
(2016) 02 MAD CK 0174

In the Madras High Court

Case No : Writ Appeal (MD) No. 304 of 2016 and C.M.P. (MD) Nos. 1726 and 1727 of 2016

P. Manoharan

APPELLANT

Vs

The Superintendent of Police and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Citation : (2016) 3 MLJ 1

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

Bench : Division Bench

Advocate : N. Mohideen Basha, for the Appellant; N. Manoharan, Special Government Pleader, for the Respondent

Final Decision : Disposed off

Judgement

S. Manikumar, J.—1. Material on record discloses that while noticing the difference of opinion between two groups, vide proceeding in Na.Ka.A1/2662/2015, dated 16.03.2015, the Tahsildar, Virudhunagar, has directed that Arulmigu Karku Vallaiyan Banthi Madasamy Kovil, situated at No. 16, Parapatti Street, Virudhunagar Town, be closed, as done in 2013, and that the key of the said temple, be handed over, to him. The said proceeding, dated 16.03.2015, has also been issued, taking note of the difference of opinion, between the two groups, in the Peace Committee Meeting conducted on 07.03.2015 and 12.03.2015 respectively, and also on the basis of the legal opinion, dated 16.02.2015, offered by the learned Government Pleader, District Munsif Court, Virudhunagar.

2. Proceeding, dated 16.03.2015, of the Tahsildar, Virudhunagar, has been challenged in W.P(MD) No. 4757 of 2015, and vide order, made in M.P(MD) Nos. 1 and 2 of 2015 in W.P(MD) No. 4757 of 2015, dated 31.03.2015, the Writ Court, has stayed the proceeding, dated 16.03.2015.

3. Added further, Mr. N. Mohideen Basha, learned counsel for the appellant/

petitioner, submitted that the abovesaid writ petition, in which, the proceeding dated 16.03.2015, of the Tahsildar, Virudhunagar, has been stayed, is still pending.

4. Material on record, further discloses that claiming himself, to be the Poosari, for himself and others, the appellant/petitioner herein, has filed a suit, in O.S. No. 192 of 2013, on the file of the learned District Munsif, Virudhunagar. I.A. No. 531 of 2013 in O.S. No. 192 of 2013, has been filed, seeking for an interim injunction, restraining the defendants/respondents therein, from interfering with his right as Poosari and others, to worship.

5. Material on record discloses that after notice to respondents 1 to 4, a counter affidavit has been filed. After hearing the parties, on 03.03.2014, the learned District Munsif, Virudhunagar, in I.A. No. 531 of 2013 in O.S. No. 192 of 2013, has passed the following order:--

""Hearing Respondent (No Further Adjournment) Respondent heard in part and petition under Order 26, Rule 9 filed & witness summons filed for examined witness till then status co is ordered till disposal of main as Exhibit marked on the side of petition show that prima facie he is maintaining the temple.

Commission Application check & call on 11.3.14.""

6. Record of proceedings of the lower Court, further shows that the interim order, granted on 03.03.2014, has been extended, and entries in I.A. No. 531 of 2013 in O.S. No. 192 of 2013, placed before us, are only, upto 30.01.2015. There are no further materials, appended, in the typed set of papers, as to whether the status-quo, granted on 03.03.2014, is still in force, as on date.

7. When the matter stood thus, the appellant/petitioner seemed to have made a representation, dated 01.08.2015 to the Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District, the 2nd respondent herein, to afford police protection for Kula Deiva Vazhipadu, in Arulmigu Karku Vallaiyan Banthi Madasamy Kovil, situated at No. 16, Parapatti Street, Virudhunagar Town, scheduled on 04.09.2015.

8. Contending inter alia, that the said representation, had not been considered, the appellant/petitioner has filed W.P(MD) No. 15676 of 2015, for a Mandamus, to consider his representation dated 01.08.2015, and to direct the Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District, 2nd respondent therein, to afford police protection. Vide order, dated 31.08.2015, in W.P(MD) No. 15676 of 2015, this Court directed the 2nd respondent therein, to consider the abovesaid representation, and to pass appropriate orders, on merits and in accordance with law.

9. Material on record further discloses that pursuant to the order, made in W.P(MD) No. 15676 of 2015, dated 31.08.2015, by which, a direction has been issued to consider the representation dated 01.08.2015, Kula Deiva Vazhipadu, in Arulmigu Karku Vallaiyan Banthi Madasamy Kovil, situated at No. 16, Parapatti

Street, Virudhunagar Town, has been conducted on 04.09.2015, peacefully, without any problem. However, in the letter, dated 08.09.2015, addressed to the appellant/petitioner, the Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District, has observed that after the outcome of the pending cases, before the Courts, in future Kula Deiva Vazhipadu and Poojas, would be permitted to be performed, in the abovesaid temple and accordingly, the appellant/petitioner has been informed.

10. In the said letter, the Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District, has also informed the appellant/petitioner that in the event of the appellant/petitioner, conducting Kula Deiva Vazhipadu and Poojas, without the permission of the Police, and if any law and order problem arises, the appellant/petitioner would be responsible, for such acts.

