

(2016) 03 MAD CK 0258

In the Madras High Court

Case No : W.P. (MD) No. 5132 of 2016, W.M.P. (MD) Nos. 4581 and 4582 of 2016

D. Murugaiah

APPELLANT

Vs

The District Collector, Kanyakumari District at Nagercoil and
Others

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Constitution of India, 1950 — Article 25, Article 26, Article 27, Article 28, Article 29,
Article 30, Article 51A

Citation : (2016) 03 MAD CK 0258

Hon'ble Judges : S. Manikumar and C.T. Selvam, JJ.

Bench : Division Bench

Advocate : T.S.R. Venkataramana, for the Appellant; A.K. Bhaskarapandian, for
the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—1. A retired I.A. & A.S. Officer, has sought for a Writ of Certiorarified Mandamus, to quash R.O.C. No.C3/26037/15, dated 02.03.2016 and consequently, prayed for a direction to the District Collector, Kanyakumari District to demolish the construction made in Survey No. 174/9, Kottaram West Village, Agasteeswaram Taluk, by respondents 3 to 5. He has also prayed for a direction to the District Collector and Superintendent of Police, respectively of Kanyakumari District, to remove the construction in Survey No. 174/9, within a time frame.

2. According to the petitioner, he is native of Achankulam. Now, he is settled in Chennai and often, visit his native place, for his personal work. There is a temple called, "Arulmighu Umayamman Temple" in Achankukalm. It is in Survey No. 174/7. The village consists of Scheduled Caste Hindus, Nadars and Christians. There is a vacant place in Survey No. 174/9, situated behind the said temple. East of that property, after the road, lies a CSI Church, in Survey No. 174/3, Achankulam Kottaram Post, Agastheeswaram Taluk, Kanyakumari District, the

4th respondent, which is under the control of Mr.G.Belin, Convener, Achankulam Church, Kottaram Post, Agastheeswaram Taluk, Kanyakumari District, 5th respondent.

3. It is the case of the petitioner that from the year 2000 onwards, Bishop of CSI Church, Kanyakumari District, Nagercoil, 3rd respondent herein, is creating brickbats to the peace loving Hindu Society of Achankulam, who belongs to downtrodden members of the society. This is done on the initiation of the 4th respondent. According to him, 3rd and 4th respondents are "money bags" and misusing their wealth, are creating problem in Kanyakumari District, in general, and in particular, Achankulam.

4. The petitioner has contended that a church in Survey No. 174/3 existed South-West of S.No.174/7, for sometime, and there was no objection for that. Suddenly, the Secretary, CSI Church, Achankulam Kottaram Post, 4th respondent herein, instigated the Bishop of C.S.I., Kanyakumari District, Nagercoil, the 3rd respondent herein, to occupy the lands, around the Church and filed O.S. No.545 of 1997, O.S. No.826 of 1997 and O.S. No.89 of 1995, on the file of the learned 2nd Additional District Munsif Court, Nagercoil and that the said suits were dismissed. Appeal filed by them in A.S. Nos.56, 57 and 107 of 2004, were also dismissed. Second Appeal Nos. 743 to 745 of 2015, filed were also dismissed, as withdrawn.

5. The petitioner has further contended that when respondents 3 and 4 herein, attempted to build a new Church, without obtaining prior permission from the competent authorities, in violation of the District Municipalities Building Rules, 1972, he filed W.P.(MD)No.16786 of 2015 and this Court, by order, dated 15.09.2015, directed the 1st respondent herein, to consider his representation, and to pass appropriate orders.

6. Pursuant to the above directions, the District Collector, Kanyakumari, conducted an enquiry, and after issuing notice to all the stake holders, passed orders in R.O.C. No.C3/26037/15, dated 06.01.2016. According to him, the said order was passed, after getting reports from the authorities and providing an opportunity to all parties. According to the petitioner, the said order, is as per law, and passed, following the due process of law.

