
(2014) 10 KL CK 0001
In the High Court Of Kerala
Case No : WP(C). No. 29035 of 2013 (D)

Fr. Geevarghese

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : (2014) 4 KerLJ 710

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri. P. Martin Jose, Sri. P. Prijith and Sri. Thomas P. Kuruvilla, Advocates, for the Petitioner; Joseph George, (GP), Joice George, Sajan Vargheese K. and Liju M.P, Advocates, for the Respondent

Final Decision : Allowed

Judgement

A. Muhamed Mustaque, J.—The dispute in this writ petition pertains to refusal of permission by the District Collector for the purpose for reconstructing a Church. By Ext.P8 District Collector rejected the permission sought by the petitioner to reconstruct the Church on account of the fact that there are disputes on right and interest over the existing Church situated in re-survey 328/4, 324/4 and 324/6 of Kanjikuzhi Village. In fact, the petitioner sought review of Ext.P8 order and also permission to reconstruct the Church by Ext.P10. It appears that the dispute is between two factions of Church, namely, Orthodox faction and Party respondent-Patriarch faction.

2. Indian Constitution in principle allows religious freedom. Article 25 of the Constitution of India secures every person to practise and profess and propagate religion. Article 26 of the Constitution also prescribes right to establish institutions for religious and charitable purposes and also to manage its own affairs in the matters of religion. However, these rights are subject to public order, morality and health; which means, the State is empowered to regulate any activity relating to religion subject to public order, morality and health. This is obvious considering the cultural and social background of Indian social society in

which numerous religious beliefs play dominant role. Therefore, on account of different religious beliefs and practise, conflict is inevitable. Thus, the State impinges upon religious freedom to the extent to secure public order, morality and health.

3. This writ petition calls upon to decide the scope of enquiry under the manual of guidelines to "Prevent and Control Communal Disturbances and to Promote Communal Harmony-2005" issued by the Government of Kerala. The 2005 manual is an amended version of the original manual issued in the year 2002. The objective of the manual is to avert potential threat to communal harmony by frustrated elements resorting to competitive communalism resulting in communal violence. In the manual the following guidelines are issued in relation to construction/renovation of religious place:

"23. Any construction of religious place should be made only with prior approval of the District Authorities and at the earmarked place. Cases of construction of unauthorised religious places should be dealt with severely under existing laws. Negligence on the part of the District Administration in implementing this direction should be seriously viewed and the guilty dealt with.

23.(a)(i) Renovation of existing places of worship can be undertaken after informing the matter to the District Administration. However, any addition or expansion to the existing structure should be done only with the previous permission and concurrence of the District Administration. This addition or expansion should not in any way cause any inconvenience to the public, should not obstruct traffic, should not be an impediment to the future expansion of roads and other public amenities. Any addition or expansion can be undertaken only with observing the building rules and with the prior permission of Town Planning Department or Local Self Government, as the case may be;

(ii) Any new construction of a place of worship shall be done only with the clearance of the District Administration. Any religious activities centered around a newly established places of worship should not precipitate communal tension or law and order situation. Before sanctioning requests for construction of new places of religious worship, the District Administration should ensure this. In such cases the District Administration may take recourse to shift the places of worship after arriving at a consensus with the parties concerned."

Thus, in the light of above guidelines, for construction, reconstruction and renovation of any religious places permission from the District Collector is imperative.

4. Secularism is the basic feature of Indian Constitution so also religious freedom. The religion is not defined under the Constitution. The religion in normative sense is understood as a set of principles of faith in transcendent reality. Thus, any conflict among different faith will involve in public order leading to the threat of secular fabric of the nation. The State machinery, therefore, have to secure balance of religious freedom along with the avowed object of

secularism while issuing the manual in the nature referred as above. Public order has also to be distinguished from "law and order". In *Asok Kumar v. Delhi Administration* [AIR 1982 SC 1143], the Hon'ble Supreme Court distinguished "public order" and "law and order" and held that true difference between the areas of "public order" and "law and order" lie not in nature of quality of the act, but in the degree and extent of its reach upon society. Thus, "public order" is held as one affecting community at large and "law and order" among few individuals or specified individuals. This view has also been reiterated in *Angoori Devi v. Union of India* [(1989) 1 SCC 385]. The public order is synonymous with public safety and public tranquillity disturbing communal harmony.