11. Pursuant to the above communication, dated 08.09.2015, the appellant/petitioner seemed to have made representation, dated 26.01.2016, to the Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District, to permit him and others, to conduct Kula Deiva Vazhipadu, in Arulmigu Karku Vallaiyan Banthi Madasamy Kovil, situated at No. 16, Parapatti Street, Virudhunagar Town, from 19.02.2016 to 21.02.2016. A further representation, dated 04.02.2016, is also stated to have been made, to the Superintendent of Police, Virudhunagar District.

12. As the representations remained unanswered, the appellant/petitioner has filed W.P(MD) No. 2709 of 2016, for a Mandamus directing the respondents therein, to provide police protection and permission, to conduct Kula Deiva Vazhipadu in Arulmigu Karku Vallaiyan Banthi Madasamy Kovil, situated at No. 16, Parapatti Street, Virudhunagar Town, from 19.02.2016 to 21.02.2016.

13. In the supporting affidavit, the appellant/petitioner has referred to the order of status-quo, granted on 03.03.2014, in I.A. No. 531 of 2013 in O.S. No. 192 of 2013, on the file of the learned District Munsif, Virudhunagar, as well as the interim order, granted by this Court, in M.P(MD) Nos. 1 and 2 of 2015 in W.P(MD) No. 4757 of 2015, dated 31.03.2015, by which, the Writ Court, has stayed the proceeding of the Tahsildar, Virudhunagar, dated 16.03.2015, directing closure of Arulmigu Karku Vallaiyan banthi Madasamy Kovil situated at No. 16, Parapatti Street, Virudhunagar Town, as done in 2013.

14. Before the Writ Court, on behalf of the respondents therein, a representation has been made, that a suit in O.S. No. 192 of 2013, is pending on the file of the learned District Munsif, Virudhunagar. Having regard to the pendency of the suit and observing that right of worship, is a civil right, which has to be determined, only before the Civil Court and not in Writ jurisdiction, where, disputed questions of facts, cannot be adjudicated, a learned single Judge of this Court, vide order dated 08.02.2016, in W.P(MD) No. 2709 of 2016, has closed the writ petition, with liberty to the appellant/petitioner, to work out his remedy, in the manner known to law.

15. Being aggrieved by the same, the present appeal, has been filed, contending inter alia that the Writ Court, has failed to consider that earlier, pursuant to the order, made in W.P(MD) No. 15676 of 2015, dated 31.08.2015, Kula Deiva Vazhipadu and Poojas in the subject temple, had been performed peacefully. The impugned order made in W.P(MD) No. 2709 of 2016 dated 08.02.2016, is also assailed, on the ground that what was intended, and prayed for was only, adequate police protection, for conducting Kula Deiva Vazhipadu and Poojas in the said temple.

16. During the hearing of the present appeal, both the learned counsel for the parties, fairly submitted that after the order, in W.P(MD) No. 15676 of 2015, dated 31.08.2015, Kula Deiva Vazhipadu and Poojas, had been performed in the abovesaid temple, peacefully without any problem, and that the said fact has also been recorded, in the letter, dated 08.09.2015, of the Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District, addressed to the appellant/petitioner.

17. As observed earlier, there are no materials, to indicate, as to whether the status-quo, granted on 03.03.2014, in I.A. No. 531 of 2013 in O.S. No. 192 of 2013, on the file of the learned District Munsif, Virudhunagar, is still in force, enabling the appellant/petitioner, to take the benefit therefrom. Inasmuch as the proceeding, dated 16.03.2015, of the Tahsildar, Virudhunagar, directing closure of the abovesaid temple, has already been stayed, by this Court, in M.P(MD) Nos. 1 and 2 of 2015 in W.P(MD) No. 4757 of 2015, dated 31.03.2015, and taking note of the fact that pursuant to the order, made in W.P(MD) No. 15676 of 2015, dated 31.08.2015, Kula Deiva Vazhipadu and Poojas, in the abovesaid temple, have been performed peacefully, on receipt of the representation, dated 26.01.2016, by the appellant/petitioner, the 2nd respondent/Inspector of Police, ought to have considered the same, on merits, with reference to the orders, passed by the Courts, and taken a decision. It is not necessary, for the appellant/petitioner, to obtain orders from the Court, whenever there is Kula Deiva Vazhipadu and Poojas, in the abovesaid temple.

18. Police protection is granted, only to maintain peace and to avoid, law and order problem. Finality in a litigation, may take a longer time, depending upon the facts and circumstances of the case. Nevertheless, orders of the Courts, in force, have to be taken note of, with reference to the inter se rights of the parties. To ensure peace in the performance of Kula Deiva Vazhipadu and Poojas, in the abovesaid temple and participation of the general public thereof, Police has to take appropriate decision.

19. In the light of the above discussion, We direct the 2nd respondent/Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District, to consider the representation of the appellant/petitioner dated 26.01.2016 seeking permission and police protection to conduct Kula Deiva Vazhipadu in Arulmigu Karku Vallaiyan Banthi Madasamy Kovil, situated at No. 16, Parapatti Street, Virudhunagar Town, from 19.02.2016 to 21.02.2016, and take appropriate

decision. The 2nd respondent is directed to pass appropriate order, within two days from today. Learned Special Government Pleader is directed to communicate this order, to the respondents, forthwith.

The writ appeal is disposed of accordingly. Consequently, C.M.P(MD) Nos. 1726 and 1727 of 2016 are closed.