7. The petitioner has further contended that later on, the District Collector, was pressurized, due to agitations and road roko, by the men of respondents 3 to 5, and it was widely reported in the newspapers on 31.01.2016, 01.02.2016 and 23.02.2016 respectively. Mr.G.Belin, Convener, Achankulam Church, who was not a party to the earlier proceedings, has given an undated representation to the District Collector, Kanyakumari District and apparently, in view of the ensuing elections and political pressure, the District Collector, has passed the impugned order, dated 02.03.2016, without notice to the petitioner. Against the said order, the present writ petition has been filed.

8. Assailing the correctness of the subsequent order, dated 02.03.2016, following

grounds have been raised:-

"(i) The 1st respondent being an executive authority has no power to review its own order and that too, without hearing the petitioner or giving him an opportunity of being heard.

(ii) The 1st respondent has no authority to grant permission to construct a "temporary side wall of the partially constructed unauthorized building". When a building is unauthorized, the Collector cannot baptize it by an illegal order.

(iii) The petitioner has no objection for religious prayers in a temporary construction, but not in S.No.174/9, opposite to the temple and that can be done by putting Tin Wall and not by a permanent wall.

(iv) A temporary construction cannot be in the disguise of a permanent construction. The 1st respondent has not noted the status of the existing prayer hall in Survey No. 174/3 which remain intact even today and it has not been demolished. So no need for a new prayer hall in S.No.174/9.

(v) The demonstrations by respondents 3 to 5 in public explicitly declared the intention of challenging the law and a lawful order of 1st respondent.

(vi) The modified illegal order makes the original legal order redundant and gives way to the law of jungle.

(vi) The 5th respondent has no authority whatsoever to give a undated petition to the 1st respondent as he was not a party before the earlier proceedings. The 5th respondent has no locus standi to give a petition to the Collector.

(vii) The cat is out of the bag when the 5th respondent alleges that they have no money to demolish and reconstruct the old Church in S.No.174/3, but they have money to build a new and big Church in S.No.174/9, opposite to a Hindu Temple in gross violation of all Rules and Regulations.

(viii) The order of the 1st respondent is also in utter violation of the Venugopal Committee Report, which says, "No Church or Temple should be allowed to come up within the close proximity and obtain prior permission to hold meetings or to establish any Church or Temple in any of the area in Kanyakumari District so as to avoid communal violence. 1st respondent has just done that."

Mr.T.S.R. Venkataramana, learned counsel for the petitioner reiterated the above grounds and contended that the petitioner has no objection for the Church in Survey No. 174/3, but respondents 3 to 5 cannot construct a new Church in Survey No. 174/9.

Heard the learned counsel for the petitioner and perused the materials available on record.

9. Material on record discloses that earlier, the petitioner has filed W.P. (MD)No.16786 of 2015, for a Mandamus, directing the District Collector and Superintendent of Police respectively, Kanyakumari District, respondents 1 and 2

herein, to remove the alleged illegal construction of a church in S.No. 174/9, Achankulam Village, Kottaram Agastheeswaram Taluk, Kanyakumari District, by respondents 3 and 4 herein, which according to him was without complying with the provisions relating to construction of a religious place, as per the Tamil Nadu District Municipalities Act, r/w. Municipality Building Rules. In the above Writ Petition, a Hon"ble Division Bench of this Court, vide order, dated 15.09.2015,, has passed the following orders,

"The grievance of the petitioner is that despite pendency of the civil suits, the respondents church indulging in construction without obtaining proper permission from the competent authority. In this regard, a complaint is lodged to the District Collector. Such complaint is a very recent in time. Therefore, we direct the District Collector to consider the said representation and pass appropriate orders, on its own merit and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order."

10. Thereafter, the District Collector, Kanyakumari District, 1st respondent herein, has called for reports from the Superintendent of Police, Nagercoil, 2nd respondent herein, and the Revenue Divisional Officer, Nagercoil, heard the writ petitioner, counter petitioner, Executive Officer, the Kottaram Town Panchayat, Village Administrative Officer, Kottaram and Inspector of Police, Kanyakumari District, on 07.12.2015. After considering the materials on record, on 06.01.2016, the District Collector, Kanyakumari District, has passed the following orders,

"8. The material facts of this case were perused in detail with all available records.

Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, states that "No site be used for the construction of a building intended for public worship or religious purpose, without the prior approval of the Collector of the district who may effuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order."

The One Man Committee constituted by Justice P.Venugopal due to Mondaicaud riot, has also concluded that no church or temple should be allowed to come up within the close proximity, and to obtain prior permission to hold meetings or to establish any church or temple in any of the area in Kanniyakumari District, so as to avoid communal violence.

9. On perusal of the statements and reports put forth before me, the following orders are passed.

(i) Existing old church in R.S. No.174/3 of Kottaram West Village, which is in dangerous condition should be demolished immediately and permission is granted to construct a new C.S.I Church in the same land in R.S. No.174/3.

(iii) The church which is illegally constructed without the prior approval of the District Collector in R.S. No.174/9 of Kottaram West Village has to be stopped

immediately. Further constructions should not be undertaken and status-quo be maintained.

(iv) This partial and unauthorizedly constructed new C.S.I. Church in R.S. No.174/9 in Kottaram West Village has to be get inspected by the Executive Engineer, PWD, Nagercoil in order to check its structural stability for occupation within 15 days time.

(v) After getting the structural stability certificate from the PWD, Executive Engineer, Nagercoil, the partially constructed church in R.S. No.174/9, will be permitted to be used for conduct of prayers temporarily till the completion of construction of new church in S.No.174/3 of Kottaram West Village.

(vi) This construction of C.S.I. Church in R.S. No.174/3 of Kottaram West Village has to be completed in 18 months of time.

(vii) The partially constructed church wherein temporary conduct of prayer is allowed will be sealed on completion of 18 months of time and no prayer or any kind of religious activities will be allowed in this land in R.S. No.174/9 of Kottaram West Village after that.

(viii) Any construction of building should be undertaken after obtaining necessary plan approval from the competent authorities."

11. Thereafter, Mr.G.Belin, Convenor, Building Committee, Achankulam, has submitted a petition, dated 25.02.2016, to the District Collector, Kanyakumari District, stating that Achankulam C.S.I. Church, is 202 years old, and due to the dilapidated condition of the Church, they have applied for grant of permission, for Construction of a new Church. 18 months of time was granted to worship in the temporary building, till the demolition of the old church and for construction of a church, in that place. Due to lack of money, the church is unable to complete the work, in time. Roof of the temporary building is made up of Tin. Since there is no side wall in the building, it is unable to worship in the new building, due to rain, heat of the sun and natural calamities and therefore, he has requested the District Collector, Kanyakumari District, to grant permission to erect sidewalls, for the building, constructed in S.No.174/9, in order to facilitate worship in that building. Upon consideration of the said request and taking note of the available records, the District Collector, Kanyakumari District, has passed orders in Roc.No.C3/26037/15 dated 02.03.2016, partially, modifying the earlier proceedings in Roc.C3/26037/2015, dated 06.01.2016, as hereunder:

"1. Permission is granted to construct temporary side walls of the partially constructed unauthorized building in S.No.174/9 of Kottaram West Village and this construction should be valid upto 18 months of time for which temporary conduct of prayer is allowed as per the orders, dated 06.01.2016, in order to avoid natural disturbances due to rain, sunlight, etc., at the time of worship.

2. The temporary side wall construction of the partially and unauthorised constructed new C.S.I. Church in Kottaram west village should be carried out

under supervision of an approved panel engineer and a certificate to that effect must be obtained.

3. This temporary construction should be demolished immediately after the construction of the C.S.I Church in R.S. No.174/3 of Kottaram West Village is over within 18 months of time as per the orders issued in proceedings 1st read above.

4. All the conditions and formalities given in the proceedings cited in read 1st above should be strictly adhered into. Any deviation in this regard will lead to take stringent action against the concerned authorities."

12. It is the subsequent order, dated 02.03.2016, which is assailed by the petitioner, on the above grounds.

13. Firstly, the contention of the petitioner that from the year 2000 onwards, at the instance of the 4th respondent, Bishop of CSI Church, Kanyakumari District, Nagercoil, 3rd respondent herein, is creating brick bats to the peace loving Hindu Society of Achankulam, is not substantiated by any evidence. The allegation is baseless

14. Secondly, the allegation of the petitioner that respondents 3 and 4 are "moneybags", and by misusing their wealth, they are creating problem in Kanyakumari District, in general and in particular, Achankulam, is not substantiated. Mere averments do not amount to proof.

