

(2011) 08 MAD CK 0307

In the Madras High Court

Case No : Writ Petition No. 11903 of 2003

South India Assemblies of God

APPELLANT

Vs

The District Collector and Jothilingaraj

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Constitution of India, 1950 — Article 16(4), 25, 26, 27, 44

Citation : (2011) 7 MLJ 752

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Hema Sampath and R. Meenal, for the Appellant; S.V. Durai Solaimalai, Additional Govt. Pleader for Respondent 1 and Chitra Sampath, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The present writ petition is filed by the Petitioner against the order passed by the District Collector, Kanyakumari District, Nagercoil in D.Dis(C3) 71889/2002 dated 20.3.2003 which was received by the Petitioner on 9.4.2003 seeking to and quash the same with further direction to forbear the Respondent from interfering with the right of the Petitioner in conducting prayers in the Assemblies of God Church situated in R.S. No. 275/8 Arudesom Village, Vilavancode Taluk, K.K. District i.e., Door No. 4/57-A, Mangadu Panchayat.

2. Mrs. Hema Sampath, learned senior counsel appearing for the Petitioner submits that the Petitioner is a Church belonging to the South India Assemblies of God established and managed by the Southern District Council founded in the year 1981, situated at Attoor in Kalkulam Taluk represented by Rev. C. Simon as the Superintendent of Southern District Council of SIAG and within the same vicinity of the Petitioner's Church a pastoral house is also situated in Door No. 4/57-A and the Pastor is conducting the Church. Though the said church originally founded by Pastor Benjamin as The Fellowship of Pentecostal Christian Society in the property cited in the property mentioned above the church building

and its site absolutely belonged to one P. Madaswamy, son of Paul Nadar alias Malla Rama Marthanda Nadar of M.S. Bhavan, Valia Pazhanji, Arudesom Village.

3. While so, on 19.4.1983 the said Pastor Benjamin an auditor of the Fellowship of Pentecostal Society executed an agreement with an undertaking that he has No. objection to have the church building and its site of 5 cents to be sold in favour of the South India Assemblies of God by the owner Madaswamy. Thereupon, the said owner Madaswamy executed a registered sale deed No. 1633/1983 in favour of the then Superintendent representing the South District Council of the South India Assemblies of God on 28.5.1983. The said Church is being managed and conducted un-interruptedly from 1983 onwards by regularly conducting meetings, prayers, ceremonies and further services are also held continuously.

4. When the matter stood thus, one Thankaraj lodged a false complaint to the Assistant Collector, Padmanabhapuram on 18.08.1991 making certain allegations that the Petitioner was conducting prayers, meetings, ceremonies with other Christian people and thereby causing public nuisance to the nearby villages. The then Assistant Commissioner also without even going into the relevant documents ordered to close the Petitioner's church. When the appeal was filed, the Collector dismissed the appeal by its order passed in L.Dis (C3) 69628/91 dated 9.9.1991.

5. Aggrieved by the order passed by the District Collector, W.P. No. 13494/1991 was filed. This Court after seeing two facts that the Petitioner church was established without permission from the District Collector, though made an observation that there was another church of the same denomination within the distance of 0.75 kms, would not disable the Petitioner from running the church as there is no prohibition in having two churches in close proximity directed the Petitioner to apply to the Collector for proper licence. In the light of the order passed by this Court on 25.7.1991 in W.P. No. 13494/1991, when the Petitioner filed a petition before the Collector, the same was also rejected by the District Collector on 12.11.1991. Aggrieved by this order, the Petitioner again preferred second Writ Petition-W.P. No. 17692/99. This Court after seeing that the District Collector refused to grant permission to run the church as there is another church of the same denomination, situated within a distance of 0.75kms dismissed the same. Aggrieved by the same, W.A. No. 1326/1999 was filed. The First Bench of this Court by noticing that the impugned order challenged before the learned single Judge was passed without proper notice and the same was passed in breach of the principles of natural justice, by setting aside the same, gave a direction to the Collector to afford the Petitioner a reasonable opportunity of being heard and to pass appropriate orders in accordance with law.

