
(2010) 02 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No. 1012 of 2010 and M.P. No's. 1 of 2010

T. Amirthalingam

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (2010) 02 MAD CK 0173

Hon'ble Judges : H.L. Gokhale, C.J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : S. Purushothoman, for R. Thirumoorthy, for the Appellant; P.S. Raman, General a/b., L. Raja Kalifulla, Govt. Pleader for Respondents 1 to 5, 6, 9 and 10, Sirajuddin, for Siraj and Siraj for Respondents 7 and 11, Udayabanu, for Respondent 8, C. Raghunatha Reddy, Commissioners, For Respondent 12, V.P. Sengothuvel and S. Kasi Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. The present petition is about an unfortunate development in a village in Cuddalore District of State of Tamil Nadu, which we hope should be an eye-opener, and which should not be permitted to occur any where in future.

2. The issue involved in the petition revolves about an unceremonious shifting of the statue of Dr. B.R. Ambedkar, the Founding Father of the Indian Constitution, from the place where it was initially located in that village and the efforts made by the Petitioner to bring it back to its original location.

3. The Petitioner is a resident of a village by name Pazhaya (Old) Pattinam in Virudhachalam Taluk of Cuddalore District. This village consists of about 700 families out of which nearly half belong to the dalit community. A statue of Dr. B.R. Ambedkar was decided to be erected in this village in front of the Village Panchayat Library by the village panchayat. It is the case of the Petitioner that a resolution to that effect was also passed on 15th August, 2008 in the Special Gram Sabha Meeting. A photo copy of the resolution signed by the President of

the Village Panchayat Thiru. C. Dharmalingam is annexed at page -1 of the typed set of papers filed in support of the petition. It is not in dispute that the statue was so erected in the village, though according to the Petitioner it was erected sometime in August/September, 2008, whereas according to the Tahsildar it was erected in the 1st week of October, 2008.

4 (i). It appears that a section of the villagers, at the instance of the 11th Respondent, who happens to belong to a minority religious community, (and who was earlier defeated in the election to the post of President of the Panchayat) started a campaign to shift the statue and to re-locate it on the banks of a village pond near the dalit settlement. The Petitioner and the villagers felt very much disturbed by this campaign. When they made enquiries with the fourth and the fifth Respondents i.e., the Revenue Divisional Officer and the Tahsildar, they were replied that any opposition to such proposal will result in police custody. This led to the Petitioner making a representation to the second Respondent/District Collector on 11th January, 2010 that the statue be retained where it is presently situated and should not be shifted due to objection by a few Islamic families. A copy of the representation signed by 114 persons and the acknowledgement issued by the office of the Collector are produced in the typed set of papers. .

4(ii). The Petitioner feared that any such action will disturb the communal harmony in that village, and therefore filed the present petition on 19th January, 2010 praying initially that the Respondents to the petition be restrained from removing the statue of Dr. Ambedkar and from relocating the same on the banks of the village pond. The petition, as was filed originally, had the following Respondents:

(i) The State of Tamil Nadu through Home Secretary,

(ii) The District Collector, Cuddalore,

(iii) The Superintendent of Police, Cuddalore,

(iv) Revenue Divisional Officer, Virudhachalam

(v) The Tahsildar, Virudhachalam, and

(vi) The Inspector of Police, Virudhachalam

The above referred to statements are on the basis of the averments made in paragraphs 5 & 6 of the Petitioner's affidavit filed in support of the petition. The Petitioner has produced the photographs showing the statue of Dr. Ambedkar situated near the Village Library Hall, some policemen guarding the same and another photograph showing large number of villagers gathered near the statue.

5. The petition was mentioned before this Court in the forenoon session of 19th January, 2010 for an urgent order in the afternoon. However, with a view to enable the learned Government Pleader to take instructions, it was directed to be notified for admission on 20th January, 2010.