15. The contention of the petitioner that the Church in Survey No. 174/3 in Achankulam, existed for sometime is an incorrect statement, because even as per the order of the District Collector, Kanyakumari District, dated 06.01.2016, it is a old church stated to be in existence for 202 years.

16. Reference to the suits and appeals, is without any context, irrelevant and extraneous to the present subject matter.

17. It is the categorical admission of the petitioner that there was no objection for the church in Survey No. 174/3.

18. Arulmighu Umayamman Temple is stated to be situated in Survey No. 174/7. CSI Church in Survey No. 174/3, is stated to be 202 years old. The petitioner has stated that he has no objection for the respondents 3 to 5, to demolish the existing church and to rebuild it.

19. While adverting to the above contentions, this Court is of the view that the petitioner has no locus to say as to the demolition and reconstruction.

20. As per the version of the petitioner, there is a vacant place in Survey No. 174/9, situated, behind the said temple. East of that property, after the road, lies the 4th respondent-CSI Church, in Survey No. 174/3, and it is under the control of Mr.G.Belin, Convener, Achankulam Church, Kottaram Post, Agastheeswaram Taluk, Kanyakumari District, 5th respondent herein. The 5th respondent, arrayed

in his individual capacity, is the Secretary of CSI, Achankulam.

21. When the petitioner has made an objection, for the construction of church, in Survey No. 174/9, Kottaram west village, vide order dated 06.01.2016, the District Collector, Kanyakumari District, has directed that further constructions should not be undertaken and status-quo to be maintained. He has also made it clear that the partially constructed C.S.I. Church in R.S. No.174/9 in Kottaram West Village, has to be inspected by the Executive Engineer, Public Works Department, Nagercoil, in order to check its structural stability, within 15 days time for occupation. After getting the structural stability certificate from the Executive Engineer, Public Works Department, Nagercoil, the partially constructed church in R.S. No.174/9, would be permitted to be used for prayers, temporarily, till the completion of construction of a new church in S.No.174/3 of Kottaram West Village. Construction of C.S.I. Church in R.S. No.174/3 of Kottaram West Village has to be completed in 18 months of time, and after the completion of 18 months of time, no prayer or any kind of religious activities would be allowed in S.No. 174/9 of Kottaram West Village.

22. In the supporting affidavit, it is the categorical admission of the petitioner that the order dated 06.01.2016 of the District Collector, Kanyakumari District, permitting the worshippers to offer prayers, in the temporary construction in S.No.174/9, till the completion of construction of the church in S.No.174/3, is as per law and passed in accordance with law. In effect, according to him, he has no objection to the temporary worship, in S.No.174/9.

23. Order, dated 06.01.2016, makes it clear that,

(1) permission is granted to conduct prayers temporarily, in Survey No. 174/9 of Kottaram west village.

(2) Structural Stability Certificate has to be obtained from the Executive Engineer, Public Works Department, Nagercoil, for occupation.

(3) Temporary construction has to be used, for a period of 18 months.

(4) no prayer or any kind of religious activity be allowed in S.No.174/9, after 18 months.

(5) The new church has to be constructed in S.No.174/3, within 18 months.

24. Reading of the order, dated 06.01.2016, makes it clear that when the petitioner made an objection for construction in S.No.174/9, Achankulam, Kottaram, Agasteeswaram Taluk, after hearing the petitioner and others, the District Collector has ordered that for the purpose of construction in Survey No. 174/9, structural stability certificate has to be obtained from the Executive Engineer, Public Works Department, Nagercoil. After getting this structural stability certificate, from the Executive Engineer, the partially constructed church in S.No.174/9, would be permitted to be used, for conduct of prayers temporarily.

25. The District Collector, Kanyakumari District, has considered the

representation of the Church, to have a temporary place of worship in Survey No. 174/9. Property in Survey No. 174/9, belongs to Church. What has been permitted by the District Collector is only a temporary construction, put up by the Church for worship, and after 18 months, conduct of prayers in Survey No. 174/9, will not be permitted.

