

(2017) 06 MAD CK 0158

In the Madras High Court

Case No : 1079 & 1402 of 2016 and C M P (MD) Nos 6520 & 10454 of 2016

Vijayan

APPELLANT

Vs

The District Collector Madurai District, & Ors.

RESPONDENT

Date of Decision : 14-06-2017

Acts Referred:

Citation : (2017) 06 MAD CK 0158

Hon'ble Judges : T.S.Sivagnanam, P.Velmurugan

Bench : DIVISION BENCH

Advocate : T.S.Sivagnanam, P.Velmurugan

Judgement

1. These writ appeals have been preferred by the writ petitioner in W.P. (MD) No.9628 of 2015 and 16313 of 2013.
2. Both the matters pertain to same issue relating to the statue of a Freedom Fighter erected by the appellant in his property.
3. W.P.(MD) No.16313 of 2013 was filed by the appellant to forbear the respondents from causing any obstruction in the unveiling of statue of the Freedom Fighter Theeran Chinnamalai to be held on his Birth Anniversary on 15.11.2013 in the property of the appellant - Sangam called as Gounder Maha Jana Sangam, Alanganallur, Madurai District.
4. Along with the said writ petition, another writ petition in W.P.(MD) No.18319 of 2013 was filed by the General Secretary, Tamilnadu Valayarkula Mutharaiar Munnettra Sangam, challenging the proceedings of the District Collector, Madurai, dated 21.01.2012, in and by which permission for construction of statue of Perarasar Perumpidugu Muthariyar was refused.
5. Both the writ petitions were dismissed, by a common order dated 17.04.2014, issuing certain directions.
6. The appellant is not aggrieved by all such directions issued by the Writ Court, except for those as contained in Paragraph Nos.12(ii) and (iv), which state that

the statue should be located 100 feet away from the main road entrance and it should be at a moderate elevated level. It is contended that those conditions cannot be imposed on the appellant as the statue had been erected much prior to the directions issued by the Court and at best, the directions can be made applicable prospectively for other cases. Therefore, the scope of the writ appeal in W.A.(MD) No.1402 of 2016 is limited to the said extent.

7. Writ appeal in W.A.(MD) No.1079 of 2016 has been filed challenging the order, dated 08.01.2016, made in W.P.(MD) No.9628 of 2015, whereby the relief sought for by the appellant to give permission to unveil the statue of the Freedom Fighter Theeran Chinnamalai in the Association's land was dismissed primarily on the ground for similar relief, the appellant had approached this Court earlier and the writ petition has been dismissed.

8. The learned counsel appearing for the appellant, after reiterating the factual aspect, submitted that the appellant is not aggrieved by the conditions imposed in W.P.(MD) No.16313 of 2013, but in fact, he has complied with the conditions for installing CCTV Camera etc., but the distance of 100 feet cannot be insisted upon and the statue is located in a private Patta land at a height of more than 20 feet and it is well away from the main road, which was sought to be clarified by producing photographs.

9. Further, it is submitted that the legal position, which has been settled by the Court in the case of P.Maniyarasan v. The Government of Tamil Nadu, reported in 2011 (1) CWC 379 and in the case of the District Collector, Madurai and others v. N.E.Rajasudhan, President, Puthiya Neethi Katchi, W.A.(MD) No.547 of 2016, dated 25.04.2016, are clearly in favour of the appellant and the respondents cannot prevent or prohibit the appellant from erecting the statue in his own land and the Government Orders and Guidelines cannot be a law.

10. Further, it is pointed out that the appeal filed by the District Collector, Madurai, in W.A.(MD) No.547 of 2016, was dismissed and the statue of V.O.Chidambaranar, a National Leader, has been erected in the Patta land belonging to the Sangam and the appellant's case is no different. Further, it is submitted that the appellant's building is situated well away from the main road and the statue is on top of the entrance, which leads to a School and all safeguards have been made and the objections raised by the respondents are frivolous.

11. Further, it is submitted that though directions have been issued by the Writ Court in the earlier writ petition, till date the officials have not passed any orders. Therefore, the second writ petition was filed, as there was a fresh cause of action for the appellant in the light of the directions issued in W.P. (MD) No.16313 of 2013. Therefore, the Writ Court ought not to have dismissed the writ petition in W.P.(MD) No.9628 of 2015.

12. It is further submitted that the decision of the Honourable Supreme Court in the case of Union of India v. State of Gujarat and others, SLP (Civil) No.8519 of

2006, dated 18.01.2013, would have no application to the facts of the case as the matter pertains to installation of statue or construction of any structure in public roads, pavements, sideways and other public utility places. Whereas, the appellant has constructed the statue only in their private Patta land well away from the main road.

