

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : **07.02.2019**

CORAM

**THE HONOURABLE MR.JUSTICE N.SESHASAYEE**

**W.P.(MD)No. 1552 of 2019**

**and W.M.P. (MD) No.1324 of 2019**

J. Deva Asir

... Petitioner

Vs.

1.The Superintendent of Police,  
Kanyakumari District  
at Nagercoil.

2.The Inspector of Police,  
Marthandam Police Station,  
Kanyakumari District.

...Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the files of the second respondent pertaining to its order bearing proceedings Nil dated 16.01.2019 and quash the same and consequently direct the respondents to grant permission and provide police protection to conduct convention meeting from 08.02.2019 to 10.02.2019 in the Government Promboke land in Survey No.803/19 land.

For Petitioner : Mr. K. Samidurai

For Respondents : Mrs. S. Bharathy  
Government Advocate  
(Criminal Side)

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**ORDER**

This petition has been filed seeking to call for the records on the file of the second respondent pertaining to its order bearing proceedings Nil dated 16.01.2019 and quash the same and consequently direct the respondents to grant permission and provide police protection to conduct convention meeting from 08.02.2019 to 10.02.2019 in the Government Promboke land in Survey No.803/19.

2. Yesterday, when the matter came before this Court, the learned Government Advocate (Criminal side) submitted that the District Collector, Kanyakumari District passed an order rejecting it, cited an earlier order of this Court in W.P. (MD) No.22193 of 2017.

3. Today, the learned Counsel for the petitioner submits that he has filed a another representation, seeking permission for holding the said convention in S.No.803/19. He would further submits that the order of rejection pertains to S.No.803/17 and not S.No.803/19. Therefore, the second respondent or such other authority are required to grant permission may have to consider the feasibility of granting permission to the convention in S.No.803/19 of Kanchiracode Village.

4. This Court has carefully considered the submissions made on either side.

5. The petitioner herein requires the second respondent to grant permission to hold a convention of his religion in S.No:803/19 of Kanjirancode village, Kanyakumari District. Earlier his request for permission to hold it in S.No: 803/17 was rejected by the Collector citing an earlier Order of this Court in

W.P.22193 of 2017, wherein this Court had restricted the use of the land in that survey field. When this case is taken up today, the learned counsel for the petitioner submitted that the petitioner's request for permission in the alternate venue in S.No:803/19 (opposite to the residence of Yesudhas) is still pending consideration of the authority.

6. A direction to an authority to do what he may have to do belongs to him, and this Court may not be interested to interfere with it unless palpable arbitrariness is displayed or *malafide* of the action is self evident. Ordinarily, this Court merely directs the authority to consider any representation requiring him to do what is to be done. And, here there is not going to be any variance to the general norm adopted by the Court. However, this Court senses an urgent need to infuse responsibility among the active practitioners of every religion to ensure that they hold their religious meeting, congregation or convention without breaching the Constitutional spirit of secularism, for not everyone seems to take it seriously. While the Courts stay neutral, they still do not blindfold itself to the happenings around.

7.1 The secular ethos that over flows from the Constitution has not provided a citizen a free way to profess, practise or propagate one's religion and faith, nor any open space for demonstrating the domination of one religion over the other. The framers of the Constitution after all are wiser than those who the Constitution governs, and Article 25 exhibits their preeminence. It reads:

*25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*

They, (the framers) do not rush to declare the equality of the fundamental right to profess, practice, and propagate religion, but have introduced the rider restricting the right to freedom of religion *inter alia* to public order and other provisions of Part III of the Constitution first, before introducing the equality of right to religion. Article 19(2) also underscores *public order* as a restrictive factor on the fundamental right of free speech and expression.

7.2 The Preamble to the Constitution prides itself to constitute this nation into a secular Republic. However, without establishing equality in the conscience of the citizens, that may be a distant dream. And, at the ground level it can reduce public order that concerns both Articles 25(1) and 19(2) of the Constitution into empty-expressions. Equality is the fountainhead of secularism and the bedrock of public order and tranquility. If We, the People, should have concern for secularism, then equality of religions must be let to occupy the consciousness of every religious group, since secular values cannot exist without respect to equality. Preserve equality, it will protect secularism should be the *mantra*. But if equality is disturbed, then as held in ***Rev. Stanislaus Vs State of Madhya Pradesh & Another*** [AIR 1977 SC 908] it “*would impinge on the freedom of conscience guaranteed to all the citizens of the country alike.*”

8.1 Equality of religion is primarily an aspect internal to the intellect, and in a matured society it transcends to shape the attitude of men. Sadly, on display are sporadic instances when every religious group competes to dominate with shameless quest its supremacy over the other. The Constitution has secured to everyone to praise their religion, but not to abuse another. Free speech cannot include hate speech, and if this difference is to be maintained, then responsibility attached to free speech should not be forgotten.

8.2 When the Constitutional responsibility associated with equality of freedom of religion is eroded, and when the Executive responses are disproportionate to the rate of such degradation, it then becomes the responsibility of the Court to step in to ensure that citizens exercise their right to freedom of religion, respecting the equal freedom of others. In ***State of Madras v. V.G. Row***, [1952 S.C.R. 597], the Supreme Court, though in a different yet related context, has observed:

*“..in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part.....dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all...”*

9. Without getting into the set parameters based on which requests for holding any religious meeting or congregation or conventions are considered by the authorities, every authority who decides to grant permission for any such meeting or congregation or convention of every religious group shall obtain a written undertaking from the organizers of such meeting etc., that they would ensure that no speech offending or denigrating any other religion or their faith or their mode of worship or other practices associated with it will be made. And, every instance of breach of this undertaking should invite immediate prosecution of the speaker and the organizers.

10. Accordingly, this petitions is disposed of with a direction to the second respondent that he shall,

(a) consider the request of the petitioner to grant permission to hold the proposed convention scheduled to take place from 08-02-2019 at the place indicated by him forthwith; and,  
(b) in the eventuality of the second respondent deciding to grant permission, he shall obtain a written undertaking from the organisers that they will ensure that no speech offending or denigrating any other religion, its mode of worship, faith and other practices associated with it will be made.

No costs. Consequently, connected W.M.P.(MD)no.1324 of 2019 is closed.

**07.02.2019**

Index : Yes/No  
Internet : Yes/No  
CM/Ksa

**Note : Issue a copy of Order on 08.02.2019 by 12 noon**

To

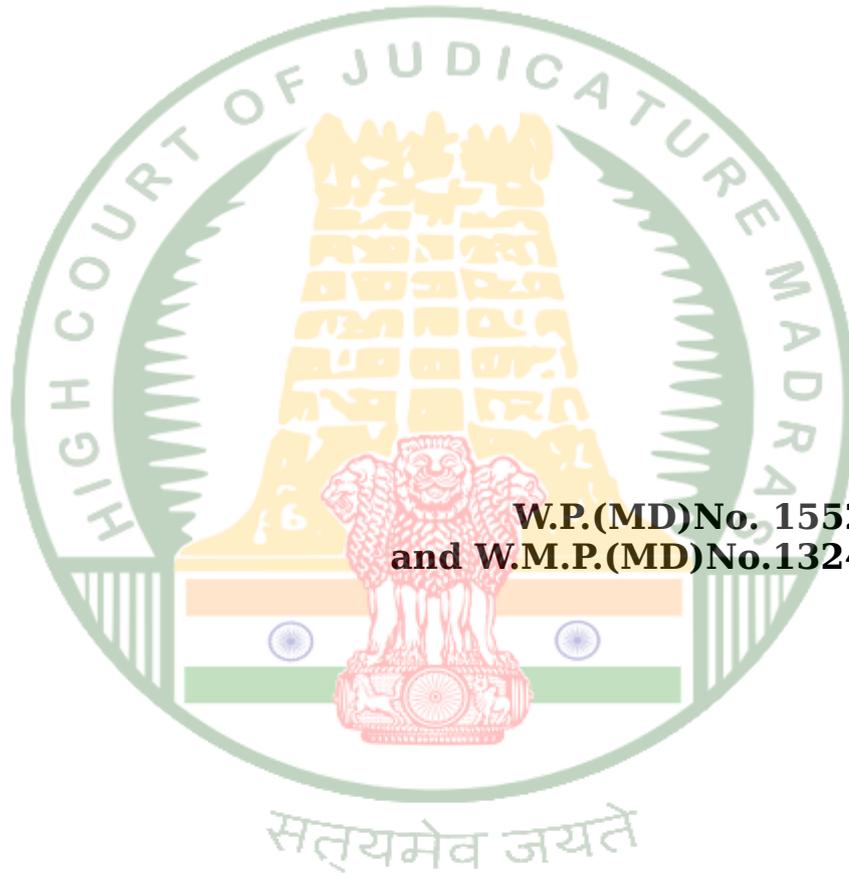
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**N.SESHASAYEE., J.**

CM/Ksa



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