26. When Mr.G.Belin, Convener of the Building Committee, Achankulam Church, 5th respondent, has made a representation, dated 25.02.2016, to the District Collector, Kanyakumari District, explaining the difficulties, that there is no side wall in the building and worshippers have to face the heat of sun, rain, and natural calamities and requested him to grant permission to erect sidewalls for the building constructed in S.No.174/9, in order to facilitate worship in that building, the District Collector, Kanyakumari District, vide order dated 02.03.2016, has permitted construction of temporary side walls in the partially constructed C.S.I. Church in Kottaram west village, under the supervision of an approved panel engineer and he has also ordered that a certificate to that effect must be obtained. He has also made it clear that the temporary construction should be demolished, immediately, after the construction of C.S.I Church in R.S. No.174/3 of Kottaram West Village is over, within 18 months of time, as per the earlier proceedings, dated 06.01.2016. He has also made it clear that all the conditions and formalities given in the earlier proceedings i.e., 06.01.2016 should be strictly adhered.

27. Before this Court, it is the contention of the petitioner that the 5th respondent, who was not a party to W.P.(MD)No.16786 of 2015, has no locus standi, to make any representation to the District Collector, Kanyakumari District. In the present writ petition, the petitioner has described the 5th respondent, as the Secretary of CSI Church, Achankulam. At paragraph 3, he has also admitted that the existing Church is Survey No. 174/3, is under the control of the 5th respondent, who is also the Secretary of the Church, in which event, who else would espouse the cause of worshippers?

28. When the 4th respondent-Church is stated to be under the control of the 5th respondent, he has every right to make a representation to the District Collector, Kanyakumari, explaining the difficulties of the worshipers. For the abovesaid reasons, we reject the objection of the writ petitioner, regarding locus standi.

29. Having accepted the order of the District Collector, Kanyakumari District, dated 06.01.2016 as valid and it is as per law, at ground No.(iii), the petitioner has contended that he has no power to review its own order and that too, without hearing the petitioner. At ground No.(iv), he has further stated that there is no need for a new prayer hall in S.No.174/9. In the light of the admission of the petitioner stated supra, the petitioner cannot be permitted to collaterally challenge the order, granting permission to worship in Survey No. 174/9. He cannot be permitted to approbate and reprobate.

30. One of the contentions raised in the writ petition is that the District Collector,

Kanyakumari District, being an Executive Authority, has no power to review his own order and that too, without hearing the petitioner or giving him an opportunity of being heard. No public hearing is contemplated in the rules. As stated supra, after hearing the petitioner and others, the District Collector, has granted permission to conduct prayers, temporarily in Survey No. 174/9, which has been accepted by the petitioner.

31. As per Rule 6(4) of the Tamil Nadu District Municipalities Building Rules, 1972, no site, be used for the construction of a building intended for public worship or religious purpose, without the prior approval of the Collector of the district, who may refuse such approval, if in his opinion, use of the site and building is likely to endanger public peace and order.

32. All that the District Collector to see is that the construction of a building, intended for public worship or religious purpose should not endanger public peace and order. The District Collector, Kanyakumari District, has considered the reports of the authorities and found that the temporary construction is not likely to endanger public peace and order. Even the prayer of the petitioner is only against alleged unauthorised construction. It is for the District Collector to arrive at the subjective satisfaction, as to whether a construction for the above purpose is likely to endanger public peace and order. Subject place appears to be quiet and there is no material to indicate breach of public peace and order. For all these years, both the temple and church have existed in the same village.

33. The District Collector, Kanyakumari District, seemed to have considered the One Man's Committee report of Hon'ble Mr. Justice P.Venugopal. Church in Survey No. 174/3 is in existence, proximate to Survey No. 174/7, which the temple is in existence. Church is stated to be 202 years old.

34. Existence of Church and Temple in the same village, in close proximity for many years, is not disputed. Absolutely, there is no material to indicate that there was communal violence, in this place. Though the District Collector, Kanyakumari District, has taken note of the report of the Hon'ble Mr. Justice P.Venugopal, in his order dated 06.01.2016, the petitioner has accepted the order dated 06.01.2016 as valid. Unsubstantiated arguments of the learned counsel for the petitioner by referring to Mandai Kadu incident, are liable to be rejected and accordingly rejected.