13. The learned Special Government Pleader appearing for the respondents submitted that the Government has issued two Government Orders pertaining to the erection of statue, namely, G.O.(Ms) No.248, Rural Development (C2) Department, dated 23.11.1998 and G.O.(Ms) No.186, Municipal Administration (M) Water Distribution (N.Ni.5) Department, dated 21.09.1998, under which there is no right for any private party to erect statue even in his private Patta land. Furthermore, the area in which the statue is sought to be unveiled is sensitive and prone to communal clashes and there is a likelihood of breach of peace, if the statue is unveiled. Therefore, it is submitted that the appellant should not be granted permission to unveil the statue.

14. We have heard the learned counsel appearing for the parties and perused the materials placed on record.

15. Before we proceed to consider the factual aspect, we need to take note of the legal position, which has been enunciated by this Court in at least two decisions, namely, P.Maniyarasan and N.E.Rajasudhan (supra). In P.Maniyarasan (supra), the Court considered the effect of G.O.(Ms) No.248, Rural Development (C2) Department, dated 23.11.1998 and G.O.(Ms) No.186, Municipal Administration (M) Water Distribution (N.Ni.5) Department, dated 21.09.1998, which were relied on by the learned Special Government Pleader before us, and held that those Government Orders cannot override the law and the citizen right to make use of his property cannot be interfered unless there is valid law circumscribing such act. At this stage, it would be relevant to refer the following Paragraphs of the said order:

"15. The Learned Special Government Pleader also contended that even to put up a building in a private place, it requires necessary plan sanction by the local bodies. Therefore, the citizens cannot have free for all in erecting the statues. The Government has power to regulate erection of statues even private places. But, the learned Special Government Pleader is unable to point out any law under which such power is assumed by the State Government or by any local bodies. On the other hand, the Village Panchayat is empowered to grant approval for the site, buildings and huts in terms of the Tamil Nadu Panchayats Building Rules, 1997. In the rules, there is no reference to any prior permission in respect of erection of statues in a private Patta land. A perusal of the Rule 4(3) of the Tamil Nadu Panchayats Building Rules, 1997 relating to places of public worship reads as follows:

"4(3) No site shall be used for the construction of a building intended for public worship or religious purposes without the prior approval of the Collector of the

district who may refuse such approval, if in his opinion, the use of the site and buildings is likely to endanger public peace and order."

16. If the argument of the learned Special Government Pleader is accepted, then for putting up of hanging the picture of ones own parents or forefathers in the private pattadars lands, they should move the authorities (whether it is Local Body, Revenue or Police Authorities) for seeking such permission. Such step is never contemplated. The attempt by the Respondents is to clutch to a non-existing power. The Special Government Pleader had attempted to submit that the Government guidelines can be a law also cannot stand to reason. An embargo on the citizen's right to make use of his own land without any hindrance and it can be done in the absence of any valid law circumscribing such act, cannot be entertained by this Court. A fetter on a citizen's right must be spelt out by a valid law made the state legislature and that law alone can regulate the questions raised this Writ Petition.

17. The petitioner's attempt to put up a bust-size statue for their hero Muthukumar is not intended to convert the site into a place of worship nor the place was to be used for religious purpose. May be in a lighter vain it can be said there will be "Hero worship". The history of Tamil Nadu is replete with instances of laying "Nadukal" (hero stone) in memory of many Subaltern heros in each area. The more excavations done in the State more such hero stones are found. The Respondents have unnecessarily blown up the issue which otherwise would have gone off without much ado.

18. This Court is of the opinion that the objections raised by the Respondents are not based on any sound legal foundation. The Respondents cannot prevent the Petitioner's political party in installing a bust-size statue of the person who in their esteem is a Martyr, in a private land. Instead of asking the Petitioner to furnish the details of Adangal, Chitta, FMB sketch, etc., the Second Respondent himself being the head of the Revenue Department can very well verify the credentials of the claim made by the Petitioner from their records and satisfy themselves that the land in question is not a Poramboke land or notified public pathway."

16. In N.E.Rajasudhan (supra), the appeal was by the Government against the order permitting the erection of the statue of V.O.Chidambaranar. The Division Bench elaborately considered all the aspects, including the Government Orders, and held that there cannot be any fetter on the erection of a statue of leader of national importance that too in a private property. It would be relevant to refer the following paragraphs:

"17. Facts of the above said case, relied on by the learned Additional Government Pleader, is inapposite to the case on hand. Installation of V.O.C. statue in the instant case, is opposed on the ground that it is in a "place open public view", as per Explanation 2(c) of Section 2 of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, and that the area is communally hyper

sensitive. The said objection cannot be countenanced, for the reason that there are many statues of National Leaders in open places. There cannot be any total prohibition of installation of a statue in a "place open public view", and more so, in the case on hand, when the statue of a National Leader is sought to be erected, in a private land, though open to public view. On the contra, it should be in public view. There is no reason why a statue of a National Leader, should not be in public view. Though some of the instances placed before this Court may indicate that there were some clashes between two groups; some cases registered against different communities, there is no incident regarding installation of any statue.

