

(2010) 11 MAD CK 0247

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 7265 of 2010 and M.P. (MD) No. 1 of 2010

P. Maniyarasan General
Secretary

APPELLANT

Vs

The Government of Tamil Nadu
and Others

RESPONDENT

Date of Decision: Nov. 23, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14
- Tamil Nadu Panchayats Building Rules, 1997 - Rule 4(3)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: T. Lajapathi Roy, for the Appellant; R. Janakiramulu, Spl. G.P., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

K. Muthukumar, a Tamil youth in his prime age abortively terminated his life for a cause which was dearer to him on 29.1.2009 at Chennai. The whole of Tamil Nadu was shocked and became speechless. The last testament left by him before his death was widely publicized in all newspapers. There were meetings to condone his death and was adored for the spirit of sacrifice.

2. Exactly a year later, the Petitioner who is the leader of a political party decided to erect a statue in honour of Muthukumar at Sanoorapatti Village, Budalur Panchayat Union, Thanjavur Taluk. They had decided to put up a bust-size statue of Muthukumar in the land exclusively belonged to a private person in S. No. 159B/7A. They had also decided to have a meeting to commemorate the unveiling of the statue on 16.5.2010 in that village.

3. With this object in mind, the Petitioner approached the District Collector, Thanjavur with an application, dated 4.5.2010 to grant necessary permission. They submitted that the land is in unobjectionable and private patta land. A copy of the affidavit notarized by Notary Public given by the land owner-cum-pattadar was enclosed. It was stated that it is not an hindrance to anyone. It was claimed by the Petitioner that Muthukumar is a Martyr for a noble cause of demanding a cease-fire to stop killing of Eelam Tamils by the Srilankan Army due to continuous bombing and that he died for a noble cause.

4. The second Respondent District Collector by his communication, dated 5.5.2010 informed the Petitioner that permission from the State Government should be obtained for the installation of the statue. Hence without that permission convening of a meeting on 16.5.2010 was not proper. He had also asked the Petitioner to furnish several documents, including chitta, adangal for the place, FMB sketch, topo map, structure of the statue, that the statue will be made of bronze at their own expenses, an undertaking that in case of road expansion, the statue will be removed on their own volition, the resolution of the panchayat and the estimated cost of the statue. Pursuant to the order passed by the District Collector, the Revenue Divisional Officer, Thanjavur Division by a further communication informed the Petitioner that without getting approval from the State Government, fixing the date for unveiling the statue was not proper. The Tahsildar, Thanjavur and the Inspector of Police, Bhoodalur were asked to supervise that no statue will be erected without permission.

5. The Petitioner thereafter asked the Information Officer attached to the District Collectorate that necessary Government Orders and regulations in erecting the statues in the private patta lands should be furnished to him. The District Collector made an endorsement to inform the Petitioner the appropriate steps taken on the said requisition. The District Collector by his communication, dated 17.5.2010 informed the Petitioner that there are no details available in their office regarding the queries made by him.

6. Faced with an inaction of the District administration, the Petitioner has approached this Court challenging the orders, dated 5.5.2010 contending that the orders passed were arbitrary and violative of Article 14 of the Constitution of India. In the absence of any valid law followed by the Government Order regulating the erection of statues in the private land, there could not be any refusal for the Petitioner in erecting the statue of Martyr Muthukumar. It was further contended that for the installation of the statue in the private land, no prior permission of the Government is required. The Respondents' declining permission in this regard is completely unwarranted.

7. The writ petition was admitted on 8.6.2010. Pending the writ petition, in the application for an interim relief, this Court merely ordered notice. The Respondents on being served took several adjournments. Finally, they produced a written

instruction dated 13.7.2010 together with certain documents relating to the subject on hand.

8. The main stand taken by the second Respondent District Collector was that on 25.7.2007, a decision was taken in a meeting convened by the Chief Secretary to the Government followed by a letter written by the Secretary to the Government, Rural Development and Panchayat Raj Department, dated 17.08.2007 instructing the District Collectors to follow the guidelines of the Government vide letter, dated 12.6.1995 and G.O. Ms. No. 248, Rural Development Department, dated 23.11.1998 regarding erection of statues. In the letter, dated 12.6.1995, it was informed by the Secretary that whenever the Corporations and the Municipalities want to erect statues within their limits, the Government will give permission only if the statues are made of bronze. The same advise should be followed by the panchayat and panchayat unions. In the same letter, it was also informed referring to the communication issued by the Public Works Department that in the panchayat, panchayat union areas, if any statues are erected without permission and without hindrance to the traffic and without creating any hindrance to peace, the PWD can collect amounts from the person who erected the statue and in case they do not pay the maintenance charge, the statue can be removed.