35. When the District Collector, being the Executive Authority, has already given permission for worship, in the temporary construction, in Survey No. 174/9, to be used temporarily, for conducting prayers, till the completion of construction of a new church in S.No.174/3 of Kottaram West Village, it cannot be contended that the District Collector has no power to give permission for construction of temporary side walls, so that the worshippers need not have to face the heat of sun, rain and other natural calamities and for that matter, the petitioner should be put on notice, just because, he had filed the writ petition, earlier.

36. The petitioner is very much aware of the order, dated 06.01.2016 that

permission had already been granted to conduct prayers, in the temporary construction in Survey No. 174/9, and even in the subsequent order, dated 02.03.2016, it has been made clear that the temporary side wall construction in S.No.174/9, should be carried out, under the supervision of an approved panel engineer, and it should be demolished, immediately after the construction of the C.S.I. Church in R.S. No.174/3 of Kottaram west village is over, within 18 months of time, as per the earlier proceedings, dated 06.01.2016.

37. Church stated to be 202 years old with a weak stability, has to be demolished and reconstructed, for which, it requires time. 18 months time has been granted, for the said purpose. To enable continuity of worship, respondents 4 and 5 have put up a construction in Survey No. 174/9, belonging to them. When objection was raised, stating that no permission was granted, considering the genuine grievance of the worshipers, the District Collector, has permitted a temporary place for worship, for 18 months.

38. It is the grievance of the 5th respondent that due to rain, heat of sun and natural calamities, it is unable to worship, in the new building. Admittedly, roof of the building is made of tin. Photographs reflect the pillars supporting the tin roof and that the hall is open. Worshipers have to assemble, without any side walls and if they have to stand or sit in the hot sun, rain or in the event of other natural calamities, they would certainly be affected.

39. From the averments and opposition now made, we are not able to understand, as to whether, the intention of the petitioner is that the worshipers have to conduct their prayers, in hot sun and rain. We are also not able to understand, what is the public interest, in this case, when the worshipers are allowed to conduct their prayers in the temporary construction with side walls, directed to be demolished, after 18 months.

40. Action of the District Collector, in modifying the earlier order, dated 06.01.2016, permitting construction of temporary side walls, and the construction, to be made in the presence of an approved engineer, is described as law of jungle. At this juncture, we are only reminded of what Aristotle, has said "Man is by nature a social animal."

41. Though the petitioner has contended that cat is out of the bag, when the 5th respondent has stated that there is no money to construct a new church in Survey No. 174/3 and thus, made an attempt to put up the side walls, in Survey No. 174/9, and contended that the action of the respondents 3 and 4 is malafide, we are not inclined to accept the said contention, for the reason that the District Collector, in his proceedings, dated 02.03.2016, has made it clear that the side walls would be only a temporary construction and that they would be demolished, after the construction of the Church in Survey No. 174/3, ie., after 18 months time. Malafides alleged is rejected.

42. Contention of the petitioner that due to the ensuing election political pressure, the District Collector has passed the impugned order, dated

02.03.2016, is baseless. Permission has already been granted to worship at Survey No. 174/9, way back in January, 2016, which has also been accepted by the petitioner. The contention of the petitioner that he was not provided with any opportunity, before modifying the order, though he was a party, in the earlier writ petition and therefore, the impugned order is liable to be set aside, on the grounds of natural justice, cannot be accepted. As observed, no public notice is contemplated under the provisions of the Tamil Nadu District Municipalities Building Rules, 1972. Merely because, he was a party, he cannot expect that the District Collector, Kanyakumari District, should hear him, before considering the grievance of the worshippers.

