

(2011) 06 MAD CK 0207

In the Madras High Court

Case No : Writ Petition No. 6366 of 2011 and M.P. No. 1 of 2011

Madurai Mavatta Devendra rep. by its President K.C.
Selvakumar

APPELLANT

Vs

The Government of Tamilnadu and Others

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0207

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Vijay Narayanan, for K. Kannan, for the Appellant; P.S. Siva Shanmuga Sundaram, Addl. Govt. Pleader for Respondents 1 to 5 and 7, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—Though the miscellaneous petition is listed today, at the instance of the learned Counsel appearing on either side, the main writ petition itself is taken up for disposal.

2. Heard Mr. Vijay Narayanan, learned Senior Counsel appearing for the Petitioner and Mr. P.S. Siva Shanmuga Sundaram, Additional Government Pleader appearing for Respondents 1 to 5 and 7.

3. It is the case of the Petitioner that he is the elected President of the Petitioner association, which is a registered body, with the object of serving for the good of the people. According to the Petitioner, the freedom fighter Veeran Sundaralingam, who was born in Tirunelveli District in the southern part of Tamil Nadu and one among the war personnel in the Army conducted by the great freedom fighter Veerapandia Kattabomman, who fought against the British rule, was crowned to rule one part of the southern district of Tamil Nadu and killed in the war. Therefore, to recognise the sacrifice of the said freedom fighter, the Petitioner association wants to erect a statue in honour of Veeran

Sundaralingam. Accordingly, the Petitioner seeks permission from the Respondents for installation of the statue of the freedom fighter Veeran Sundaralingam in Madurai city.

4. It is seen from the records and the documents annexed in the typed set of papers that to the request of the Petitioner, all the Respondents except the Commissioner of Police, Madurai City/7th Respondent herein have given their opinion and therefore after exhausting the remedies, the Petitioner had now sought for direction to the 1st Respondent Secretary, Home Department, Government of Tamil Nadu to issue necessary direction to the 7th Respondent to give opinion in the form of No Objection Certificate sought for by the 2nd Respondent- District Collector. In this regard, they have also addressed a letter of communication to the 1st Respondent on 15.1.2011, and till the Petitioner moved this Court, no communication was sent to them about the decision taken by the 7th Respondent. Therefore, after hearing the learned Counsel on either side, this Court, by an order dated 13.6.2011, suggested the learned Additional Government Pleader to apprise the concerned Officer viz., the Commissioner of Police, Madurai city/7th Respondent herein to expedite the matter and submit his report to this Court in the next hearing date. Accordingly, the matter is posted today.

5. The learned Government Pleader apprised the Respondents and two of the proceedings have been placed before this Court for consideration.

(i) Proceedings in Na. Ka. No. S3/209/ 6081/11 dated 25.2.2011, wherein the Commissioner of Police, Madurai City, Madurai have addressed a letter to the District Collector, Madurai stating that the place sought for by the Petitioner for erection of statue of freedom fighter Veeran Sundaralinganar is located on a National Highway leading to Chennai and in between the statue of M.G.R and Roundana, which is situated on the western side of M.G.R. statue within a distance of 15 metres. Therefore, the Commissioner took a decision not to give permission to erect the statue in the said place as there may be a traffic problem in that area. He pointed out that in the said road leading to Mattuthavani bus stand, fruit market, flower market and private buses operators offices are situated.

(ii) Another communication is the proceedings in C. No. S3/209/16081/2011 dated 19.6.2011 addressed by the Inspector General of Police, South Zone, Madurai, who is also in-charge of Commissioner of Police, Madurai City to the Collector intimating that a reply requesting the District Administration to reject the permission sought for by the Petitioner Tr. K.C. Selvakumar for the erection of Veeran Sundaralingam statue at the Roundanna in between M.G.R. Statue and the District Court on Melur Road, Madurai City on the traffic point of view, has been sent to the Collector's Office in the earlier letter dated 25.2.2011, with a copy annexed along with the said communication.

6. The learned Senior Counsel appearing for the Petitioner has strenuously

contended that the above said two communications sent by the 7th Respondent addressed to the District Collector are not supported by any material documents except stating that the place sought for erection is situated within 15 metres between roundanna and the M.G.R. Statue. The Learned Senior Counsel further contended that the statement made in the communication dated 25.2.2011, about the location of Mattuthavani bus stand, fruit market, flower market and private bus operators offices is not correct, as the said places are far away from the proposed place sought for erection of the statue and the said places are in no way connected with the request made by the Petitioner. The bottom line of the learned Senior Counsel of that the 7th Respondent, namely the Commissioner of Police, Madurai, has played the role of decision making authority, which he is not empowered to, as per the decision of this Court.

