any prayers in his dwelling place *per se*, without causing nuisance or disturbance to others and without causing

hindrance to the general public of the locality, does not arise. Consequently, the directions issued by the Second Respondent in the impugned order calling the Petitioner to attend the peace talks with the Hindu Munnani Party, who had lodged objections, and restraining the Petitioner from conducting prayers till such peace talks are concluded, which is without any authority of law, cannot be sustained. However, the Petitioner is bound to ensure that while conducting such prayers in his residential premises, no hindrance or disturbance is caused to the general public and for that purpose, it is certainly open to the concerned authorities on the basis of subjective satisfaction with concrete evidence to take necessary action under the provisions of the relevant statutes in accordance with law in the event of any nuisance being caused due to noise pollution or for violation of any statutory provisions or for any *bonafide* reasons.

7. The Writ Petition stands disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Note: Issue order copy by 19.06.2019.

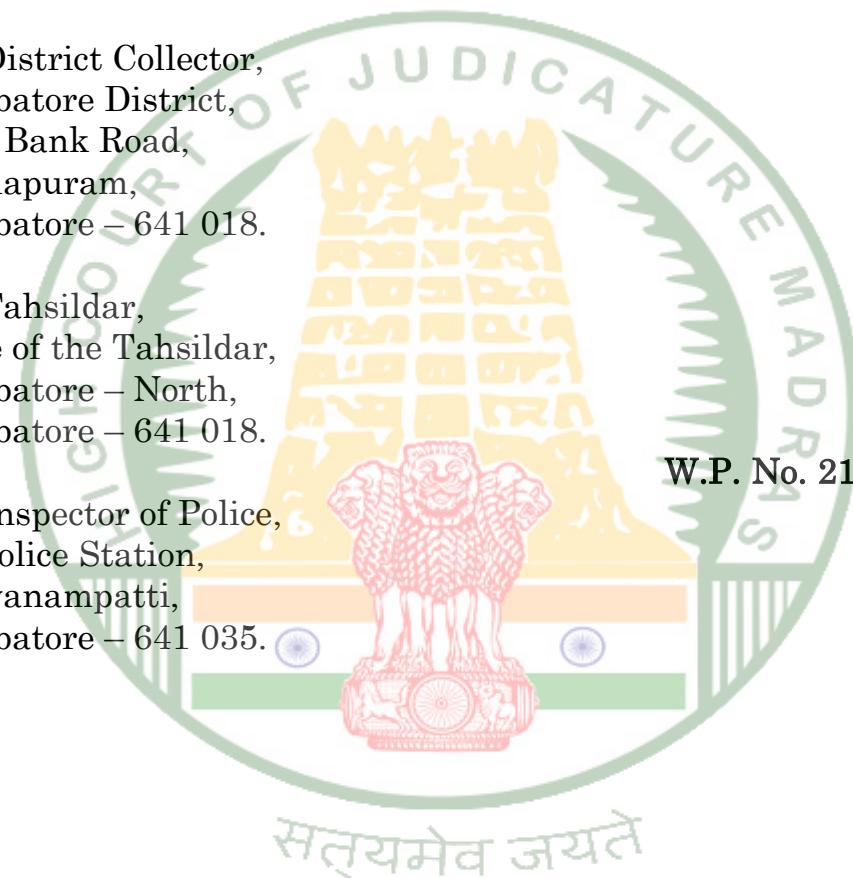
P.D. AUDIKESAVALU, J.

vjt

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