

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W. P.Nos.11366 & 11467 of
2020 and
W.M.P.Nos.14001 & 14002 of 2020

W.P.No.11366 of 2020 :

ELA. Ganapathi

... Petitioner

.. Vs ..

1. Government of Tamil Nadu, Represented
by its Chief Secretary, Secretariat,
Chennai - 600 009.

2. Government of Tamil Nadu, Represented
by its Director,
News & Public Relations Department,
Secretariat,
Chennai - 600 009.

3. The Director General of Police,
Mylapore,
Chennai - 600 004.

... Respondents

Prayer in W.P.No.11366 of 2020:- Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to

quash the Press Release No.583, dated 13.08.2020 of the second respondent with respect to the overall banning of installation of Vinayaka idols in public places and taking them out in procession for immersion in water bodies or seas and consequently direct the first respondent to permit installation and procession to the public by following social distancing norms.

For Petitioner : Mr.Karthikeyan, A.S.G.,
& Mr.Suriya Muthu

: Mr.Vijay Narayan,
Advocate General assisted by
Mr.V.Jayaprakash Narayanan,
Government Pleader

For Respondents

W.P.No.11467 of 2020 :

G.Radhakrishnan

... Petitioner

.. Vs ..

1. The State of Tamil Nadu,
Rep. by its Secretary to the Government of Tamil Nadu,
Home Department,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The Chief Secretary,
In the capacity of Ex-Officio Member of SDMA,
Fort St. George,
Secretariat,
Chennai - 600 009.
3. The Director,
Information and Broadcasting,
Fort St. George,
Secretariat,

Chennai - 600 009.

4. The Director General of Police,
Mylapore,
Chennai - 600 004.

... Respondents

Prayer in W.P.No.11467 of 2020:- Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Press Release issued by the third respondent on behalf of the first respondent in Press Release No.583, dated 13.08.2020 and quash the same and consequently forbearing the respondents from anyway preventing the members of the petitioner party namely in Siva Sena, State of Tamil Nadu and others installing, worshiping Vinayagar Idols in public place and conduct Vinayagar Pooja for celebrating Vinayagar Chaturthi in Tamil Nadu.

For Petitioner : Mr.Karthikeyan, A.S.G.,
& Mr.G.Mutharasu

For Respondents : Mr.Vijay Narayan,
Advocate General assisted by
Mr.V.Jayaprakash Narayanan,
Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the petitioners including those who are permitted to make submissions and the learned Advocate General appearing for the State.

2. These writ petitions have been filed to quash the Press Release No.583, dated 13.08.2020 of the second respondent and consequently direct the first respondent to permit installation and procession of Vinayaka idols by following social distancing norms.

3. By the impugned release in Release No.583, dated 13.08.2020, which is a publication of the Government Order passed in G.O.Ms.No.418, dated 14.08.2020, the procession during Vinayagar Chathurthi scheduled on 22.08.2020 and the consequential activities sought to be controlled / regulated keeping in view of the pandemic situation prevailing.

4. The learned counsel appearing for the petitioners submitted that they do not wish to undertake any public procession of any nature, however, individuals will have to be allowed to perform their religious ceremonies which is being followed over the decades. This includes keeping the Vinayagar idols before the house, before the temples and immersion in the water bodies. Since this practice is an age old one and being the final act after the performance of other ceremonies the idol of Lord Vinayagar cannot be kept

at home and only to be immersed, appropriate directions may be issued in this regard.

5. The learned counsel submitted that the organisations which they represent would extend fullest cooperation to the Government towards the smooth conduct of the religious performances.

6. The learned Advocate General appearing for the State submitted that the challenge made to the Government Order passed has already been upheld by the Madurai Bench of this Court where processions as been sought for. There is an apprehension of law and order problem apart from the pandemic situation if procession is permitted. Therefore, though individual activities is not prohibited, any order may give an impression that the orgainsations have been permitted to go on a procession and thereafter involved in mass immersion with a larger gathering.

7. At the outset, we are of the view that the order passed by the Hon'ble Madurai Bench of this Court may not have a bearing on this case, as a larger prayer has been sought for and that too for a procession. Though the petitioners sought for a larger relief, learned counsel appearing for all the parties fairly submitted that they would not insist upon either mass procession

or mass immersion, however individuals will have to be permitted to undertake and perform the religious ceremonies on the auspicious day as aforesaid.

8. We find that the Government Order passed in G.O.Ms.No.418, dated 14.08.2020 of Public (Law & Order.B) Department is by taking into consideration of two factors. The first is on the pandemic situation prevailing and the other law and order. Now the restriction imposed by way of lockdown has been relaxed considerably. Therefore the movement of the public during the time permitted is not restricted. Once that is done and in the light of the statement made by the learned Advocate General there is no difficulty for the individual to perform his religious function, we do not find any prohibition in the impugned order. Clause (ii) in paragraph 2 of the G.O. has to be read only to mean to apply to the public procession and therefore the public immersion.

9. Thus, there is no difficulty in holding that the practice which has been followed for decades by the individual having faith either by placing the idol after performance of the ceremony in front of their house, temples and immersion in water bodies will not have any bearing to either the pandemic situation or the law and order. At the risk of repetition, we wish to say that it

is the individual who does this practices and therefore there is no possibility of any spread of pandemic. Secondly, it is these individuals who are going to immerse and not the organisation. Therefore, the regular restriction with respect to the number of persons also would apply to these cases.