7. The learned Senior Counsel for the Petitioner placed reliance on a decision of the Division Bench of this Court in the case of *T. Amirthalingam v. State*, Rep. By Its Secretary, Department of Home, Chennai reported in (2010) 2 MLJ 1022, wherein, the Honourable First Bench, in a similar circumstances of permission of a statue, has authoritatively given directions to the Government underlining what are the principles to be followed in paragraph Nos. 35, 36 and 37 and he wanted to place on record the said directions given by this Court for consideration of this case also. The said portion reads thus:

35. The first direction is that government sanction should be obtained before installation of the statues, memorials, memorial arches and memorial pillars. This is with respect to the sanction to be obtained from the government. In this behalf, it would be desirable that the person, society or body of institutions desirous of erecting any such statue should make an application to the concerned District Collector for grant of permission. The application must specify the location along with the sketch. It must also give details with respect to the survey numbers of the property. It would be desirable that the District Collector forwards the application to the Tahsildar of the Taluk as well as to the Inspector of Police of the concerned police station, who should obtain all necessary information and forward it to the District Collector. The Tahsildar may as well obtain the views of all persons concerned with the erection of the statue. The District Collector will then forward his report to the Home Secretary who should obtain the sanction of the government on the proposal. In no case the erection of the statue should be initiated or carried out without the prior sanction of the government in this behalf.

36. The second direction given in the above referred to Government Order is that such statues, memorials, memorial arches and memorial pillars that are already erected should be protected and the persons who erected them should take the responsibility for its security and maintenance. In this behalf it would be desirable that the District Collector obtains the affidavits of the persons who want to erect the statue. These affidavits should be sought along with the application to put up the statue and if the District Collector finds that the persons concerned

are not reliable, it will be open to him to reject any such application. The District Collector should maintain a list of such permissions granted and the statues erected in his District. This G.O. dated 20th November, 1998 refers to an earlier G.O. Ms. No. 193 dated 23rd August, 1990 which laid down the necessity to have the statues made in bronze. In our view, the government should insist on that condition while granting the permission. As seen in the present matter the statue got damaged with the pole falling thereon. A bronze statue will avoid any such development.

37. The third direction in the Government Order dated 20th November, 1998 requires a prior permission of the government before shifting of the statue in case it is required to be shifted for its protection and for preventing it from ruining. This condition should be scrupulously followed. This is because, again as seen in the present matter, shifting of the statue from the original place becomes a sensitive issue leading to unfortunate consequences.

8. Therefore, the learned Senior Counsel would submit that the above directions already circulated to all the authorities concerned including the Respondents herein. So, the procedure contemplated by this Court is that when an application is made for permission for erection of a statue, it would be desirable that the District Collector shall forward the application to the Tahsildar of the Taluk as well as Inspector of Police of the concerned Police Station, who should obtain all necessary information and forward it to the District Collector. The Tahsildar may as well obtain the views of all persons concerned with the erection of the statue. The District Collector then will forward his report to the Home Secretary, who should obtain the sanction of the Government on the proposal and it was made clear that in no case the erection of the statue should be initiated or carried out without the prior sanction of the Government. If that is so, two of the proceedings placed before this Court appears to be as they are the decision making authority and conveyed certain informations, which is not desirable by any of the persons, who are languishing for justice as well as the authority concerned to obligate on the directions of this Court. Instead, the Respondents themselves wanted to take decision. Therefore, the learned Senior Counsel submits that the entire opinion so far obtained by the concerned authority may be placed before the Home Secretary for a decision and then ultimately the Government has to take a final decision in respect of sanction of permission to erect the statue of the above said freedom fighter, who has been recognised by the State of Tamil Nadu.

9. In respect of the Petitioner's grievance also, a representation dated 15.1.2011, has already been sent to the Home Secretary, the 1st Respondent herein and therefore he has to take a final decision and then obtain the sanction from the Government.

10. The legal position is well settled by this Court that in the matter of erection of a statue, it is incumbent upon the Home Secretary to Government to take a decision, after getting necessary report from the District Administration, namely,

the Collector of the district concerned, and also the views and reports from the local authorities viz., Tahsildar, Inspector of Police and Commissioner of Police, in case of city, and, ultimately, the sanction has to be accorded by the Government. Be that as it may, in the instant case, instead of sending the reports, the authorities below have assumed the role of decision making authority and acted in manner thereof, which is contrary to the dictum laid down by this Court in Amirthalingam's case, cited supra. It is for the Government to recognise any freedom fighter and respect him and also to take appropriate decision to permit anybody, who seeks to establish or erect anyone's statue.

11. In the above circumstances, this Court feels it appropriate that instead of directing the 1st Respondent to direct the 7th Respondent to give a proper opinion in the form of no objection, as the opinion of all other authorities are now available before the 2nd Respondent - District Collector, if the District Collector forwards all the reports of the authorities without taking any opinion on the said reports to the Home Secretary for a decision, then the Home Secretary can proceed further and place the matter before the Government for sanction.

12. Accordingly, this writ petition is disposed of with a direction to the 2nd Respondent District Collector to forward all the reports obtained from the concerned authorities to the 1st Respondent herein within a period of two weeks from the date of receipt of a copy of this order and thereafter the 1st Respondent has to take a decision considering the representation of the Petitioner dated 15.1.2011, and pass appropriate orders within a period of four weeks thereafter and proceed further in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.