43. Before parting with the case, we wish to consider few decisions on the aspect of socialism and tolerance.

In *Ms. Aruna Roy v. Union of India* reported in , AIR 2002 SC 3176, the Hon''ble Supreme Court, at Paragraph 81, held as follows:

"The word "secularism" used in the preamble of the Constitution is reflected in provisions contained in Articles 25 to 30 and Part IVA added to the Constitution containing Article 51A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 50 years experience of the working of the Constitution. The complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State have not helped in removing mutual misunderstanding and intolerance inter se between sections of people of different religions, faiths and beliefs. "Secularism", therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences. "Secularism" can be practised by adopting a complete neutral approach towards religions or by a positive approach by making one section of religious people to understand and respect religion and faith of another section of people. Based on such mutual understanding and respect for each other's religious faith, mutual distrust and intolerance can gradually be eliminated."

44. In *Valsamma Paul v. Cochin University* reported in , 1996 (3) SCC 545, at Paragraphs 22 and 25, the Hon''ble Supreme Court held as follows:

"22. Indian culture is a product or blend of several strains or elements derived from various sources, in spite of inconsequential variety of forms and types. There is unity of spirit informing Indian culture throughout the ages. It is this underlying unity which is one of the most remarkable everlasting and enduring feature of Indian culture that fosters unity in diversity among different populace. This generates and fosters cordial spirit and toleration that make possible the unity and continuity of Indian traditions. Therefore, it would be the endeavour of everyone to develop several identities which constantly interact and overlap, and prove a meeting point for all members of different religious communities, castes, sections, sub-sections and regions to promote rational approach to life and

society and would establish a national composite and cosmopolitan culture and way of life.

25. At the cost of repetition, it is stated that pluralism is the keynote of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection or God-realisation. It stands for a complex interpretive process in which there is a transcendence of religion and yet there is a unification of multiple religions. It is a bridge between religions in a multi-religious society to cross over the barriers of their diversity. Secularism is the basic feature of the Constitution as a guiding principle of State policy and action. Secularism in the positive sense is the cornerstone of an egalitarian and forward - looking society which our Constitution endeavours to establish. It is the only possible basis of a uniform and durable national identity in a multi - religious and socially disintegrated society. It is a fruitful means for conflict- resolution and harmonious and peaceful living. It provides a sense of security to the followers of all religions and ensures full civil liberties, constitutional rights and equal opportunities."

45. On the aspect of the petitioner describing respondents 3 and 4 as money bags and the further contention that by misusing their wealth, they are creating problems in Kanyakumari District and in particular, Achankulam Village, and terms the action of the District Collector in modifying the earlier order, as law of jungle, we wish to consider what the Hon"ble Supreme Court in State of Karnataka v. Dr.Praveen Bhai Thogadia reported in , 2004 (4) SCC 684, at Paragraphs 6, 7 and 9, said.

"6. Courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities, within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order. No person, however, big he may assume or claim to be, should be allowed irrespective of the position he may assume or claim to hold in public life to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India, 1950 (in short the "Constitution"). Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic state. Persons belonging to different religions live throughout the length and breadth of the country. Each person whatever be his religion must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience. Otherwise, the

rule of law will become replaced by individual perceptions of one's own presumptuous good social order. Therefore, whenever the concerned authorities in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foothold undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.

7. Communal harmony should not be made to suffer and be made dependent upon will of an individual or a group of individuals, whatever be their religion be it of minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions. While permitting holding of a meeting organised by groups or an individual, which is likely to disturb public peace, tranquility and orderliness, irrespective of the name, cover and methodology it may assume and adopt, the administration has a duty to find out who are the speakers and participants and also take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting or congregation would be objectionable, for some patent or latent reasons as well as past track record of such happenings in other places involving such participants necessary prohibitory orders can be passed. Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly having regard to the sensitivity and perniciously perilous consequences it may result in, if not prevented forthwith cannot be lost sight of. The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination of social interests, needs and necessities to preserve the very chore of democratic life - preservation of public order and rule of law. At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of Courts - unless a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent.