5. The source of power to issue manual regulating religious freedom based on public order referable to Articles 25 and 26 of the Constitution. In this context "public order" has to be understood as any disorder in the society resulting imbalance in relationship due to exercise of religious freedom among followers of different religious communities. Thus, any revulsion in relationship is bound to have repercussion in communal harmony warranting State interference. State steps in to restore the relationship and to sustain the balance to have a communal harmony and peace. It is to be noted that communal harmony is a facet of secularism professed under the constitution. On the other hand, law and order is referable to dispute between individuals or group of individuals on identifiable issues having reflection on corporeal interests. Resolution of such issues are not referable to any communal harmony focus. The objective line of resolution in both type of disputes are different. The State interest is focused in public order and interest of parties are focused in law and order issues. Thus, this distinction has to be borne in mind while considering the application for permission in terms of manual.

6. There are three categories of disputes which normally arise in respect of construction of religious places, namely, (i) Interfaith disputes, (ii) Intra faith disputes and, (iii) Disputes over title, interest of religious places among different denomination of same faith.

7. It is necessary to understand each category of disputes:

i) Inter faith disputes:- these disputes arise normally between two different faith or two different religious community members against establishment or construction of religious places. These are more of incorporeal disputes. There may be occasion when disputes may arise between two different faith or two or more religious denominations with regard to interest or title over religious places. Thus, there can be corporeal disputes in inter faith disputes also.

ii. Intra faith dispute: These are essentially different denomination of same faith on account of their differences in religious practices or following different leaders of same faith which results in disputes. There are also possibility of corporeal disputes in intra faith disputes.

iii) Disputes of title, management etc.:— In these disputes, the disputes are purely on right, interest or title or possession etc. of immovable or movable property.

8. The approach required by the District Administration in the above categories of disputes shall be as follows:

i) Any construction of religious place must require prior permission of District Administration. The District Administration while making enquiry for grant of permission only need to consider potential communal violence and any threat to communal harmony for peaceful co-existence.

ii) The scope of enquiry is not directed against disturbances based on dispute referable to title or interest in the immovable property, but against communal disharmony. The permission granted not with reference to immovable property but as an approval on satisfaction relating to public order.

iii) The permission granted will not confer any right on grantee over any immovable property.

iv) The objective of the manual is to secure communal harmony. Therefore, while exercising the power by the District Administration, it has to distinguish between "public order" and "law and order" with reference to the objective of the manual and Guidelines. In case the dispute is purely a corporeal dispute, the District Administration need not deny any permission for constructing place of worship subject to any decision by competent civil court or other authority, which is competent to hear the dispute regarding title or interest. This is because there is no issue relating to public order in such situation and only a law and order relating to dispute over title or interest over the immovable property. Of course, in appropriate cases, the Authority can invoke Section 145 of Criminal Procedure Code but that cannot be a reason to deny permission in terms of manual for construction of religious places as an enquiry under the manual is not with respect to particular land over which construction of religious place is proposed. However, in case of incorporeal disputes, the District Administration can refuse permission unless a consensus is arrived among different religious faith or the District Administration feels to issue appropriate order in the light of objective of manual. The purpose of manual is only to secure public order and not law and order. Law and order is totally a different subject and has to be dealt differently, not under the guidelines. It is in the above back ground this writ petition has to be examined.

9. The writ petitioners claim title, interest and possession over the property mentioned as above. They rely on various judgments of this Court to establish their title, possession etc. over the above property. The fourth respondent representing the other faction of the Church also claims title and possession over the property. The only reason stated in Ext.P8 is that there is a dispute regarding title and interest over the property and a suit is pending before the Kattappana Sub Court regarding the property. It is also stated in Ext.P2 that on account of

the pending suit, if permission is granted it may result to law and order situation.

10. Any maintenance of law and order is obviously not in contemplation of the above manual on account of dispute regarding title or interest or management of the above property. Therefore, a dispute on account of title of immovable property or management of the Church cannot have a bearing for grant of permission under the manual.

11. As has been noted above, no permission can be declined on account of the dispute over title, interest or management over the property as the enquiry under the manual is not directed against any title or interest over the property. On the other hand based on public order, to obviate potential threat to communal harmony, the corporeal disputes between denominations of same faith cannot be a reason to deny permission under the manual for establishing religious place. It appears that by such disputes, District Administration also fall into recognise corporeal disputes over property and management in exercising their power under the manual. Such disputes are outside the purview of District Administration while seeking permission for establishing worship places. The permission granted under the manual cannot be used as a right to construct a religious place in particular land or property. It is only an approval of existence of public order for constructing a religious place and nothing beyond that. In view of the above, Ext.P8 is set aside. There shall be a direction to the District Collector to grant permission to the petitioner to construct worship place subject to decision by any competent civil court regarding title, interest, possession, management etc. of the Church situated in the immovable property. Needful shall be done within 10 days from the date of receipt of a copy of this judgment.

12. The writ petition is allowed as above. No costs.