

**(1995) 09 MAD CK 0054**

**In the Madras High Court**

**Case No :** W.M.P. No's. 19360 and 19361 of 1995 (in Writ Petition No. 12147 of 1995)

G. Chambi Raj

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

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**Date of Decision :** 07-09-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226

Madras City Municipal Corporation Act, 1919 — Section 220, 222, 223, 9

**Citation :** AIR 1996 Mad 56

**Hon'ble Judges :** Jagadeesan, J

**Bench :** Single Bench

**Advocate :** R. Krishnamoorthy, A.G., for N. Jothi, Spl. Govt. Pleader, S. Govindaswaminathan, for M/s. Sriram Panchu, N.L. Rajah and Aparna Mukherjee, for the Appellant; N. Kannadasan and C.S. Krishnamurthy, for the Respondent

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## **Judgement**

Jagadeesan, J.—The petitioner, Secretary, All India Lawyers' Union has filed W.P. No. 12147/95 byway of public interest litigation,

seeking for the relief of mandamus forbearing the respondents from interfering in any manner with the free access of the public to public amenities

and utilities like electricity, roads, pavements, water, transport (public and private) or misuse of official machinery for private functions of persons

holding public office and other acts in contravention of law.

2. The petitioner has stated in the affidavit that the fifth respondent herein, the Chief Minister of Tamil Nadu is celebrating the marriage of her foster

son Mr. Sudhakar on 7-9-1995 at Madras and the said function is purely a private family affair. But unfortunately the State's resources are being

exploited by the fifth respondent and deployed extensively to facilities celebration of the function in medieval splendour. The petitioner narrated as

to what are all the arrangements being made for the said marriage. As I am not dealing with the main writ petition, I am not proposed to extract all

the averments of the petition. But however, since I am dealing with W.M.P. Nos. 19360 and 19361 of 1995, I deal with the averments made by

the petitioner in respect of those reliefs alone.

3. The further case of the petitioner is that for the purpose of marriage number of arches, cut-outs, fixtures and other structures are being put up on

the road and pavements from Taramani to Santhome and beyond. The first and second respondents have a statutory duty under Ss. 220, 223 and

226 of the Madras Municipal Corporation Act to ensure that there are no obstructions or encroachments on any streets and pavements. The

respondents 1 and 2 have failed to take any steps to remove these encroachments. Further on the arches, fixtures, cut-outs and other structures,

electric lighting, fittings have been installed and obviously the electric supply for these connections have been lifted from the existing street lights and

other public electric connection sources. The fourth respondent have failed in their statutory duty to stop these public electricity sources and

connections from being misused. On account of the heavy consumption of electricity likely to take place on 6th and 7th September, on which dates

the marriage celebrations are to be held, the fourth respondent has decided to deny electric supply to Santhome, Mylapore and certain other areas

which are in the immediate vicinity of the site of the marriage and thus causing the residents of the locality, extreme agony and hardship. Moreover

there has been large deployment of police force to carry out the fixtures and structures and to attend to other aspects of this private function. The

act of putting up the structures, arches and fixtures is contrary to law. Section 220 of the Madras Municipal Corporation Act provides that no one

shall build up or erect any obstruction or projection or make any encroachment in or over any street. Section 222 of the said Act casts a duty on

the Commissioner of Corporation to remove such encroachments or obstruction on any street. Section 222(3) of the said Act envisages that no

licence can be granted if such projection or construction causes public inconvenience or otherwise materially interfere with the use of the road. On

the ground of public policy as well as law, the erection of such arches as well as other fixtures and structures is not permissible. It appears as

though the authorities have no control over the situation. It also appears that no procedure exists for checking these erections from the point of view of stability and safety and having proper warning systems. The arches, cut-outs, fixtures and structures have been put up without the necessary permission being obtained from the authorities. The erection of these fixtures and structures would result in grave and irreparable loss to the members of the public in addition to being in gross violation of the statutory provisions of the Madras Municipal Corporation Act and the Tamil Nadu Open Places (Prevention of Disfigurement) Act.

4. The two W.M.Ps. were filed for the relief of direction, directing the respondents to remove the arches, fixtures, cut-outs and other structures put up on roads and pavements of Madras City pending disposal of the writ petitions and to forebear the respondents by an order of interim injunction from disrupting the normal supply of electricity and water to the citizens of Madras or cause similar inconvenience to the members of public on 6th and 7th September, 1995 pending disposal of the writ petitions.