9. Subsequent to the said letter, the Government had issued G.O. Ms. No. 248, Rural Development Department, dated 23.11.1998 announcing the decision of the Government taken in an all party political meeting on 22.10.1998 and 26.10.1998 regarding the erection of statues. It was stated in that meeting that in future if any statue is to be erected, the Government's prior permission should be obtained and that maintenance of the statues solely vest with the persons, who are responsible for the erection of statues. The existing statues should be maintained either by the Association or section or individual who was responsible for erection of it. In the same way, consolidating all the Government Orders with reference to erection of statues in the village panchayat, panchayat union and the District panchayat, the said order was issued. In that order, it was stated that for erection of statue, memorial pillar or memorial hall or memorial arch, Government's permission should be obtained. The existing statues should be protected by persons who were responsible for erection of statues. In case statues are not in good condition, they should be removed to a safer place and be brought back for erection. For this purpose, once again the Government's permission is required. Whatever order issued in respect of erection of statues will also apply to the memorial pillar or memorial hall or memorial arch.

10. The said order had come into effect from 23.11.1998. The District Collector had also stated that when the Petitioner made a request, he was asked to produce all necessary details which is in consonance with the Government letter. Without complying the same, the Petitioner has gone ahead and fixed the date for the function to unveil the statue.

11. Mr. T. Lajapathy Roy, learned Counsel for the Petitioner submitted that the order referring to by the District Collector has no relevance to the case on hand. When an information was sought for from the Collectorate regarding erection of statues in the private patta land, the very Respondent had stated that no such information in the form of any order of the Government is available in their office. A perusal of the written instruction also shows that no such decision was taken by the Government in respect of erection of statues in the private patta land. He had also stated that reliance placed upon the Government Order in G.O. Ms. No. 248, Rural Development Department, dated 23.11.1998 will apply to the case where there is erection of statue in public place and not in the private place.

12. Mr. R. Janakiramulu, learned Special Government Pleader, countering the same contended that without an appropriate permission from the Government as required under law, the Petitioner cannot go ahead with the erection of statue. He had also stated that the Petitioner should provide land ownership details and must give an undertaking that the statue will be made of bronze and that in future, if there is any hindrance to traffic, the same should be accepted to be removed from the existing place. Without complying with those conditions, permission cannot be granted.

13. Attention of this Court was drawn to a judgment of a division bench of this Court in T. Amirthalingam m State, rep. by its Secretary, Department of Home, Chennai and Ors. reported in 2010 (2) MLJ 1022, where passing reference was made to the said Government Order. But in that case, the statue in question was erected in a public land without permission. Thereafter, when the question of its removal came up, the Court came to the rescue of the person who had erected the statue and gave several directions. But all those steps were taken only in relation to the erection of statue in a public place in a panchayat. There were also objections by a section of villagers and the question of law and order was also involved. Even there was a direction that in future, bronze statues alone should be erected. By that reference, no inspiration can be drawn from the said judgment. If at all, the bench was concerned with the safety of the statue.

14. The said decision though reproduced the Government Order did not deal with the question of erection of a statue in a public place/street. This fact can be verified from the extract made from the Home Secretary's affidavit as noted in paragraph 12(ii) of the judgment, which is as follows:

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 20.11.1998. 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.

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 in 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.

Other than this, there is no other permission of any kind is required.

16. If the argument of the learned Special Government Pleader is accepted, then for putting up or 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 by the State legislature and that law alone can regulate the questions raised in 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 a 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.

19. Further in the present case, the land owner pattadar had given a sworn statement notarized by the notary public, which could be treated as a valid authorization. It is not as if there are any other contending party to the said land. Whether the statue should be made of clay or wood or stone or metal is to be left to the volition of the organizers of the event. It may be the policy of the State that bronze statue alone should be erected in public places, lest any other forms are likely to be damaged by miscreants or by political rivals. But such ideas cannot be thrust upon to private citizens who sets up memorial in their own private lands. Nowhere in the written statement, the District Collector had said that there is any threat or opposition for erecting the statue of Muthukumar. It is for the organizers like the Petitioner to take care of their memorials in the event of their proceeding to erect the statue in the village in question.

20. In view of the above, the writ petition will stand allowed. The impugned orders of the second and third Respondents, dated 5.5.2010 will stand set aside. The Respondents are hereby directed to permit the Petitioner to erect the statue of Muthukumar in Survey No. 159B/7A at Sanoorapatti Village, Budalur Panchayat Union, Thanjavur District on the date notified by the Petitioner party. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed.