
(2013) 04 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 11443 of 2013 and M.P. No's. 1 and 2 of 2013

Thomas G. Rathinaraj

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 CTC 505 : (2013) 4 MLJ 761

Hon'ble Judges : R.K. Agrawal, Acting C.J.; N. Paul Vasanthkumar, J

Bench : Division Bench

Advocate : R. Prabhakaran, for the Appellant; R. Maheswari, SCGSC for Respondent 1, Mr. T.N. Rajagopalan, Additional Government Pleader for Respondents 2 to 5 and Dr. Fr. Xavier Arulraj for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, Actg. C.J. and N. Paul Vasanthkumar, J.—This writ petition is filed by the petitioner as public interest litigation, seeking

issuance of a writ of mandamus directing respondents 1 and 2 to declare St. Michael's Cathedral Church, Post Box No. 6, Big Bazaar Street,

Coimbatore-641 001, as a protected Ancient and Heritage Monument of Historical Importance, and recommend for its preservation under the

Ancient Monument and Archaeological Sites and Remains Act, 1958, and the Madras Ancient and Historical Monuments and Archaeological

Sites and Remains Act, 1966. In the affidavit filed in support of the writ petition the petitioner is claiming that he is a Christian by faith and often

visit St. Michael's Cathedral Church, Coimbatore-1, and he came to know that the 6th respondent is demolishing the superstructure with a view to

reconstruct the Church, and the 6th respondent had published the plan for new

construction in its official website, and in order to protect the

Ancient and Heritage Monument and Archaeological excellence of the Church, this writ petition is filed. According to the petitioner, the Church

was established in the year 1848, which is in the center of Coimbatore city and even after lapse of 164 years, the building is as good as new one,

which is a center for worship. The petitioner sent a representation dated 15.4.2013 to the first respondent by registered post and posted the same

on 17.4.2013 as per the postal receipt filed and after sending the said representation, petitioner has filed this writ petition with the above prayer on

18.4.2013, i.e., on the very next day of posting the representation, this writ petition was moved as lunch motion on 19.4.2013.

2. Even when the writ petition was moved on 19.4.2013, the learned counsel, who appeared for the petitioner has produced the photographs

showing partial demolition of the Church. As the Church was demolished partially even before the writ petition was posted, the petitioner was

permitted to serve notice to the counsels, who appeared for the respective respondent in the earlier writ petition and also to the learned counsel for

the Central Government and this writ petition was directed to be listed on 22.4.2013, on which date, as the learned counsel appeared for the 6th

respondent prayed for time to file counter affidavit, this Court ordered to maintain status-quo as on that date till 25.4.2013, which was extended

upto 26.4.2013 and further extended till 29.4.2013, and again extended till this order is passed.

3. The 6th respondent herein filed counter affidavit praying to vacate the interim order of status-quo ordered on 22.4.2013 and dismiss the writ

petition, and contended as follows:

(i) The decision to demolish the existing superstructure of the Cathedral Church was taken in the Annual General Body Meeting of the Diocesan

Society on 26.9.2012.

(ii) Even though the Church was constructed in the year 1848, periodical alterations were made in the years 1926, 1953; in 1962, the Church was

reconstructed and expanded on the eastern and western side to form a cross shaped to accommodate more people; in the year 1985 alterations

were made by fixing modern granite and marble stones; and in the year 1997, the portico area was constructed and the original three entrances

were added and replaced with five entrances with new wooden doors with additional construction area of 2800 sq.ft, totally changing the front elevation.

(iii) The old structure had become dilapidated and therefore a decision was taken to demolish the existing church and construct a new church in the very same place.

(iv) Earlier the petitioner had filed writ petition in W.P. No. 28164 of 2012 in his personal capacity, which was dismissed by this Court on

7.1.2013 and no liberty was obtained by the petitioner to file another writ petition by way of Public Interest Litigation.

(v) Again petitioner filed W.P. No. 1001 of 2013 by way of Public Interest Litigation, wherein the Commissioner of Archaeological Department,

Government of Tamil Nadu, filed a counter affidavit opposing the prayer sought for by the petitioner and the said writ petition was allowed to be

withdrawn to approach the appropriate authority, if the petitioner is having any right.

(vi) The petitioner sent a representation by registered post on 17.4.2012 and filed this writ petition on 18.4.2013, the very next day, i.e., without

even waiting for receipt of representation by the first respondent Government of India, New Delhi, and as such the petitioner is abusing the process

of this Court, who has got personal animosity against the Diocese as he left the seminary midway, while he was studying in Italy and only due to the

personal vendetta, petitioner has filed this writ petition by misusing the process of the Court.