5. In W.M.P. No. 19361/95 I directed notice when the writ petition came up for admission on 4-9-1995 and directed the respondents to file counter on 5-9-1995. In W.M.P. No. 19362/95 I granted interim injunction and posted the same on 5-9-1995 along with two other W.M.Ps. about which we are not concerned at present.

6. The first respondent has filed the counter, confining himself in respect of the relief sought for in W.M.P. No. 19359/95 wherein he denied the allegation of the petitioner that there has been an abuse and misuse of Government machinery in connection with the wedding of the foster son of the Hon'ble Chief Minister. He reserved his right to file a detailed counter affidavit in the main writ petition later and he made a reference to the counter filed by the respondents 2, 3 and 4.

7. The second respondent has filed counter stating that the Madras City Municipal Corporation Act provides for the grant of permission to erect pandals, arches, poles etc", in public roads, such application or claims are considered on the merits of each and permission granted after being satisfied that the grant of such permission would not impede or affect the free flow of traffic. The first-respondent received an application on 23-8-95 for grant of permission for erection of arches etc., in the places specified in

the said application. After considering the said application with reference to each one of the site mentioned in the application, the Assistant Commissioner (Zone No. 10) of the Corporation of Madras, who is the appropriate authority has granted permission on 1-9-1995 to enable the digging of the roads and erecting the said arches etc. After having granted such permission, direction has been given to the Executive Engineer (Zone No. 10) to inspect and report about the actual number of poles and digs that would be made at various sites so as to ensure that there is no violation. The said Executive Engineer had duly inspected and verified as to whether the permission granted had been adhered to. While granting permission, the authorities will take note of the fact that such permission would not affect the free flow of traffic. No arches or structures have been put in any place contrary to the permission granted.

8. On 6-9-1995 the second respondent filed additional counter with regard to the ecotricity supply from the street lights. He has stated that they have not extended service connection for any purpose from the street lighting poles nor they have authorised any such use to anybody. The Corporation itself is the consumer which has no authorisation to extend the service connection which has availed by them for street lighting. Further the second respondent has issued instructions to the effect that any such unauthorised lapping should be checked and the connection if any should be disconnected. Apart from the application dated 23-8-1995, the second respondent received an application on 4-9-1995 along with a cheque for Rs. 1,50,000/- seeking permission to erect the arches and cut-outs in various places and also poles for erection of banana trees etc. The copies of the application have been forwarded to the Assistant Commissioner of the respective zones for further action and the concerned officers are seized of the matter and the claim of the applicants would be considered in accordance with the provisions contained in the Madras Municipal Corporation Act.

9. On behalf of the third respondent, the Deputy Commissioner, in charge of: entire traffic regulation has filed the counter, In the counter he has referred to the traffic arrangements made and also stated that the respondents are not seeking to restrict the movement of the public over public roads in the city but only to regulate the traffic for the purpose of facilitating the

easy movement of the traffic and people who are to reach places

like hospitals, schools and other public utility institutions would have free access to reach such destinations. He has not referred to the obstruction

of any traffic in respect of the arches, structures and cut-outs erected on the roads.

10. In respect of the relief sought for in W.M.P. No. 19362/95 relating to water supply, an affidavit has been filed on behalf of the Madras Metro

Water Supply and Sewerage Board. The Chairperson and Managing Director has filed the affidavit in which they have referred to the

arrangements made for the supply of water at the marriage site and gave an undertaking that there will be no shortage of supply or restriction in the

normal supply of water to the residents of the area.

11. Mr. Govind Swaminathan, Senior Counsel, appearing for the petitioner contended that the arches and structures that had been erected for the

occasion of the marriage of the fifth respondent's foster son is directly against the orders of this Court in W.M.P. Nos. 10347 and 10348 of 1995

in W.P. No. 6728 of 1995. He also referred to Ss. 220, 221, 222 and 223 of the Madras Municipal Corporation Act and contended that the

prior permission of the Corporation ought to have been obtained before even any erection of the cut-outs or the structures are put up and since

they have been erected without the prior permission, immediate removal of those cutouts and structures have to be ordered. He also referred to S.