18. As observed earlier, this Court in *Srivilliputhoor Saiva Vellalar Sangam vs. The District Collector* (W.P(MD)No.8935 of 2012, dated 29.08.2012), has expressed its displeasure that even the National Leader, V.O.C. has been depicted as community leader. When there is no need to obtain prior permission from the Government, for erection of a statue, in a patta land, more so, a National Leader, objections of the appellants are liable to be rejected. On the other hand, it is the considered view of the Court that whenever statues of National Leaders are erected, State and its Machineries should give adequate protection, so that future generation of this Country would at least have an opportunity to see the images of such National Leaders.

19. The Hon"ble First Bench in *T.Amirthalingam's* case, directed that the statue has to be shifted, in the presence of the District Collector and the Superintendent of Police, by fixing a time. The observation of the Hon"ble First Bench, on the facts and circumstances of the above case, only depicts the attitude and mind-set of few sections of the society, in raising an issue, whatever be the sacrifice, service and contributions of the National Leaders to the citizens of India, and encircling them as Leaders Belonging to "X" or "Y" community. Such narrow minded persons only forget the fact that freedom, which we now enjoy, is only because of them. When they fought for our freedom, there was no caste, creed or colour. Thus, they were united. Today, we stand apart, on the grounds of community and religion. Taking not of the instances of clashes on the grounds of community and religion, all the citizens should take a constitutional oath, on the Independence Day, as to what we have resolved to ourselves. Let the Preamble to our Constitution, be known to all our citizens. While teaching moral and discipline in schools and colleges, let there be a programme for the students, to know our constitutional goals."

17. One of us (T.S.S.J.,) had an occasion to test the correctness of an order passed by the Deputy Commissioner of Police, Coimbatore City, dated 04.07.2014, by which permission was refused to unveil the statue of Perunthalaivar Kamarajar in a Park near North Coimbatore Flyover. The Court took into consideration the directions issued by the Honourable Supreme Court in *S.L.P.(C) No.8519 of 2006* and held that the authorities had granted permission from 2001 onwards and the statue was installed in 2010 and on the facts of the

case, the order passed by the Honourable Supreme Court would not be an impediment for the purpose of installing the statue. The relevant paragraphs of the said order are quoted herein below:

"4. Insofar as the second impediment is concerned, i.e., the order dated 17.07.2014 passed by the Honourable Supreme Court in S.L.P.(C)No.8519 of 2006, it is noted that there is no objection by the Government for the unveiling of the statue and the statue has been installed in a place approved by all the authorities and photographs produced by the learned Additional Government Pleader also clearly shows that the statue is in a park much away from the traffic and there could be no hindrance to the traffic or the public, since access to the park is through designated entries. The photographs show that the statue has been fully erected and is covered with green cloth ready to be unveiled.

5. The issue before the Honourable Supreme Court was with regard to the installation of the statue of a former Deputy Speaker of a Kerala Legislative Assembly in the curve turning to the KSRTC bus stand, Neyyattinkara in the Kanyakumari National Highway near bus stand. While considering the said case, the Honourable Supreme Court granted an order of status quo as on the said date to be maintained in all respect with regard to the Triangle Island where statue has been permitted for erection and further directed the State Government not to grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. The said order took note of the conditions prevailing therein and directions were issued. The Hon"ble Supreme Court further directed henceforth the State Government shall not grant any permission for installment of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. The said order was directed to be applied to all other States and the Union Territory and the concerned Chief Secretary/Administer were directed to ensure compliance of the order. The said directions have been passed by the Honourable supreme Court on 18.01.2013.

6. However, in the instant case, the authorities have approved and granted permission from 2001 onwards and the statue had been installed in the year 2010. The dispute with regard to the case was only with regard to the objection so made by the second respondent. Therefore, on facts the order passed by the Honourable Supreme Court would not be an impediment for the purpose of installing the statue, which has already been erected and installed in the year 2010.

7. In the result, the writ petition is allowed and the impugned order is set aside and the respondents are directed to take into consideration the consensus arrived at by the petitioner and the second respondent organisation and grant permission for the purpose of unveiling statue which has already been installed in the year 2010. The above direction shall be complied with by the respondents, within a period of two weeks, from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

18. The above directions have been complied with and the statue of Perunthalaivar Kamarajar has been unveiled.

19. Having steered clear of the legal position, we have now to test the correctness of the submissions made by the official respondents. The sheet anchor of the respondents is pitched upon the two Government Orders in G.O. (Ms) No.248, Rural Development (C2) Department, dated 23.11.1998 and G.O. (Ms) No.186, Municipal Administration (M) Water Distribution (N.Ni.5) Department, dated 21.09.1998. The validity, efficacy and enforceability of these Government Orders were decided by this Court in the case of P.Maniyarasan and N.E.Rajasudhan (*supra*). One of which is a Judgment of the Division Bench, wherein it has been categorically held that the official respondents have no right to impose restrictions on the erection of statue in private properties. We are in entire agreement with the view expressed in the case of P.Maniyarasan and N.E.Rajasudhan (*supra*). Therefore, the arguments advanced by the learned Special Government Pleader based on the above two Government Orders does not merit consideration.

20. The other aspect of the matter appears to be trivial, objections for the sake of raising objections. The statue is a cement statue erected at a height of about 20 feet, admittedly, in a private property belonging to the appellant - Sangam and the statue was erected much prior to the order in W.P.(MD) No.16313 of 2013. Therefore, certain directions, which have been issued by the Writ Court in the said writ petition, could not be made applicable to the appellant's case and consequently, the directions contained in Paragraphs Nos.12(ii) and (iv) as contained in the order, dated 17.04.2014, cannot be imposed on the appellant. The appellant has been able to substantially comply with the other guidelines by installing CCTV Camera and other safeguards and therefore, it would suffice to state that the directions issued in W.P.(MD) No.16313 of 2013, more particularly directions contained in Paragraph Nos.12(ii) and (iv) need not be insisted upon in respect of the statue already erected by the appellant much prior to the order. This would be sufficient to protect the interest of the appellant and it may not be necessary to set aside the order, dated 17.04.2014, made in W.P.(MD) No. 16313 of 2013, which is a common order in two writ petitions. Thus, with the above observations, the writ appeal in W.A.(MD) No.1402 of 2016 could be disposed of.

21. With regard to W.A.(MD) No.1079 of 2016 is concerned, we are of the view that the relief sought for in W.P.(MD) No.9628 of 2015 though may appear to be somewhat similar to the relief sought for in the earlier writ petition, the necessity for approaching the Court for the second time has arisen because the respondents did not take any action inspite of several directives issued by the Writ Court, in its order dated 17.04.2014. After the said order, the appellant submitted a representation, on 17.04.2015, seeking permission to unveil the statue and on 18.04.2015, the appellant produced Certificate from the Engineering Contractor as to the strength and stability of the statue, Certificate from the Assistant Executive Engineer regarding the quality of cement and steel

and No Objection Certificates from the Presidents of Devendra Kula Velalar Peravai, Muduvarpatti Panchayat, Vadipatti Taluk, Madurai District, Adi Dravidar Peravai, Muduvarpatti Panchayat, Vadipatti Taluk, Madurai District, Alanganallur Vattara Yadhava Maha Sabai, A.Pudupatti, Vadipatti Taluk, Madurai District Paalamedu Hindu Naadargal Uravinmurai Sangam, Paalamedu, Vadipatti Taluk, Madurai District, Pillaimar Uravinmurai Sangam, Paalamedu, Madurai Taluk, Alanganallur Pakuthi Anaithu Samudhaya Ilaignargal Nala Sangam, Alanganallur, Sri Kamatchiamman Aalaya Vazhipaattukkarargal Uravinmurai Sangam, Adanur and 24 Manai Telungupatti Chetti Uravinmurai Sangam, Alanganallur.

22. Further, the learned counsel for the appellant submitted that there has been no allegation or bad antecedent about / of the persons belonging to the appellant - Sangam and the stand taken by the respondent Police is absolutely without any basis. Thus, considering all these facts, we are of the view that the appellant was justified in approaching the Court by filing W.P. (MD) No.9628 of 2015 as it has given a fresh cause of action for the appellant after the earlier writ petition was disposed of, which in fact is a general directive and not specific to the appellant's case.

23. For the above reasons, the order, dated 08.01.2016 made in W.P. (MD) No.9628 of 2015, calls for interference.

24. In the result: (i) W.A.(MD) No.1402 of 2016 is disposed of with an observation that the respondents cannot insist upon the implementation of the directions contained in Paragraph No.12(ii) and (iv) of the order, dated 17.04.2014 made in W.P.(MD) No.16313 of 2013, in respect of the appellant's case as the statue has been erected much prior to the order in the writ petitions.

(ii) W.A.(MD) No.1079 of 2016 is allowed and the order, dated 08.01.2016 made in W.P.(MD) No.9628 of 2015, is set aside and the respondents are directed to permit the appellant to unveil the statue of the Freedom Fighter erected in the Patta land, by passing appropriate orders to the said effect, within a period of two weeks from the date of receipt of a copy of this Judgment.

(iii) No costs. Consequently, connected miscellaneous petitions are closed.