
(1999) 01 MAD CK 0077
In the Madras High Court
Case No : Writ Petition No. 19118 of 1998

K. Kannadasan

APPELLANT

Vs

The District Collector and The Avadi Municipality

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Citation : (1999) 01 MAD CK 0077

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant;

Final Decision : Dismissed

Judgement

Jagadeesan, J.—The Petitioner has filed this writ petition for the issue of a writ of mandamus directing the Respondents to accord permission for putting up the Ashok Pillar at the junction of M.T.H. Road, and Avadi bye-pass road.

2. The Petitioner is the President of Youth Congress (I), South Chingleput District which is a recognised party. The Congress has decided to celebrate the completion of 50th year of Independence in various parts. One such step is putting up a Stupi of Ashok Pillar. In their rejoice the party men have contributed their mite and as far as the Petitioner is concerned he had thought fit to raise the Ashok Pillar which would be symbolic of Indian Independence. In the pillar the names of the freedom fighters in the District would be written to enable the general public to recognise their services to the nation. Hence the Petitioner applied for permission to erect the pillar in the above said place. The Petitioner's request was forwarded to the Inspector of Police, Avadi Police Station, who had submitted a report on 11.8.98 stating that the erection of the pillar would not affect the movement of the traffic. The Divisional Engineer. Highways, Chingleput District addressed Superintending Engineer for the grant of "No Objection Certificate" for erecting the structure near the Kamarajar Statute. The Petitioner reliably understands that on 13.8.98 the Superintending Engineer has given

clearance with certain conditions. The Chief Engineer, Madras has written to the District Collector seeking certain clarifications. In the meanwhile the shop keepers who had put up structures on the road had raised objection in the name of Avadi Circle Nadar Iykkia Sangam stating that if the pillar is raised, it would hide the view of their beloved leader Kamarajar. The occupants of the shop are likely to be removed in the event of widening the road. In order to create mischief they had issued pamphlets to various authorities raising objections for the erection of the pillar. The statue of Kamarajar is 19 feet in height; whereas the proposed pillar is hardly 12 feet in height and as such there is no substance in the objection raised by the other group. Moreover, it is for the authorities to decide the issue and no individual or any group has a say in these matters. On 11.11.98 the District Revenue Officer addressed the Tahsildar, Poonamallee to inspect the site and ascertain whether it is in the interest of the public or whether there would be any law and order problem on account of such construction. When the highways authorities had sanctioned permission subject to conditions, it is not open to the revenue authorities to raise any objection since the land does not vest with them. It is only to delay the putting up of a pillar, the revenue authorities had taken such a stand. It is the look out of the police to enforce the law and order in the event of any miscreants attempting to block a good and earnest act from being performed. The object of the Petitioner is to enable the members of the public to know the pioneers of the District who had stood for the Indian Independence and any person who is attempting to stall such intention from being implemented is doing only with the view of gaining political mileage. The department in the event of not being helpful should not dissuade the interest evinced by the Petitioner and like-minded people. Kamarajar is also a leader associated with the Congress and independence and it would be a farfetched thought that he would project his image in preference to the celebration of Indian Independence. It is rather unfortunate that some disgruntled members of the public to project their cause, use the name of the leader to delay the noble cause. The Petitioner intended to install the pillar in August, 1998 but the same has been (sic) repelled and as he wants to have it installed at least before the Republic Day, the writ petition has been filed. It is further stated in the affidavit that after receiving the no objection communication from the Highways Department, the Petitioner has commenced the construction and had incurred expenses.

3. The learned Counsel for the Petitioner vehemently contended that the erection of the Ashok Pillar in memory of the Golden Jubilee year of Independence is a noble cause and hence the authorities should be directed to grant permission to the Petitioner to erect the same. In fact the main contention of the learned Counsel for the Petitioner is that when once the Highways Department, in whose control the land lies, has granted "no objection" for the erection of the pillar, it is not open to the other authorities to stall the project. Equally it is not open to the Avadi Circle Nadar Iykkia Sangam to raise any objection for the erection of the Ashok Pillar. Hence the enquiry undertaken by the revenue department pursuant

to the objection raised by the said Sangam is unwarranted. On the basis of the "no objection" issued by the Highways Department, the Petitioner is entitled to have the Ashok Pillar erected in the place.