223(2) of the said Act and contended that the Commissioner of the Corporation of Madras has to issue the permission in concurrence with the

Police Commissioner and the affidavit filed by the second and third respondents do not reveal any such concurrence. Hence even assuming if the

second respondent has granted any permission for erection of the cut-outs and arches etc., it is illegal and invalid and as such the respondents

should be directed to remove the cut-outs and arches etc.

12. The learned Advocate General appearing for the respondents contended that S. 223 of the Madras Municipal Corporation Act has no

application to the facts of the present case and only S. 226 of the said Act is applicable. As the Commissioner of Corporation has granted prior

permission for the erection of the cut-outs, arches etc., there is no violation of an statutory provisions.

13. So far as W.M.P. No. 19362/95 is concerned, the learned Advocate General referred to the counter affidavit filed by the second respondent

and the Chairperson of the Madras Metro Water Supply and Sewerage Board and contended that the proper applications have been made for the

electric supply for the arches, cut-outs etc., and electric connection has been given from the transformers at the marriage site and in respect of the

road side structures and arches permission has been given to take electricity from the terminal transformers situated in those areas and there is no

supply of electricity from the junction boxes of lamp posts. To establish this, an additional affidavit was filed by the fourth respondent where it is

stated that six temporary connections were granted to the marriage venue and apart from that 20 temporary connections at various points from

Adyar Automatic Signal to M.R.C. Nagar were granted in connection with marriage procession. An advance towards current consumption

charges and installation charges amounting to Rs. 8,44,410/- was collected on 2-9-1995. Twenty six temporary service connections are extended

from the T.N.E.B. pillars where the metres are provided.

14. The learned Advocate General further contended that there will be no reduction of water supply to the citizens of the city and they will get their

normal water supply.

15. Heard the counsel. At the outset I appreciate the laudable purpose with which the writ petition was filed by way of public interest litigation by

the All India Lawyers' Union. In spite of fresh memories of Shanmugasundaram episode, who was alleged to have been beaten as he intended to

file a private complaint against the Chief Minister.

16. I called for the files from the second respondent in respect of the permission sought for, for erecting the structures etc. As I am deciding the

question on the materials available in the file, I am not proposed to deal with the contentions of the counsel elaborately.

17. One R. M. Rajendran Manager of G. K. Arts had submitted his application to the Corporation of Madras on 23-8-1995 stating as follows:

We propose to dig the roads (as mentioned in the annexure list) for the purpose of V.I.P. visit on 6-9-1995 at Madras. I request the

Commissioner, Corporation of Madras to issue necessary permission. The requisite charges, to be levied by the Corporation for the above will be

paid by us.

This application has been forwarded to the Zonal Office No. 10. In the annexure to this application the number of sites are mentioned is follows:

1. Adyar Signal Police Beet Backside (Arch)
2. Police Beet To Pillayar Temple (Pandal)
3. Police Beet Opp. Road Centre, Island Two Nos. (Statute Work)
4. Avin Booth Corner (Palace Work)
5. Malar Hospital Opp. Road Centre Island (Statute Work)
6. Malar Hospital Car Park In Between In Gate Out Gate (Palace Work)
7. Front Of Adyar Bridge (Fountain Work)
8. Ministers Houses Entrance (Fort Work)
9. Sathya Studio Opp. Island (Statute Work)
10. Opp. To Police Beet Hindu Hoarding Board (Palace Work)
11. Music College Entrance Next Closed Gate (Statute Work)
12. Bank Of Coovam River (Palace Work)
13. Ayyappan Temple Front Island (Statute Work)
14. Ayyappan Koil Next Road Entrance (Arch)
15. Above Said Road Both Sides Statute Decoration
16. Above Said Road Finishing (800 Feet Limit)
17. From Adyar Vinayagar Temple To Function Site Road Both Sides Pillar Lights (Incl. Bridge)

18. From the above application it is clear that the permission is sought for to dig the roads. But, however, in the annexure enclosed they have given

the places and the purpose for which the digging has to be done. From the above extracted annexure list, the nature of the work and the places is

made clear. But in case of the sites mentioned in the annexure the size and the measurement of the work had been mentioned. However, on 1-9-

1995, the Assistant Commissioner, Zone No. 10 Corporation of Madras had written a letter to the applicant in the following terms:

With reference to your letter dated 23-8-1995 I am informing you that the permission for digging the road will be granted and you are requested

to pay the charges of Rs. 15/- (Rupees fifteen only) per dig per day.