(vii) It is also stated in the counter affidavit that if prayers are conducted in the dilapidated Church building, thousands of persons visiting the

Church will face danger and as there is lot of seepage in the roof, wall and cracks developed in the lime structure, the same are beyond repair.

(viii) In the counter affidavit it is further stated that the permission for demolition was applied before the District Collector on 15.4.2013 and the 6th

respondent already applied for planning permission to construct a new Church.

(ix) The safety of the children, who are visiting the Church is the top priority and the Church now exists only as a show piece and if any delay is

caused in demolition, it will be endangering the worshipers, apart from causing other difficulties.

(x) A typed set of papers is filed by the 6th respondent with photographs of the demolished Church. The said demolition was carried out before the order of status-quo on 22.4.2013.

4. Heard the learned counsel for the petitioner as well as learned counsels appearing for the respective respondent.

5. It is seen from the typed set of papers filed by the petitioner as well as 6th respondent that the petitioner earlier filed W.P. No. 28164 of 2012

praying for a declaration to declare the Church as a protected Ancient and Heritage Monument of Historical Importance and recommend for its

preservation under the Tamil Nadu Ancient and Historical Monument and Archaeological Sites and Remains Act, 1966, by impleading the

Principal Secretary and Commissioner, Department of Archaeology, Government of Tamil Nadu, Egmore, Chennai, among others. The said writ

petition was dismissed on the ground that the petitioner failed to produce proof showing his membership in the Church, and hence he is not an

aggrieved person to move the said writ petition. No liberty was granted to the petitioner in the said writ petition to move another writ petition as

Public Interest Litigation.

6. Again the petitioner filed W.P. No. 1001 of 2013 as public interest litigation, by raising very same averments. In the said writ petition, the

Commissioner, Department of Archaeology, Government of Tamil Nadu, Egmore, Chennai-8, filed a counter affidavit wherein in paragraphs 3 and

4 it is stated as follows:

3. I state that, from the records of Church and as per Inspection Report of Archaeological Officer, Coimbatore, the Church was originally

constructed and opened for the public in the year 1867, through the Church is in existence for more than 100 years, it does not have sculptures,

inscriptions or any unique artistic interest. The original Church constructed in 1867 has undergone by way of repair, alteration, addition, extension

number of times with the modern materials (in the year 1926, 1953, 1962, 1965, 1997). The originality has been changed from time to time. In

1997, 2800 sq.ft. additional construction has been done totally changing the front elevation.

4. I state that, this case from the facts and findings of St. Michael's Cathedral Church in Big Bazaar Street, Coimbatore-1, has lost the original

architecture and historical evidence, for restoration. After the detail inspection made by the Archaeology Department, it is found that it could not

declared the St. Michael's Cathedral Church, Bishop's House, Post Box No. 6, Big Bazaar Street, Coimbatore, as a protected ancient and

heritage monument of historical importance and so that the claim of the petition in this regard is not sustainable in law. There is no merit in the writ

petition and it is liable to be dismissed.

(Emphasis Supplied)

In the said writ petition the Secretary, Ministry of Art and Culture, Union of India, was not impleaded as party. When such a counter affidavit was

filed by the Commissioner, Archaeological Department, the learned counsel, who appeared for the petitioner, made an endorsement in the case

bundle of W.P. No. 1001 of 2013, seeking permission to withdraw the writ petition with liberty to approach the appropriate authority and the said

writ petition was dismissed as withdrawn on 10.4.2013 with such liberty. Thereafter the petitioner approached the first respondent as stated supra

by representation dated 15.4.2013, which was sent by registered post on 17.4.2013 and this writ petition was filed on 18.4.2013.

7. From the averments in the counter affidavit filed by the Commissioner of Archaeology, Government of Tamil Nadu, as extracted above, it is

evident that though the Church is more than 100 years old, it has no sculptures, inscriptions or any unique artistic interest, and the Church had

undergone repairs, alterations, additions, extensions number of times with modern materials. The competent authority viz., the Commissioner of

Archaeology, Government of Tamil Nadu has filed a counter affidavit on 15.2.2013 stating that the Church need not be protected as Ancient

Heritage Monument of Historic Importance. In view of the said stand taken by the experts in Archaeological Department, this Court sitting under

Article 226 of the Constitution of India, cannot give direction to declare the St. Michael's Cathedral Church, Coimbatore-1 as protected

monument, particularly when the facts pleaded herein are in dispute.