9. Our country is the world's most heterogeneous society, with rich heritage and our Constitution is committed to high ideas of socialism, secularism and the integrity of the nation. As is well known, several races have converged in this sub-continent and they carried with them their own cultures, languages, religions and customs affording positive recognition to the noble and ideal way of life - "Unity in Diversity". Though these diversities created problems, in early days, they were mostly solved on the basis of human approaches and harmonious reconciliation of differences, usefully and peacefully. That is how secularism has

come to be treated as a part of fundamental law, and an unalignable segment of the basic structure of the country's political system. As noted in *S.R. Bommai v. Union of India*, (, 1994 (3) SCC 1) freedom of religion is granted to all persons of India. Therefore, from the point of view of the State, religion, faith or belief of a particular person has no place and given no scope for imposition on individual citizen. Unfortunately, of late vested interests fanning religious fundamentalism of all kinds vying with each other are attempting to subject the constitutional machineries of the State to great stress and strain with certain quaint ideas of religious priorities, to promote their own selfish ends, undeterred and unmindful of the disharmony it may ultimately bring about and even undermine national integration achieved with much difficulties and laudable determination of those strong spirited savants of yester years. Religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of the larger interest of society and basic requirement of a welfare State. Religion sans spiritual values may even be perilous and bring about chaos and anarchy all around. It is, therefore, imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seed of mutual hatred, and their proposed activities are likely to create disharmony and disturb equilibrium, sacrificing public peace and tranquility, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracization of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote well being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well being without communal harmony, love for each other and hatred for none. The chore of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind seem to be -"Love others, serve others, help ever, hurt never" and "Sarvae Jana Sukhino Bhavantoo". Oneupship in the name of religion, whichever it be or at whomsoever's instance it be, would render constitutional designs countermanded and chaos, claiming its heavy toll on society and humanity as a whole, may be the inevitable evil consequences, whereof."

46.Hon"ble Mr. Justice Venkatachalaiah, in his speech, on the topic, ""Constitutional Underpinnings of a Concordial Society"", said thus,

"Fraternity" was added in the Preamble because it was even then felt "that the need for fraternal concord and goodwill in India was never greater than now and that the particular aim of the Constitution should be emphasised by specific reference in the Preamble." The relevance is far greater now. There is also the prime need for maintaining the unity and integrity of the country without which individual liberty and human dignity may not be of much avail. And unity can be achieved only if there is a spirit of brotherhood among various sections of the

people. All these objectives are therefore interrelated and interdependent and help promote and foster one another. Economic and social inequalities rupture the fabric of civil society. Public goods such as education, health care, human security are not the rewards of economic development. They are not social gains of economic reforms; but are indeed economic gains of social reform. Fraternity makes economic good sense too. This is true insurance for the good health of free market economy.

47. His Lordship, further added that tolerance of beliefs, views and practices of others, is imperative for a harmonious living and a concordial society. Be it a religious procession or the screening of a film or the expression of a viewpoint in speech or writing, must all have some space in our society. Nothing can be put in straitjacket or dictated.

48. In his speech, on the above topic, His Lordship has quoted S.R. Das, C.J. in Kerala Education Bill, 1957, Re: [AIR 1956 SC 956], thus,

" 34. ... Throughout the ages, endless inundations of men of diverse creeds, cultures and races-Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals- have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomized in the following noble lines:

"None shall be turned away

From the shore of this vast sea of humanity That is India."

49. The Hon"ble Supreme Court in *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat* reported in , 2008 (5) SCC 33, observed as follows:

"66. These days unfortunately some people seem to be perpetually on a short fuse, and are willing to protest often violently, about anything under the sun on the ground that a book or painting or film, etc. has "hurt the sentiments" of their community. These are dangerous tendencies and must be curbed with an iron hand. We are one nation and must respect each other and should have tolerance.

50. Reverting back to the present case, from the material on record, it could be deduced that Church in Survey No. 174/3, is stated to be in existence for nearly 202 years. Church and Temple simultaneously were in existence. People have worshipped their respective Gods, all along. When the stability of old church was weak, and that the same was sought to be demolished and reconstructed, worship in a temporary construction, in the place owned by the church, with side walls is opposed on the grounds, that it would create public order. In view of the recitals, in the order of the District Collector, Kanyakumari District, the contentions raised by the petitioner do not merit any consideration.

51. Before parting with the case on hand, we are of the view to state that the petitioner, who claims to be a public interest litigant, should understand the

constitutional goals.

52. In the result, the Writ Petition is dismissed. No costs. Consequently, W.M.P(MD)Nos.4581 and 4582 of 2016 are closed.