You will be separately given advice for payment of actual charges after site inspection by your field engineers.

The Executive Engineer had made an endorsement as follows:

PL inspect and report the actual number of poles etc. after site inspection on or before 5-9-1995.

The letter of the Assistant Commissioner dated 1-9-1995 makes it clear that the permission for digging roads will be granted, which means the

permission has to be granted in future after the payment of the approximate charges referred to in the letter. There is nothing on record to show

that the applicant Rajendran had made any payment in respect of the proposed digging. But, however, the digging had already been done and the

structures had also been already erected.

19. The application of Mr. Rajendran referred to above relates to the places between Adyar Signal Police Beet to Iyappan Temple. In the

application the applicant has not referred to the dates on which he is proposed to erect the structures in the places mentioned in the annexure. He

merely stated that he wants to dig the roads for the purpose of the structures put up in the places mentioned in the annexure in respect of V.I.P.

visit on 6-9-1995. Even assuming that the letter dated 1-9-1995 of the Assistant Commissioner is construed as granting of permission, it does not

specify to which period the permission has been granted. The permission cannot be an indefinite one or a permanent one and hence the same is

invalid.

20. One K. R. V. Ramani, the Chairman of Tamil Nadu Slum Clearance Board had submitted an application to the second respondent on 4-9-

1995 which was forwarded to the Zonal Office No. 10 on 5-9-1995. He has stated in his application as follows:

We request you to grant permission for the following arches and for laying poles from Dr. Radhakrishnan Salai to Ayyappan Temple at M.R.C.

Nagar (Santhome High Road) where V.I.P. is visiting on 6-9-1995 and 7-9 1995 (2 days) at Madras. The requisite charges to be levied by the

Corporation for the above will be paid by us.

Along with the application he has sent a cheque bearing No. 292552 drawn on Indian Bank, Velacherry, Madras dated 4-9-1995 for a sum of

Rs. 1.5 lakhs. But the cheque has not been issued either by the Slum Clearance

Board or by the applicant Mr. Raniani. Some third party had given the cheque.

21. He has enclosed three annexures mentioning various places for erecting arches for laying cut-outs and for putting The poles Cor fixing tube lights etc. He has also sought for permission for laying poles for fixing banana trees electrical arches, electrical lights, flags and banners from starting point of C.M.A. house. Radhakrishnan Salai via Kamarajar Salai, Santhome High Road, up to M.R.C. Nagar Iyappan Temple both sides.

The application has been given on 4-9-1995 and received by the concerned Zonal Office on 5-9-1995. It is admitted that no permission has been granted to the applicant for doing any of the work mentioned in the annexures to his application.

22. During the argument, the learned Advocate General represented that since the writ petition is pending the authorities thought that they should not pass any orders on the application. It is admitted case by both sides that in all the places where the permission has been sought for by the applicant, Mr. K.R.V. Ramani, the poles have been erected, banana trees have been fixed, lights have been fixed the cut-outs had been erected.

Throughout the road from C.M.'s house, Radhakrishnan Salai via Kamarajar Salai and Santhome High Road up to the M.R.C. Nagar. If the authorities thought that the application cannot be disposed of since the matter is pending before the court. It is not known as to how the authorities close their eyes for the erection of the cut-outs and other things mentioned by the said K.R.C. Ramani in his application. The authorities are expected to take immediate action especially when the applicant is doing an illegal act and in contravention of the provisions of the Madras Municipal Corporation Act. The authorities neither try to stop the work nor at least have taken any steps to remove the structures and poles that had been erected without the permission. It is rather a pity that the officials had turned to be the spectators for the illegal acts of the applicant.

23. The learned Advocate General pointed out that second respondent had received two other applications subsequently and no orders have been granted. The applications have not been produced before this Court to ascertain as to for what purpose the permission has been sought for. But taking into consideration of the representation of the learned Advocate General

that no orders has been passed on the said applications, in case if those applicants have done anything that would also amount to illegal act. The statute envisages that the requisite permission is a condition precedent to carry out the work. Whatever that has been done without the sanction of the authorities, cannot be ratified by the authorities as they have no such powers under the statute.