4. I carefully considered the contention of the learned Counsel for the Petitioner. The Petitioner is seeking permission to erect the Ashok Pillar in memory of the Golden Jubilee of the Indian Independence. The Highways Department as well as the Police Department have given "no objection". However, since objection has been raised by the Avadi Circle Nadar Iyakkia Sangam on the ground that the erection of the pillar would obstruct the view of the Kamarajar statue, the revenue authorities started enquiry regarding the feasibility of the erection of the pillar in order to find out whether it would create any communal problem in the local area.

5. Now the contention of the learned Counsel for the Petitioner is when once the highways department has given the consent stating that the erection of the pillar will not create any traffic problems and the police department has also concurred with the highways department, the other concerned authorities have no other option except to grant permission to the Petitioner and hence the writ petition has been filed.

6. In short, I am unable to agree with the contention of the learned Counsel for the Petitioner. A writ of mandamus would lie to direct the authorities to discharge their statutory functions or to protect the right of those who approach the Court, if it is interfered with or to prevent the unauthorised action of the officials. In this case, it is not the case of the Petitioner that he has got a right to install an Ashok Pillar in the public street. It is not the case of the Petitioner that the authorities are bound to issue the permission under any of the statutes. Further it is not the case of the Petitioner that the authorities have rejected the relief, which the Petitioner is legally entitled for, in an arbitrary manner. Hence the writ petition itself cannot be maintained.

7. However, coming to the merits of the claim of the Petitioner, merely because the Highways Department and the Police Department have granted "no objection" it cannot be said that the other statutory authorities have no authority to interfere in the erection of the Ashok Pillar. From the affidavit itself it is clear that both the Departments have considered the aspect as to whether the erection of the Ashok Pillar in the particular place would cause any inconvenience for the free flow of traffic. Both the departments are of the opinion that the erection of the pillar will not cause any traffic problem and hence the permission can be granted.

8. At this stage, the merchants belonging to a particular community viz., Nadar community objected for the erection of the Ashok Pillar on the ground that the erection of the pillar would totally conceal the view of the statue of Kamarajar who also belongs to that particular community. So there is no dispute that before ever the erection of the Ashok Pillar is made, the trouble started between the

groups in the local area. The Petitioner's contention that the Nadar Iyakkia Sangam has no right to raise an objection for the erection of the Ashok Pillar cannot be entertained. When the Petitioner claims a right for a future erection of the pillar, the other group is entitled to safeguard the existing statue which is already installed. Hence it is the duty of the authorities, both revenue as well as police to make an enquiry in order to find out whether there will be any law and order problem, if the permission is granted to the Petitioner. Hence it cannot be said that the enquiry commenced by the revenue authorities is an unwarranted one or without jurisdiction.

9. The court cannot lose sight of the appointment of a High Level Committee to Suggest Remedial Measures for the Prevention of Caste Clashes in the Southern Districts of Tamil Nadu recently headed by Thiru Justice S. Mohan, retired Supreme Court Judge as the Chairman, Thiru K. Lakshmikanthan Bharathi, I.A.S. (Retd.), and Prof. D. Sundaram, Head of the Department of Sociology, University of Madras as members. The Committee in its report has stated the causes and reasons for caste-clashes as follows:

The case studies were presented by the District Collectors, the District Police organizations. The evidences were provided by the representatives from the public belonging to various social groups, the local social service organizations including women activists, the elected representatives of local, State, government bodies and also by the representatives of the political parties, academicians and media representatives. They reveal the following:

They have identified certain precipitating situations like disfiguring the statues and getting agitated over the naming of the Transport corporations after the famous leaders among the competing castes. The erecting of statues for various famous leaders and the naming of the District and Transport Corporations are laudable reasons to perpetuate the memory and to honour them against the selfless service that have been rendered by them. The name of the leaders and statues belong to the various ages of history in Tamil Nadu. Also, the leaders belonged to various castes of the Southern districts who, in the real sense, considered communities of all the castes dearer to the heart without in any way creating segmented feelings. The District Collectors have stated in the reports that there were precipitating conditions connected with the naming of the districts and transport corporations after the leaders and also regarding statues. The problem issued in this regard is defiling the statues of leaders belonging to the dominant castes in a geographical space in the villages and the districts. The representationists, in their evidences before the panel sittings, hearings, went to the extent of saying that the clashes between the opposing-castes could sparked even by a careless statement that a particular statue in particular place has been disfigured or garlanded with disrespect, even if it is a rumour. At times the disfiguring of the statues or garlanding them with disrespect could have been done by a person belonging to the cast to which the leader belongs. Also, it is further represented by many representationists that the issue connected with the

statue could have been highly localized if the law and order mechanism of the area could have contained the boisterous situations without any spread-effect. But, there is a organized attempt by the people belonging to the caste-associations to spread this issue of disfiguring statue by printing posters and notices and pasting them on all transport buses which cover long and small distances and interior and nearer villages within and outside the districts of the southern region in Tamil Nadu.