6. Again when the matter was taken up by the District Collector, the District Collector after receiving report from the Superintendent of Police and Revenue Divisional Officer with regard to maintenance of law and order situation that was frequently disturbed by Hindu and Christian religious sects in that area, in order

to avoid communal clash between these two faith, dismissed the writ petition for running the church. Again W.P. No. 31462/2002 was filed before this Court. On this 4th occasion, this court assuming that the Petitioner is only seeking permission to exercise his fundamental rights enshrined in the Constitution of India and such inviolable rights of the citizens cannot be compromised unless strong reason exists, again issued a direction to the Petitioner to submit a fresh representation to the Respondent with another direction to the District Collector, Kanyakumari at Nagercoil to conduct a full enquiry in the matter as required under law and thereafter to take a valid decision. In view of the above direction, again when the matter was placed before the District Collector, Kanyakumari District once again rejected the case of the Petitioner by passing the impugned order dated 11.7.2002 on the ground that there was No. need to grant prior permission since the Superintendent of Police in his report dated 7/8/2001 has noted that the prevailing situation in the area which is predominantly occupied by Hindus is not conducive to run the church at Mangadu Panchayat.

7. The learned senior counsel appearing for the Petitioner argues that the District Collector, Kanyakumari District has seriously fell in error in rejecting the Petitioner's request to obtain permission to run a church as though the Petitioner wanted to run a new church. When the Petitioner has been running a church since 1983 and when the Petitioner has been managing and conducting meetings, prayers, ceremonies regularly, the said building has become old and dilapidated. Therefore, to renovate, when permission was sought for, the District Collector has no authority to refuse permission to run the old church on the ground that the Petitioner's church is causing public nuisance and communal hatred to other community people.

8. By further elaborating her submissions the learned senior counsel pleaded that when the Petitioner is running the church, he cannot be discriminated by denying equality under Article 16(4) of the Constitution of India.

9. The repeated rejection of the request of the Petitioner to run the Church by the Petitioner is clear violation of Articles 25 and 26 of the Constitution of India. Since Article 25 of the Constitution of India gives freedom of conscience and free profession, practice and propagation of religion all persons including the Petitioner are also equally entitled to freedom of conscience and free profession, practice and propagation of religion. That apart, even Article 26 of the Constitution also clearly guarantees freedom to manage religious affairs to establish and maintain religious institutions for religious and charitable purposes, hence the rejection order passed by the District Collector, Kanyakumari District refusing to grant permission to run Christian church in the existing place is a clear violation of Petitioner's religious rights guaranteed under Articles 25 and 26 of the Constitution and accordingly the learned senior counsel appearing for the Petitioner prays that the impugned order is liable to be interfered with by this Court.

10. In support of her submissions the learned senior counsel also has placed

reliance upon the judgment of the Apex Court rendered in Writ Petition (Civil) No. 1 of 2007 dated 28.1.2011 that holding that the fundamental right guaranteed under Article 27 of the Constitution of India cannot be violated without any proper basis. When the religious and charitable institutions are properly administered, any order seeking to close down such religious institutions will attract Article 27. On that basis the learned senior counsel prays for setting aside the impugned order.

11. Per contra, the learned Additional Government Pleader appearing for the first Respondent submitted three strong arguments praying to dismiss the writ petition.

(i) This is not the first time the Petitioner has filed the present writ petition alleging violation of Articles 25, 26 and 27 of the Constitution of India in running a church by Pentecostal Christian Society in the property situated in Door No. 4/57-A at S.T. Mangadu belonging to the Petitioner Southern India Assemblies of God.

(ii) Though there was no licence or permission granted by the District Collector to run a church, the Petitioner's church has conducted meetings, prayers and ceremonies by resorting to compulsory conversion of Hindus into Christian's faith. Further the Petitioner has set up the present church very closer to a Hindu temple that has been in existence since time immemorial and some of the devotees who are regularly visiting the temple after seeing their activities of the Petitioner church, came to the conclusion that the persons holding prayers have started abusing Hindus and thereby tried to forcibly indulge into conversion of Hindus into Christians faith, that too by using loud speakers, therefore the District Collector has rightly come to the conclusion that by these acts there was disturbance of peace among the people in that area. Further when the District Collector on the basis of complaint given by one Thankaraj ordered for enquiry by appointing Assistant Collector, the Assistant Collector after completion of his enquiry submitted a detailed report, indicating that the Petitioner's church without securing licence from the public administration by using loud speakers, has been conducting prayers, meetings, ceremonies and religious services both day and night and thereby causing huge public nuisance to the students studying for examinations and the elder persons who take rest in the evening and also in the morning. Accepting such report submitted by the Assistant Collector, the District Collector in the interest of public peace and safety passed an order restraining the Petitioner from carrying out any religious activities in the said church.