24. In view of my finding that both. Rajendran, Manager, G. K. Arts and K.R.V. Ramani, the Chairman, Slum Clearance Board have erected all the arches, structures, boards, cut-outs etc., without any valid permission from the Corporation Authorities, I direct the second respondent as well as the, third respondent to remove all the structures put up in the main roads referred to in the application of above said Rajendran and, Ramani by 9-9-1995.

25. Even though Raniani had successfully done this job without obtaining any prior permission, I direct the second respondent to encash the cheque enclosed by the applicant and issue the receipt in the name of the person who signed the cheque and the second respondent should show the counterfoil of the receipt to this Court after realisation of the cheque.

26. The second respondent is directed to initiate prosecution against both the applicants Ramani and Rajendran for contravening the provisions of the Madras Municipal Corporation Act by erecting the structures cut-outs poles etc. without obtaining proper sanction from the appropriate authorities.

27. At times, the political emissaries play a leading role by over enthusiasm. Such acts cannot be attribute the motive to the fifth respondent herein.

Unless it is established that everything has been done by the direct instructions of the fifth respondent, it is not safe to accept the involvement of the fifth respondent as alleged in the affidavit.

28. Even assuming that the fifth respondent has done something in excess, there is nothing wrong because the V.V.I.P. cannot be equated to the ordinary citizen. Always they have got the V.V.I.P. treatment. Even though the marriage of the foster son is a private affair, when it becomes the V.V.I.P. function, naturally it gets some importance in the eyes of the public. If not why should the press gives so much of importance even for the

betrothal ceremony. When the press has given so much of importance, none has raised any objection stating that after all it is a private function of

the fifth respondent and press ought not to have given so much of importance and the publicity.

29. Of course this Court is not concerned whether it is a private function or public function. What the respondents have done is correct or not.

Now having given my findings that what the respondents 2 and 3 have done is wrong, I direct them to take immediate action to rectify their

mistakes by directing the two applicants Mr. Ramam and Mr. Rajendran to remove all the structures ,cut-outs, lights etc., by 9-9-1995. Both the

W.M.Ps. are allowed.

30. Forty eight advocates have filed another writ petition W.P. No. 12229/95 for similar reliefs and the senior counsel Mr. Habibullah Basha

argued the matter as party in person. Mr. Habibullah Basha, senior counsel also advanced the identical arguments of Mr. Govind Swaminathan. As

I already stated that I am not dealing with the contentions of the petitioners in this W.M.P. and in view of my order in W.M.P. No. 19361 of

1995, I do not think any separate order is necessary in the W.M.P. in this writ petition. As the writ petition are pending, it will be posted for final

hearing.

31. Before parting with the case, I have to mention with little bit of hesitation about the mention made by Mr. N. G. R. Prasad, one of the

petitioners in the Writ Petition No. 12229/95. The W.P. No. 12147/95 was filed on 4-9-1995 and it was brought up for admission at 4:00 p.m. I

took up the matter for admission and after hearing Mr. Govind Swaminathan I passed the orders and notice was ordered and since the counsel for

the respondent took notice, I direct the W.M.Ps. to be posted on 5-9-1995. Throughout the afternoon I heard the arguments and on 6-9-1995

also I heard the arguments for about 45 minutes and reserved the orders at 12.30 p.m. So far as the other writ petition. W. P. No. 12229/95 is

concerned, I have-not yet admitted. But, however, I directed the Government Pleader and other counsel who appeared for the respondents in W.

P. No. 12147/95 to take notice and heard the matter along with other writ petition. When such is the position, I am of the view that it is not fair

either for the party or for a counsel to make a request to the Court to pass

orders on the very same day. They should not forget that the court also owes a duty and the Judge is not interested in passing an infructuous order after hearing the matter for two days. The counsel as well as the parties should refrain from making the request of this sort to the Court. I feel that it is nothing but the pressure on the Judge. I may mention even when I heard the writ petition filed on behalf of the Advocate Association, regarding the attack of Mr. Shanmugasundaram argument was completed on 16-6-1995 and I delivered the judgment on 20-6-1995. The members of the Bar made a hue and cry demanding justice on 19-6-1995 throughout the corridors of the High Court. The counsel should realise that their duty ends by arguing the matter. Only in case of unreasonable delay in delivering the judgment, they can make a request. In other cases, they have no business to dictate the judge as to when and how to pass orders. I hope the members of the Bar, at least hereafter would refrain from making this sort of request before the Court.

32. Order accordingly.