The Committee further in the summary of conclusions has stated as follows:

During the sittings of the Committee, a large number of people represented that the main reasons for these clashes was the instigation by certain caste leaders for their own selfish ends. Even the people in the villages represented to the Committee that while all the castes in the villages lived as brethren, it is the outsiders who came and fanned the caste feelings. It was mentioned that certain political leaders and caste leaders were interested in keeping alive these clashes with ulterior motives to gain personal advantages to remain as leaders. The Committee is also of the view that the actions of certain political leaders and caste leaders instigating the people is yet another cause for the caste-clashes.

10. The Court can taken note of the fact that after the filing of the Report, the Government had totally banned the naming of the Transport Corporations in the name of leaders of the political parties or of a particular community or of freedom fighters. When that be the situation, now the request made by the Petitioner who belongs to a particular political party has to be scrutinised with some sense of responsibility.

11. In the case on hand, the particular group of Nadar merchants raised the objection for the erection of the Ashok Pillar stating that the erecting of the Pillar would prevent the view of their leader's statue who played a major role not only for the Independence but in the National politics. From the manner in which the objection has been raised, there cannot be any second thought that if the Ashok Pillar is erected, there will be a clash which will end in law and order problem. If the contention of the Petitioner, that if any law and order problem arises, it is for the authorities to take care of the same as and when it arises, is to be accepted, then without any hesitation it can be said that the authorities are inviting the trouble of facing the law and order problem by their own action which cannot be allowed in a Welfare Society. Hence I am of the view that prevention is better than cure and as such the authorities cannot be expected to invite the trouble and deal with the same. They have to find out the possibility to prevent the troubles at the root level.

12. Now the permission may be sought to the erection of the Ashok Pillar, then subsequently on even Independence Day and the Republic Day, arrangement has to be made to garland the Pillar for which the local V.I.Ps. including the political leaders have to be invited and this would naturally cause hazard to the traffic. It is a regular and unforgettable sight within the City of Chennai that for the two

statues in the Anna Salai and for the two memorials in the Beach, there will be a procession to pay respect to their beloved leaders on their birth anniversary and death anniversary. The different dissident political groups are permitted to have a procession by the authorities at different times on the same day, unmindful of the inconvenience caused to the general public on every occasion. Those who are in power never spare any time to think of the plight of the general public on those occasions because they are involved in the same. If these events are taken into consideration, I do not think any authority can be directed to grant any permission to erect any statue or other structure by way of mandamus. The political leaders as well as freedom fighters can be remembered in a more respectable manner by having a memorial by way of community hall or a library in their name which may not create any problem for the public and at the same time it will be more useful and beneficial for them. Now-a-days a trend has developed whereby in order to claim importance in the party certain individual wants to do something and the result is almost the statue of every leader being installed in even street which leads to several problems, as stated by the High Level Committee for Prevention of Caste Clashes in Southern Districts of Tamil Nadu. It is clear from the Report, on occasions, this has led to compel the police authorities to post security personnel to protect the statues as well as the living human beings, whereby they are not able to concentrate in the investigation of crimes.

13. The Government has also passed an order in G.O. Ms. No. 32 Highways (Hs-1) Department dated 13.2.98 prescribing certain guidelines for the erection of statues or the memorial pillars or arches which is as follows:

14. Considering the guidelines specified in the above Government Order, it is incumbent on the authorities to hold an enquiry regarding law and order problem. It is high time that the

Government should totally ban the erection of any statue as well as taking out the procession in the public streets in order to bring some harmony among the different groups of people and to prevent the rival claims for such things.

15. Even though it may be stated by the Petitioner that the Ashok Pillar is to contain the names of freedom fighters at a later point of time, some may claim that some one's name had been omitted and that may also create a law and order problem.

16. Considering all these aspects. I am of the view that the revenue authorities have rightly taken up the task of finding out the probability of law and order problem and hence a writ of mandamus, as prayed for cannot be granted. W.P. is dismissed.