(iii) Therefore, this Court cannot sit in judgment over the District Administrator who on proper appreciation of ground reality, namely, complaint lodged by one Thankaraj, report submitted by the Superintendent of Police and another report submitted by the Revenue Divisional Officer have rightly reached the subjective satisfaction that to maintain peace among the public, the Petitioner need not be given any licence to run a church. Further, when there is one more church

belonging to the same denomination very well in existence within the distance of 0.75 kms, No. prejudice would be caused to any one.

12. The learned Counsel appearing for the second Respondent also opposed to grant such prayer to the Petitioner. According to the second Respondent, in the year 1985 a Bala Bhavan for children was started in the house property bearing Door No. 4/57-A, S.T. Mangadu Panchayat. After some time, the persons managing Bala Bhavan had started to lure Hindus to forsake their religion and to adopt Christian faith. In this connection they used to conduct prayers in the said property. In the name of conducting prayers, the Petitioner used to abuse Hindus and tried to forcibly compel them to undergo conversion into Christianity. When they permanently used loud speakers broadcasting their prayers, meetings, ceremonies, the students preparing for the examinations were disturbed by use of loud speakers by the Petitioner church. The said public nuisance was brought to the notice of the Collector by various complaints by the affected villagers to stop the acts of the Petitioner. Only based on the complaint, the Assistant Collector conducted a detailed enquiry. When the Assistant Collector conducted a detailed enquiry recommending the closure of the Petitioner church, which was run without prior permission or licence from the District Collector, the order of the Assistant Collector was confirmed by the District Collector. Therefore, there is nothing wrong in the impugned order warranting interference of this Court and on this basis, the learned Counsel for the second Respondent prayed for dismissal of the writ petition.

13. Heard the learned Counsel for the respective parties.

14. The Petitioner in the name of South India Assemblies of God came into existence in the year 1981 abattoir, Thiruvattur Post, K.K. District. Within the vicinity of the Petitioner's church, a Pastoral house is situated in Door Number 4/57-A in which they constructed a church. In the year 1985 Bala Bhavan was started in the same property. Subsequently, the persons managing Bala Bhavan had started conducting meetings, prayers and ceremonies in the name of Pentecostal Christian Society. But the problem started when the persons managing the church started using loudspeakers for broadcasting their meetings, prayers in the said village in the name of conducting prayers, and when some of the persons conducted prayer in a manner affecting the sentiments of Hindus and their religious sentiments. Hence, the local Hindu started objecting these of loudspeakers and meetings and prayers conducted in the church. Later on, when the persons managing the church started indulging in conversion of Hindus to Christians, the disturbance of peace among the people in that area took place. Therefore, the affected people made complaints to the Collector. One such complaint was lodged by Mr. Thankaraj. Based on the said complaint, the Assistant Collector conducted an enquiry. In the enquiry it came to light that the Petitioner church was not issued with any licence or permission to run the church in the said place. On the basis of the enquiry conducted by the Assistant Collector, on coming to know that No. licence was granted to the Petitioner to run

the church, coupled with various complaints lodged by the affected villagers alleging indiscriminate use of loud speakers and visible conversion of Hindus to Christians faith and their activities in provoking Hindus faith and sentiments, the Assistant Collector, passed an order dated 18.8.1991 restraining the Petitioner from carrying any religious acts in the said property. Aggrieved by the said order passed by the Assistant Collector, an appeal was filed before the District Collector. The District Collector after going through various complaints filed by the villagers and the order dated 18.8.1991, confirming the order of the Assistant Collector, dismissed the appeal which gave rise to file the first W.P. No. 13494/1991. This Court by order dated 25.7.1991 being satisfied that there is one more church of the same denomination situated within the distance of 0.75 kms dismissed the writ petition by taking note of the Collector's order directing the Petitioner to apply to the Collector for permission to run the Church. On the basis of the said order passed in W.P. No. 13494/1991 dated 25/7/1991 the application was filed. The Collector after receiving the application conducted a detailed enquiry. When the Petitioner's application was lying in the office of the Collector, he had also conducted personal inspection on 13.2.1993 to find out the information regarding conducting prayers in the church. During his personal inspection and enquiry, the public of the locality strongly expressed their objections regarding their mode of conducting prayers that they have been using loud speakers all the time to broadcast their meetings, prayers and other ceremonies even during the period of examinations of the students of the village. In the light of the order passed by this Court again on reexamining the application, the District Collector dismissed the application and refused to grant licence to the Petitioner. Therefore, the Petitioner filed the second. No. 17692/1999, challenging the correctness of order refusing license to run the Church. This Court by seeing the correctness of the order dismissed the said Writ Petition on 25.3.1999 which gave rise to file W.A. No. 1326/1999. This Court by taking notice of the fact that the order challenged before the learned single Judge was without notice and the same has been passed in breach of the principles of natural justice, by setting aside the same gave a direction to the Collector to afford the Petitioner a reasonable opportunity of being heard with further direction to the Collector to pass suitable orders in accordance with law thereafter. Once again the District Collector finding various circumstances that there is already a church of the same denomination located within the distance of 0.75 kms to avoid further public nuisance and to avoid communal harmony, dismissed the Petitioner's application. Aggrieved by the order, the Petitioner filed the 4th Writ Petition -W.P. No. 31462/2002 seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the order in D.Dis.84076/99, dated 11.7.2002 passed by the Respondent and quash the same thereby permitting the Petitioner to run the Church in R.S. No. 275/8 of Arudesom Village in Vilavancode Taluk, i.e. in Door No. 4/57 A of S.T. Mankadu Panchayat. In that Writ Petition the Petitioner has took a different plea that the Petitioner has been running a church and since the church is an old one when permission was sought to renovate the same, the District Collector declined to

grant licence on a wrong premise that the Petitioner wanted to start a new church. Therefore, once again, this Court by passing a detailed order, issued yet another direction to the District Collector to analyze the situation in depth holding talks with different sections of the society in and around the village concerned so as to take a valid decision in preserving the fundamental rights of the Petitioner guaranteed under the Constitution of India. On that basis, when a representation was given to the Respondent, the District Collector called for reports from the Superintendent of Police, Nagercoil and yet another report from the Revenue Divisional Officer. In addition to the direction given to the Superintendent of Police and the Revenue Divisional Officer, the District Collector by acting on the guidelines issued by G.O. Ms. No. 916, dated 29.4.1986 which states that No. religious institutions like church or temple shall be allowed to come up with close proximity and that No. religious institutions shall be permitted to use loud speakers which will cause public nuisance to school going children and elderly persons, finally passed the impugned order.

15. Further on coming to know that the Petitioner in the name of religion started compelling the people by forcible conversion from Hindus to Christians faith which gave rise to problems between them, by complying with the directions issued in G.O.Ms. No. 916, Public (Law and Order) Department, dated 29.04.1986 wherein the Government has accepted the recommendations and guidelines of One Man Committee headed by Justice P. Venugopal, to avoid the communal violence between the Hindus and Christian in future and also to maintain peace among them passed the impugned order refusing to grant licence.

16. It is also relevant to keep in mind the situation that took place in the year 1982 in Mandaikadu village wherein to bring under control the communal violence took place between Hindus and Christians, when police opened fire, six people died and several injured. Again on 15.3.1982 at Melmanalkudi, two more persons was killed by the police firing. In view of serious and repeated communal violence that took place in the same communal area, which started taking away various innocent lives belonging to both religion, the Government though it fit to appoint One Man Committee headed by Justice Mr. P. Venugopal. The One Man Committee after coming to the conclusion that no church or temple should be allowed to come up within the close proximity and No. religious institutions should be allowed to use loud speakers all the time and to avoid communal violence has strongly recommended to obtain prior permission to hold meetings or to establish any church or temple in any of the area in Kanyakumari District. The Government in an effort to bring peace and to restore normalcy by accepting the recommendations of the One Man Committee has issued G.O.Ms. No. 916, Public (Law and Order), dated 29.4.1986. In the light of the said G.O.Ms. No. 916, when the District Collector on his inspection came to the conclusion that the report submitted by the Superintendent of Police and the Revenue Divisional Officer consistently show that permitting the Petitioner church would again give rise to communal violence in future, by accepting the guidelines of the One Man Committee headed by Justice Mr. P. Venugopal, by taking note of another vital

fact that there has been one more church of the same denomination situated within a distance of 0.75 kms from the Petitioner's present disputed church, declined to grant license to run another church in the very same area. Therefore, the question of refusal by the District Collector to renovate old and existing church does not find any force from the arguments advanced by the learned senior counsel appearing for the Petitioner.

17. The judgments cited by the Petitioner complaining violation of Articles 25 and 26 of the Constitution do not deserve any acceptance from this Court. The reason being that both the Articles 25 and 26 guarantee freedom of conscience and free profession, practice and propagation of religion subject to public order, morality and health and freedom to manage religious affairs. When Articles 25 and 26 do not guarantee absolute freedom of conscience and free profession, practice and propagation of religion and also to manage the religious affairs and the Constitution has guaranteed only equal freedom to all citizens, the District Collector has to consider the Petitioner's request to obtain licence to run church subject to public order, morality and health. Accordingly, when he analyzed the reports of the Superintendent of Police and the Revenue Divisional Officer, both state that the Petitioner church has contributed public nuisance to the villagers in that area. Besides, the Collector also came to the conclusion that only a few Christian families are residing in the said village. More than that he was also satisfied that the existence of yet another church of the same denomination within 0.75 kMs. On considering all these aspects when the District Collector has subjective satisfaction that the opening of the church will create problem in that area, the said rejection order cannot be complained that the impugned order passed by the District Collector is violative of Articles 25 and 26 of the Constitution of India. In this context, let me see what is secularism as seen from the judgment of the Apex Court in the judgment in *S.R. Bommai and others Vs. Union of India and others etc. etc.*, . The Supreme Court has observed as under:

Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This maybe a concept evolved by western liberal thought it maybe, as some say, an abiding faith with the Indian people at all points of time. This is not material. What is material is that it is a constitutional goal and basic feature of the Constitution as affirmed in *Kesavananda Bharati v. State of Kerala*, and *Indira N. Gandhi v. Raj Narain*. Any step inconsistent with the constitutional policy is, in plain words, unconstitutional. This does not mean that the State has No. say whatsoever in matters of religion. Laws can be made regulating the secular affairs of Temples, Mosques and other places of worship and Maths. The power of the Parliament to reform and rationalize the personal laws is unquestioned. The command of Article 44 is yet to be realized.

From the above observation it can be safely construed that Article 25 of the Constitution guarantees the right to every person, whether citizen or non-citizen,

the freedom of conscience and the right of freely to profess, practice and propagate religion. But this guaranteed right is not an absolute one. It is subject to (1) public order, morality and health, (2) the other provisions of Part III of the Constitution, (3) any existing law regulating or restricting an economic, financial political or other secular activity which may be associated with religious practice, (4) a law providing for social welfare and reform, and (5) law that may be made by the State regulating or restricting the activities aforesaid or providing for social welfare and reform.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matter of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law. It is noteworthy that the right guaranteed by Article 25 is an individual right, as distinguished from the right of an organised body like a religious denomination or any section thereof, dealt with by Article 26.

From the above it is further understood that our Constitution has embodied the Indian tradition of toleration in Articles 25 and 26 of the Constitution. When our Constitution embodies in Articles 25 and 26 the tradition of toleration that means every member of the community has the right so long as he does not in any way interfere with the corresponding rights of others, to profess, practice and propagate his religion and every one is guaranteed his freedom of conscience. Therefore, it is thus clear that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints, imposed by the State in the interest of public order. Raising one's own sect and blaming the other sect will give rise to objectionable communal disharmony. Therefore, I am of the considered opinion that the Petitioner has not made out their case to interfere with the impugned order.

18. The judgment of the Supreme Court of India in Writ Petition (Civil) No. 1 of 2007 dated 28.1.2011 relied on by the learned senior counsel for the Petitioner does not have any relevance to the case on hand inasmuch as the grievance dealt with by the Hon'ble Apex Court in Prafull Goradia's case was entirely on a different issue than the one raised herein. The issue was that one was a Hindu but he had to pay direct and indirect taxes, part of whose proceeds go for the purpose of the Haj pilgrimage which is only done by Muslims. While dealing with the tax collection, an observation was made by the Apex Court stating that giving equal respect to all communities, sets etc is vital for the basic principle of secularism. No doubt here also the Collector has acted only on the basis of various complaints received by him from the villagers and thereafter when he

called for reports from the Superintendent of Police and the Revenue Divisional Officer, they reported that the Petitioner should not be allowed to put up any church. Further, the District Collector, on the basis of the directions issued by G.O.Ms. No. 916 dated 29.4.1986 refused to give permission to put up church.

19. In such view of the matter, I do not find any merits in the writ petition and the same stands dismissed. No costs.