8. Section 2(c) of the Madras Ancient and Historical Monument and Archaeological Sites and Remains Act, 1966 (Madras Act 25 of 1966)

defines "'archaeological officer'", which reads thus,

2(c) "'archaeological officer'" means any officer appointed by the Government,

by notification, to be an archaeological officer for the purposes of this Act for such area as may be specified in the notification.

Section 2(db) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Act 24 of 1958) defines ""competent authority"" as

follows:

2(db) ""competent authority"" means an officer not below the rank of Director of archaeology or Commissioner of archaeology of the Central or

State Government or equivalent rank, specified, by notification in the Official Gazette, as the competent authority by the Central Government to

perform functions under this Act:

Provided that the Central Government may, by notification in the Official Gazette, specify different competent authorities for the purpose of

sections 20-C, 20-D and 20-E.

Section 3 of the Central Act empowers the Government to declare ancient monuments, etc., to be of national importance. Section 4 of the Central

Act empowers to issue notification to declare any ancient monument. The State Archaeological Officer having taken a stand in this matter, which is

not in favour of the petitioner, the State Government cannot be compelled to declare the St. Michael's Church, Coimbatore-1, as ancient

monument, as prayed for by the petitioner.

9. The Supreme Court in the decision reported in *The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and*

Others, following its earlier decisions held that the opinion of experts should not be interfered. In paragraphs 37 and 39 the Supreme Court held

thus,

37. The Constitution Bench of this Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, held that (AIR p. 496,

para 13) "normally the courts should be slow to interfere with the opinions expressed by the experts". It would normally be wise and safe for the

courts to leave the decision to experts who are more familiar with the problems they face than the courts generally can be. This view has

consistently been reiterated by this Court as is evident from the judgments in *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and*

Others, , *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and*

Others, , Central Areca Nut and Cocoa Marketing and Processing

Cooperative Ltd. Vs. State of Karnataka and Others, and The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another, .

39. In the instant case, the Expert Committee was appointed by the High Court itself. No allegation of mala fides or disqualification against any

member of that Committee had ever been made/raised. Thus, we fail to understand as on what basis, its recommendation on the issue involved

herein, has been brushed aside by the High Court without giving any reason whatsoever, particularly, when the Act governing VMH does not

prohibit the use of the part of the compound for the purpose other than that connected with Queen Victoria.

10. The decision of the Supreme Court cited by the learned counsel for the petitioner reported in Rajeev Mankotia Vs. Secretary to the President

of India and others, was a case challenging the order declaring the site/place as an ancient historical monument of national importance. The said

challenge was rejected by the Hon'ble Supreme Court having regard to the declaration made based on the expert opinion. In this case, the expert

opinion is against the petitioner in seeking declaration. Hence the said judgment has no application to the case on hand.

11. In this writ petition itself the petitioner has prayed for direction to the second respondent viz., the State Government to recommend to the first

respondent for the preservation of the Church. The competent authority as defined in Central Act, viz., the Commissioner of Archaeology,

Chennai-8, having taken a specific stand that the Church is not to be treated as a Protected Monument and Heritage of Historical Importance, the

question of recommending the request of the petitioner to the first respondent will not arise.

12. The learned counsel appearing for the 6th respondent has relied on the photographs filed in the typed set, which is not disputed and as per the

said photograph, it is evident that more than 75% of the demolition work is already over and only remains of doom is existing and in the nearby

places schools are located, where children are playing and unless the said debris and existing doom are removed immediately, it may cause

endanger to the life of the children and general public. The photographs of the demolished Church was published in Dinamalar Daily dated

22.4.2013. The laying of foundation stone for construction of new Church is also to be held on 12.5.2013 and invitation copy for the said function

is also filed in the typed set of papers filed by the 6th respondent.

13. In view of the above findings and in the light of the list containing the monuments of Tamil Nadu published by the Archaeological Survey of

India, which list do not contain the name of St. Michael's Cathedral Church, Coimbatore-1, we are of the firm view that no purpose would be

served by directing the first respondent to consider the representation submitted by the petitioner on 15.4.2013, sent by registered post on

17.4.2013. There is no merit in the writ petition and consequently the writ petition is dismissed. No costs. Connected miscellaneous petition is also

dismissed.