6(i). Mr. G. Purushothoman, Learned Counsel appeared for the Petitioner on 20th January, 2010, and pointed out that there is a fear of communal disturbance taking place in the village on account of statue being shifted. He also pointed out that a peace committee meeting, which was convened, had also failed, Learned Government Pleader stated, on instructions, that in the peace committee meeting, it was agreed to re-locate the statue at another place, but some persons had changed their mind. This statement was disputed by the Learned Counsel for the Petitioner. He drew our attention to the statement made in the affidavit in support of the petition that the peace committee meeting had ended in failure. In this scenario, we directed that the petition be listed on 8th February, 2010, and asked the learned Government Pleader to file the affidavit of the Tahsildar,

6(ii) Learned Government Pleader stated at the time of the above hearing on 20th January, 2010 that nothing will happen to the statue, however, he was not ready to make any commitment, and therefore, this Court passed an order on Miscellaneous Petition No. 1 of 2010 taken out in this writ petition in the morning of 20th January, 2010 that until further orders, there will be an interim injunction restraining the Respondents from removing the statue of Dr. Ambedkar, which has been erected in the village. A further direction was also issued to see to it that no damage is caused to the statue in any manner whatsoever and also to ensure that peace, as well as law and order is maintained in the said village.

7(i). It so happened that Mr. Purushothoman, Learned Counsel, appeared before this Court once again on 21st January, 2010 and mentioned that in spite of this order passed by the Court in the presence of the Government Pleader, the statue was forcibly shifted in the late evening of 21st January, 2010. This was too shocking to say the least, and hence, we directed the Registry to place the matter before us on 22nd January, 2010. Next day Mr. Purushothoman, filed an affidavit of the Petitioner affirmed on 21.01.2010 wherein he stated that the Petitioner had orally conveyed the order passed by this Court at about 11.30 a.m. to the fourth and fifth Respondents in person, yet on the same day late in the night at about 10.45 p.m. a huge contingent of 200 policemen were deployed around the settlement of dalits. The Deputy Superintendent of Police Thiru. Rajasekaran and the fifth and the sixth Respondents were present and inspite of the opposition by the villagers and informing the officers about the passing of the interim order, they proceeded to remove the statue from the place where it was originally situated. Respondents 5 & 6 and Mr. Rajasekaran insisted on tendering of a copy of the court order, which the Petitioner could not, since the same was not available with him. The affidavit filed by the Petitioner states that the Petitioner's counsel also contacted the third Respondent over phone, but that was without any effect.

7(ii). The Earth Mover JCP was brought over there and the statue was removed forcibly from where it was originally installed and shifted to the dailt settlement area. Paragraph-7 of the affidavit states that the Deputy Superintendent of Police

and the sixth Respondent directed the policemen to break the pedestal of the statue and to install the statue at the new place. In the affidavit, it is also stated that the statue was shifted to a place where a pond was situated earlier, and the pond was filled up and the statue was erected over there. Inasmuch as the averments were made against the President of the Panchayat, the President of the Panchayat, the concerned member of the panchayat from that particular ward, the Village Administrative Officer, the Deputy Superintendent of Police were directed to be joined as Respondents 7 to 10 and notices were directed to be served on them. The matter was thereafter directed to be listed on 25th January, 2010 after completion of service.

8. on 25th January, 2010, Mr. Purushothoman, Learned Counsel, moved an amendment petition being M.P. No. 2 of 2010 namely, that the Respondents be directed to reinstall the statue at the earlier place i.e., in front of the Village Library. The affidavit in support of this amendment petition stated that the statue was removed late in the night of 20th January, 2010, whereas the learned Government Pleader stated that it was shifted in the afternoon and a copy of the order was not received by the authorities concerned. The fact, however, remains that it had been removed after passing of the injunction order, which was passed in the presence of the learned Government Pleader who had stated on instructions that nothing will happen to the statue but had declined to make any commitment. In those circumstances, the petition praying for amendment was allowed.

9. Mr. Udaya Bhanu, Learned Counsel appeared on 25th January, 2010 for the eighth Respondent i.e., a ward member of Old Patti-nam Panchayat, and he supported the contentions of the Petitioner. He submitted that inspite of vehement opposition by the villagers; the statue had been shifted late in the night. The Petitioner filed affidavits of 247 villagers supporting the statement of the Petitioner. He has also filed a large number of photographs showing the villagers objecting the removal of the statue, JCP machine being brought to the village and a large number of policemen standing at the place where the statue was re-located. Learned Government Pleader filed counter affidavits on behalf of Respondents 5, 6, 9 & 10 explaining their position. Learned Government Pleader also filed a typed set of documents placing on record the various minutes of the Grama Sabha Meetings and other documents, and Minutes Books, about which we will refer to a little later. We recorded all these developments in our order dated 25.01.2010 and asked the Government Pleader to take instructions from the 1st Respondent - Home Secretary.

10(i). In view of the nature of the controversy, we were of the view that it will be advisable that a Committee be appointed to visit the concerned village and to make a report to this Court with respect to the various locations in the village, particularly, the place where the statue of Dr. Ambedkar was situated earlier, the place where it was shifted subsequently, the office of the Village Administrative Officer or the Library or other conspicuous structures like Temple, Mosque, etc.,

the houses situated near the earlier place as well as the new place and some particulars of the persons occupying those houses. Hence, by an order dated 28.01.2010 we requested the two Learned Counsel namely, Mr. V.P. Sengottuvel and Mr. S. Kasikumar to assist the Court and they also readily agreed. Mr. V. Vijayan, Registrar (Management) of this Court was also made a member of the Committee. They were requested to visit the village and make a report. The Revenue Inspector and the Head Surveyor of the Village and a Senior Police Officer, other than Respondents 6 and 10, were asked to remain present along with advocate on record of the Petitioner to point out the various locations in the village. The Committee was also given liberty to call for all the relevant information and make a report along with a sketch giving the locations of all these places. They were also given liberty to take the photographs of various locations and submit a report.

10(ii). Mr. Sirajudeen, Learned Counsel, appeared for the President of the Panchayat i.e., the seventh Respondent. He pointed out that there is a reference to one Mr. Abdul Hech, who is stated to have represented that the statue be removed and re-located. This was stated in paragraph-4 of the affidavit filed in support of the petition. In that view of the matter, Mr. Abdul Hech was directed to be added as the eleventh Respondent.

11. Pursuant to the order passed on 28th January, 2010, the members of the Committee immediately visited the village on 30th January, 2010 and submitted a report before this Court on 1st February, 2010, which material we took on record. Mr. Sirajudeen, learned counsel appearing for the eleventh Respondent, sought time to talk to the surpanch of the village, as well as the eleventh Respondent whom he was representing, who is incidentally a muthuvalli of the mosque situated in the village, and through whom he wanted to talk to the members of his community. Learned Advocate General also appeared on 1st February 2010 with the learned Government Pleader. Learned Advocate General stated that this unfortunate incident should not have taken place and that the Government will honour the order of injunction passed by this Court and an appropriate affidavit will be filed on behalf of the Government on the next hearing date. We recorded that all of them were trying to explore the possibility of a way out of the present situation. Accordingly, we adjourned the matter to 8th February, 2010 as requested by the learned Advocate General and also by Mr. Sirajudeen.

12(i). On 8th February, 2010, when the matter came up, an affidavit was filed on behalf of the State by Smt. Malathi, Secretary to Government, Home Department. In paragraph-2 of the affidavit, affirmed on 6th February, 2010, she particularly made two statements, (a) Firstly, that the removal of the statue of Dr. Ambedkar from the pre-existing location, on 20th January, 2010, inspite of the order passed by this Court was an unfortunate development and she regrets for the same, (b) The other one is that the State will ensure that the statue-will be re-located and appropriate action will be taken against any official, found to

have flouted the orders of the Court in this regard. The said paragraph reads as follows:

2.I respectfully submit that the removal of the statue of Dr. B.R. Ambedkar from the pre-existing location on 20th January, 2010 despite the orders of this Hon"ble Court granted earlier in the day was unfortunate. I deeply regret for the same. There appears to have been some lack of communication between the various authorities which has resulted in this. I respectfully submit that without going into the merits of the controversy, the State would immediately ensure and re-locate the statue at its pre-existing location. The District Collector, would undertake an enquiry into the circumstances under which the removal took place despite the orders of this Hon"ble Court and take action against any official found to have erred in this regard.

12(ii) The Home Secretary has further stated in the affidavit that it is the policy of the Government that the statue of the National Leaders and public personalities whether in the field of politics or otherwise cannot and should not be erected in any public place without the prior permission of the Government. She referred to the guidelines already existing in this behalf in G.O. Ms. No. 221 dated 20th November, 1998. In paragraph-4 of the affidavit she has stated that the parties concerned should approach the District Collector for permission of placing the statue in the earlier location and the authorities would consider the same and thereafter the Government would pass suitable orders. In paragraph - 5 the Home Secretary prayed that this Court may pass suitable orders in the present petition so that similar instances of installing statues of public figures without the permission of the State Government do not take place, and the submissions made in her affidavit be recorded.

13. In view of the fact that the Home Secretary herself has stated in paragraph-2 that the statue would be re-located, we asked the learned Advocate General as to what was sought to be conveyed by paragraph-4 wherein an application was sought to be made. This is because once the statue is re-located, it would not be proper that for any reason that it would be shifted from that place once again. Learned Advocate General very fairly stated that this was to see to it that necessary procedures are complied with. He assured that the Government and the Collector will act in accordance with the final orders of this Court. We have noted the submission of the learned Advocate General. The learned Advocate General also submitted that it will be desirable that appropriate guidelines concerning such issues be passed.

14. We may also note that on 8th February, 2010 one more impleading petition being M.P. No. 3 of 2010 was filed by one A.J. Mohamed Sirajudheen, and accepted the same by the order passed on the same day. The submissions in support of this impleading petition were the same as in the affidavit of the President of the Village Panchayat and the Government Officers. His anxiety has been that if some damage is caused to the statue by any one, as it happened earlier, there will be breach of peace and that should not happen. He pointed out

that the shifting of the statue was supported by the leader of a political party, who happens to be the Member of Parliament from that very District.

15. Before we deal with the materials on record, and pass final orders, it becomes necessary to refer to G.O. Ms. No. 221 dated 20th November, 1998, which (when translated from original Tamil) reads as follows:

Government of Tamil Nadu

Abstract

Urban Local Bodies - regarding the erection of statue, memorial pillars, memorial, memorial arch - some orders issued.

Municipal Administration and Water Supply (M.A.S) Department

G.O.(Rt) No. 221 Date:20.11.98

Read with

1.G.O.(Rt) No. 1711, Rural Development and Panchayat Raj Department dated 26.10.79.

2.G.O.(Rt) No. 193, Municipal Admn. and Water Supply Department dated 23.8.90.

3.G.O.(Rt) No. 188, Municipal Admn. and Water Supply Department, dated 21.9.98.

ORDER

In the Government Order read first above, instructions had been issued to the local bodies regarding the payment of the amount required for the maintenance of the statue while erecting statues within the limits of the Urban Local Areas. In the order read secondly, orders had been issued regarding the necessity to make the statue with bronze. In the order read thirdly, an order had been issued restraining absolutely the erection of statue.

2. In the all Party Meeting that took place on 22.10.98 and 28.10.98 the following decisions were taken regarding the erection of a statue.

1 . In future, if any statue to be erected, it should be done only with the prior permission of the Government.

2. The persons who erect the statue have to take charge of its protection and maintenance.

3. The responsibility to maintain the statues already erected and its security lies on the Sangam or Division/Section or the private person who install such statues.

3. On the basis of the decisions taken in the All Party Meeting, it was examined regarding this fact. As a result, the Government alters all the orders issued till now, regarding the erection of statues and issues the following order in respect

of the procedures to be followed:

1. The Government sanction should be obtained for the installation of statue, memorial, memorial arch and memorial pillar.
2. The statues, memorial pillar, memorial and memorial arch that had already been erected should be protected. The persons who erected that (Sangam, Division/Section or private party) should take up the responsibility of its security and maintenance.
3. If it requires to shift the statues already erected to protective places to prevent from ruining and then return and erect them in the same place, regarding this issue, an order shall be obtained from the Government, and then, the concerned private party of section shall shift the same.
4. The Municipal Commissioner and Director of Town Panchayat are requested to intimate the aforesaid Government order to all local administrations.

/ By Order of the Governor /

S. Malathi, Secretary to Government

To

Secretaries of all Department, Chief Secretariat, Secretariat, Chennai.

16. We have perused the writ petition, the supporting affidavits as well as the affidavits filed by the Respondents and by the intervener. We have also gone through the report along with the annexures submitted by the Committee and the various typed set of papers and photographs submitted on behalf of the Petitioner, government and other parties. We have heard the Learned Counsel appearing for them at length.

17. Having heard all of them at length, it is seen that according to the Petitioner the statue of Dr. B.R. Ambedkar was erected sometime in August/September, 2008 which was so done after a resolution of the Village Panchayat passed on 15th August, 2008. A copy of the resolution signed by the President of the Village Panchayat has been produced along with the petition. Although it is sought to be submitted by the subordinate officers of the government that there was no such resolution, it is not possible to accept such a plea when the statue was located in front of the village library and behind the office of the Village Administrative Officer. It is erected on a 5ft pedestal and the statue was of the height of 7 ft. Surely, it could not have been erected without there being an overwhelming support in the village.

18. The objection from the Revenue Divisional Officer appears to be that it was erected without the permission, meaning thereby perhaps that of the District Collector. He has, therefore, issued a memo on 31st October, 2008 to the Tahsildar of Virudachalam, which records that he had instructed the Tahsildar to see to it that those who erected the statue shift it on their own before

29.10.2008, and since they had not so done, the Tahsildar should relocate it with the co-operation of the police department to a safer place immediately to maintain law and order. The only document prior to this memo of the Revenue Divisional Officer dated 31.10.2008 is the minute of a Peace Committee meeting conducted on 17.10.2008. In that minute it was recorded that the Peace Committee meeting was held on 17.10.2008, which was presided over by the Tahsildar and participated by the Deputy Superintendent of Police, Virudhachalam, Inspector of Police of that area, Zonal Deputy Tahsildar, and State Deputy Secretary of DPI, a political party. The minute further records that the representatives of DPI expressed their objection to remove the statue and boycotted the meeting stating that they will pursue necessary action to obtain permission to maintain the status quo to keep the statue in the same place.

19. Although this memo is of 31st October, 2008, no action has been taken thereafter for more than a year. Although this memo talks about breach of law and order, no such incident has been placed on record. The only material placed on record is one FIR at the Mangalampettai Police Station bearing No. 58/09 with respect to the alleged occurrence on 14th April, 2009 i.e., the birth day of Dr. B.R. Ambedkar. The accused are stated to be one Kannan S/o. Mayakrishnan, who is alleged to be instrumental in putting up the statue, and one Pichamuthu, S/o. Thangarasu and 16 others. All that this FIR records is that the persons concerned tried to garland and to have some kind of unveiling ceremony of non-permissibly installed Ambedkar Statue at that village. These persons are stated to have gathered over there with a plan to create law and order problem and disharmony in the village, and therefore, they have been charged u/s 151 of Code of Criminal Procedure We fail to see as to how garlanding of the statue on the birthday of Dr. Ambedkar by 18 persons could be considered by the officer as creating a law and order problem. There is no other statement apart from what is stated above in that FIR, and certainly, that cannot be considered to be objectionable.

20. Similarly, there is another subsequent report dated 25th January, 2009 in Crime No. 333/09 recorded at the same police station, wherein one Chandrasekaran, who is an advocate, and some 95 others are shown as accused. They are also charged u/s 151 of Code of Criminal Procedure They are stated to be members of Democratic Youth Federation of India (DYFI) and they are stated to have come to garland Dr. Ambedkar's statue without permission on the occasion of Memorial Day of Keezhavenmani when 40 dalits were set on fire in a hut. These persons are stated to have been arrested at 1.45 P.M. as a preventive measure. Here also there is no other allegation apart from what is stated herein above in that FIR i.e., garlanding, and surely what is attributed cannot be considered to be creating any disharmony or law and order problem.

21. The Respondents 11 and 12 who belong to the minority Muslim community have also raised the issue of breach of peace, but apart from their own statements no material has been placed before the Court to substantiate the

allegation.

22. The Report of the Committee appointed by the Court clearly states in paragraph - 6 thereof that the place of the demolished pedestal of the statue is about 5 ft on the interior of both sides of the two main roads and the said location appears to be not a hindrance to the users of the main roads. Nearby this place there are a few houses of the Muslim community and thereafter those of Hindus. A mosque is situated at a distance of about 41 meters from this place and the pedestal of the statue, as seen from the photographs, is in front of the Village Library. From the statements, which are recorded by the Committee, it is seen that when attempts were made to garland the statue on 14th April, 2009 and 25th December, 2009, that were prevented by the Tahsildar and the police.

23. From the Report of the Committee as well as the statements and the documents filed by the Petitioner, it appears that the Respondent -11 had contested the local body election for the post of President of the Village Panchayat, in which he was defeated. He had also filed a writ petition earlier to challenge the acquisition of lands for the benefit of the harijans. An opposition coming from such a person could not be said to be a bona fide opposition, and his statement will have to be considered carefully.

24. Mr. Sirajuddin, Learned Counsel appearing for Respondent - 11 has, however, stated to the Court that Respondent -11, who also happens to be a Muthavalli of the Mosque in that village is equally keen that there should be harmony, though his submission is that appropriate measures should be taken to maintain law and order. Same is the submission of Mr. C. Raghunatha Reddy, Learned Counsel appearing on behalf of the Respondent - 12.

25. It has been pointed out on behalf of the Petitioner that from the documents filed on behalf of the officers of the government it is seen that although there was a memo issued by the Revenue Divisional Officer on 31st October, 2008 that the statue be shifted, no steps in furtherance thereof were taken for more than a year. No incident, whatsoever, beyond what is stated above has taken place in the village. It appears that only because of the opposition to garland the statue on 25th December, 2009 that further steps were taken by the some of the subordinate officers of the Respondent - government. Thus, they have produced before us the resolution of the panchayat dated 07.01.2010 that the pond in the dalit settlement be filled up. It is also submitted on their behalf that a leader of a political party, who is a Member of Parliament from that District had also agreed for the shifting of the statue from its original place. It was stated on their behalf that the place where the statue stood earlier was a government land and that the construction was unauthorized. The fact equally remains that the place where it has been shifted is also a government land and there is no permission from any of the government authorities for the shifting of the statue to that place.

26. It was sought to be contended on behalf of the Respondents that the Petitioner and his colleagues are trouble makers. It was claimed by them that the

statue was shifted in the afternoon of 20th of January, 2010 and that the officers of revenue and police department were not aware of the injunction order. It was also submitted by the learned Government Pleader and the advocates for the private Respondents that the copy of the order was neither received nor were they informed about that order.

27. It is true that the copy of the injunction order was not available with the Petitioner on 20th January, 2010. But, it is difficult to accept the submission that the Petitioner had not informed the Respondents about the passing of the injunction order, particularly, when the Petitioner has taken so much pain to file the petition. The Members of the Court appointed Committee had talked to the villagers, and have also stated clearly in paragraph - 18 of their Report that they formed a clear impression that the statue was shifted only in the night of 20th January, 2010. This is also in consonance with the affidavit of Smt. M. Renu, the elected Ward Member from that village. She has stated that the villagers opposed the shifting of the statue and a large number of them had gathered at that place. She has further stated that many of them were confined to their houses and the electric supply was switched off. 247 villagers have filed their affidavits supporting the Petitioner and which also contain the very statements. A large number of them remained present in Court on a number of days.

28. It is very clear that the revenue and police department had taken the decision to shift the statue. That is clear from the government records itself. It is sought to be stated that the shifting was done by Mr. Kannan, who was responsible for putting up the statue and Mr. C. Dharmalingam, the President of the Village Panchayat, who is stated to be a Mazdoor. The Petitioner has shown us the photographs of the events of 20th January, 2010 which show a large number of police personnel present at the place where the statue was shifted. It also showed the JCP Earth Mover being brought over there. Surely, the machine and the police personnel would not have been brought unless there was a participation of the officers of the revenue and police department. In the affidavit affirmed by the Petitioner with respect to the incidents of 20th January, 2010, it is also stated that he informed the personnel present on the spot about the injunction order. Not only that, but it is stated that the Learned Counsel for the Petitioner informed the Deputy Superintendent of Police about this order when the officers on the spot insisted on the production of a copy of the injunction order. There is no reason for us to disbelieve the statement of the Petitioner or of the large number of villagers who have filed their affidavits and the position seen from the photographs produced by the petitioner. The Committee has also drawn the inference that the statue was shifted in the night of 20th January, 2010. It cannot be forgotten that the injunction order was passed since the Government Pleader was not in a position to make a commitment and the order was passed in his presence in the morning of 20th January, 2010. Tahsildar was clearly aware that the petition was to come up for hearing on 20th January, 2010. He surely knew that it was a sensitive matter and it was expected of him to act in a far more responsible manner. We may also add that though we had

directed the Superintendent of Police and the Inspector of Police to produce their Movement Register and General Diary of the concerned Police Station, for the reasons best known to them, those records were not produced.

29. Having noted the unfortunate developments, which have taken place in this matter, and also the inference which the Committee has drawn, we quite appreciate that the Home Secretary has expressed regret for the removal of the statue despite the order of injunction of the Court granted earlier in the day on 20th January, 2010. We have quoted paragraph - 2 of her affidavit. She has rightly described the removal as unfortunate. She has also assured that without going into the merits of the controversy the State Government will immediately ensure and re-locate the statue at its pre-existing location.

30. Mr. Sirajuddin, Learned Counsel appearing for the Respondent -11, who is the Muthavalli of the Mosque in the village has assured that the Respondent - 11 and persons of his community are also interested in peace and harmony. The District Collector should, therefore, honour this commitment of the Home Secretary and see to it that the statue is re-located at its original place within two weeks from this order (as per the time suggested by the Advocate General), and in any case, on or before 28th February, 2010.

31. Learned Advocate General has assured that an appropriate arrangement for the protection of the statue will be made. This is necessary because it did happen in the past that a pole carrying the flag of a political party nearby the statue fell down causing a little damage to the statue. With a view to avoid recurrence of any such situation, the District Collector will see to it that there is an appropriate fencing placed around the statue. Garlanding of the statue on occasions such as Dr. Ambedkar's Birth Day, or his Maha Nir-van Day, or a day such as 25th December of a year, should never be objected. The learned Advocate General has assured that there will be an appropriate unveiling of the statue after it is relocated. We expect that to be done on or before 28th February, 2010 in the presence of the District Collector and the Superintendent of Police of that District.

32. Mr. Sirajuddin, Learned Counsel for the Respondent - 11 has suggested that there should be some police out post nearby for protection of the statue. Learned Advocate General has stated that the District Collector and the Superintendent of Police will see to it that proper bandobust is kept near the statue at least for a period of three months hereafter so that normalcy is restored. He has also assured that similar arrangement will be made on the earlier mentioned days viz., Dr. Ambedkar's Birth Day, his Maha Nirvan Day i.e., 6th December, and on 25th December of each year.

33. The Home Secretary has stated in the above referred to paragraph - 2 of her affidavit that the District Collector would undertake an enquiry into the circumstances under which the removal took place despite orders of the Court, and take action against any official found to have erred in this regard. We expect the District Collector to take appropriate measures at the earliest, and in any

case, within a period of six months hereafter. He shall file a report with respect to the action taken in the Registry of this Court.

34. The Home Secretary has prayed that this Court may pass suitable orders so that similar instances of installing of statues of public figures without permission of the State Government do not take place. As has been recorded earlier, there is already a Governmental Order viz., G.O. Ms. No. 221 dated 20th November, 1998 issued by the Secretary of the Municipal Administration and Water Supply Department is available in this regard. Incidentally, the present Home Secretary herself was the Secretary to that department and she has signed that Government Order. That Government Order records that two meetings of all political parties have taken place on 22nd of October, 1998 and 28th October, 1998 and on that basis certain decisions were taken. On the basis of those decisions the Government altered all earlier existing orders and has issued three directions in that Government Order. In our view, a clarification of the Government Order would suffice, which we hereby do.

35. The first direction is that government's 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.

38. Before we conclude the matter, we record our appreciation for the assistance rendered by the two learned advocates, and Registrar (Management) of this Court, who formed the Committee to visit the village and made a report. We have passed a separate order directing the government to give them an appropriate honorarium. We also appreciate the timely intervention of the learned Advocate General and the fair and responsible approach of the Home Secretary. If the subordinate officers of the revenue and police department were to adopt the same approach, this unfortunate controversy could have been avoided. This Court was required to pass an order of interim injunction on 20th January, 2010 considering the likely shifting of the statue. In fact, it was not expected as stated by the learned Government Pleader at that time, yet this Court passed the order so that no untoward incident occurs. Unfortunately, some of the government officers do not appear to have acted in consonance with the order of the Court. As rightly stated by the learned Advocate General the orders of the Court have to be respected and if there is any disobedience thereof the persons concerned will have to be dealt with in accordance with law. This is particularly so in a sensitive matter like the present one. It is most unfortunate that the statue of Dr. B.R. Ambedkar which was already located at a place for more than a year, (and which place could not be considered to be in any manner controversial one), was sought to be shifted to a dalit settlement. It is highly deplorable that a National Leader is sought to be considered as a leader of a community disregarding his contribution to citizens of India irrespective of their caste, religion, and community. The Home Secretary has stated in paragraph - 4 of her affidavit that the parties concerned will have to file an application to the District Collector for permission for placing the statue at the initial location. The Petitioner shall do the same immediately. The statue has to be unveiled in the presence of the District Collector and the Superintendent of Police by the end of February, 2010. We expect the District Collector to pass the order regularizing the installation of the statue after the receipt of the application.

39. In the circumstances, we allow this petition, and as stated above, the statue of Dr. B.R. Ambedkar will be re-located at the original place where it stood earlier. The petition succeeds. The Petitioner had to take good amount of efforts as can be seen from this order. He is a well-educated person and it is totally unfair to call him a troublemaker. But for the efforts taken by the Petitioner the

statue of Dr. B.R. Ambedkar would have suffered the dis-honour of having been shifted unceremoniously to a dalit settlement and this would have led to a further tension in the village. In our view, therefore, the efforts of the Petitioner should be compensated, though his counsel has not sought the same. We, therefore, award a cost of Rs. 20,000/- (Rupees twenty thousands only) to the Petitioner which should be paid by the State Government. The State is at liberty to recover the cost from the concerned officers who were responsible for the unfortunate incident in question.

40. The petition stands allowed as above. Consequently, connected miscellaneous petition is closed.