10. The learned Advocate General appearing for the State has submitted that the prohibition of usage of beach is for the entire beach. In any case, there may be a problem more so in the area starting from Santhome beach and ending with Napier Bridge.

11. Considering the said submission, we are of the view that the said prohibition may not have an application when the individual wants to perform the religious obligations in tune with Article 25 of the Constitution of India. The restriction has been imposed only with the view of stopping the spread of the pandemic. The pandemic is likely to spread on two grounds viz., when more people commegrate in a particular place and they stay on the said place thereafter. We are not having such a situation now. As stated, no group of persons are allowed to undertake the exercise stated supra.

Secondly, even those individual namely family members who are to perform the religious obligation, they can at best go to the water body including the sea, drop the idol and thereafter come back. Therefore, there is no question of staying back and using the said place. This is also subject to the restriction which is inclusive of the time limit and social distancing. Therefore, we are of the view that the bar to usage of beaches impugned in the G.O. will not have any application to the aforesaid activities. Further, from the point starting from Santhome upto Napier bridge, there shall not be any such activity in the said stretch in the beach in view of the apprehension raised.

12. There are one more issue of much important which we are concerned, pertaining to Vinayagar idol itself. The idol is prepared by the local artisans. These idols are to be used only once in an year during the Vinayagar Chaturthi festival. Almost all the idols are made up of clay. The longevity of the clay that is being used in making of the idol is very limited, it would not last for more than few days. Therefore, the idols already manufactured by the local artisans would get lost and this cannot be used for any other purpose. The scores of local artisans who are involved in this business, their business is drastically affected due to the pandemic and now they will be reduced to

starvation and penury. Hence, on this account also, we are of the view that the directions are necessary as they would facilitate the purpose of usage of the clay idols manufactured by the local artisans.

13. Accordingly, the writ petitions stands disposed of with the following directions:-

(i) Individuals are permitted to have their Vinayaga idols after the performance of the ceremony in front of their respective houses.

(ii) Individuals are permitted to drop the Vinayaga idols at the entry point of the temples. This direction is issued by taking note of Clause (3) of para 2 of the order under challenge which does not prohibit even the worship before the temples coming under certain categories.

(iii) Individuals are allowed to immerse the idols which can be carried out only by a single person in the water bodies. No such activities shall be carried out in the stretch between Santhome to Napier bridge.

(iv) The permission given is restricted only to the individuals alone and therefore, there is a total bar to undertake the same activities by organisations.

(v) The aforesaid directions are subject to the regular restriction which are already in vogue including the time restriction and the social distancing.

(vi) For any violation of these directions, the respondents are at liberty to take appropriate action in the manner known to law as they are applicable only to the individual cases alone.

Consequently, the connected miscellaneous petitions are closed. No costs.

(MMSJ) (RHJ)
21.08.2020

JRL/kk

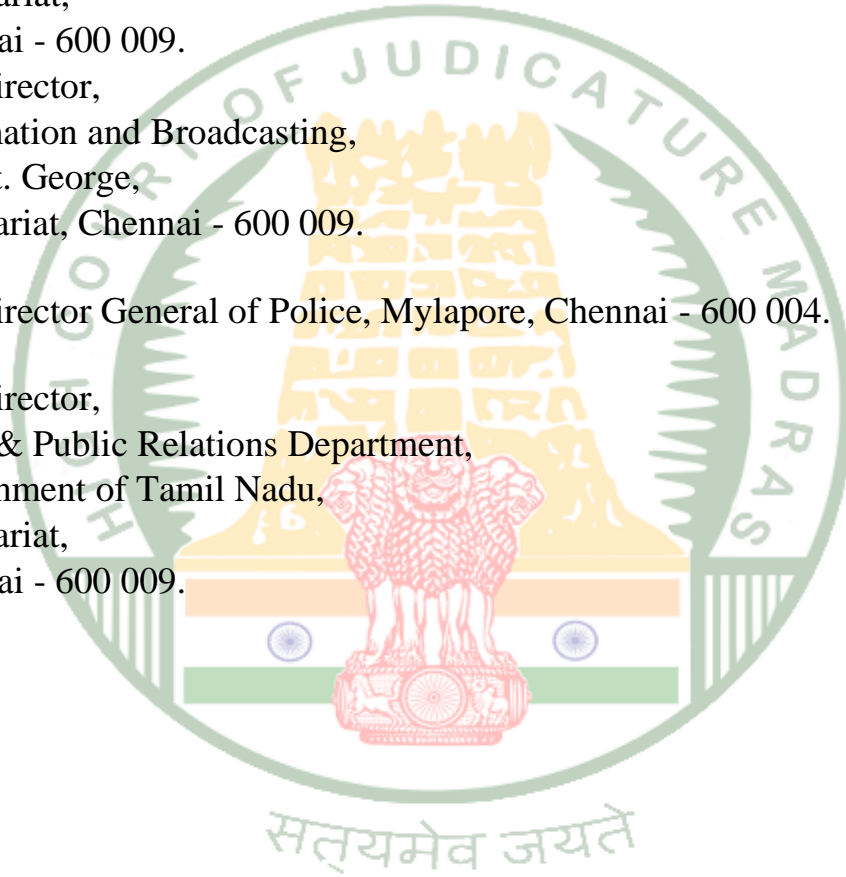
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To

1. The Secretary to the Government of Tamil Nadu,
The State of Tamil Nadu,
Home Department,

Fort St. George,
Secretariat,
Chennai - 600 009.

2. The Chief Secretary,
In the capacity of Ex-Officio Member of SDMA,
Fort St. George,
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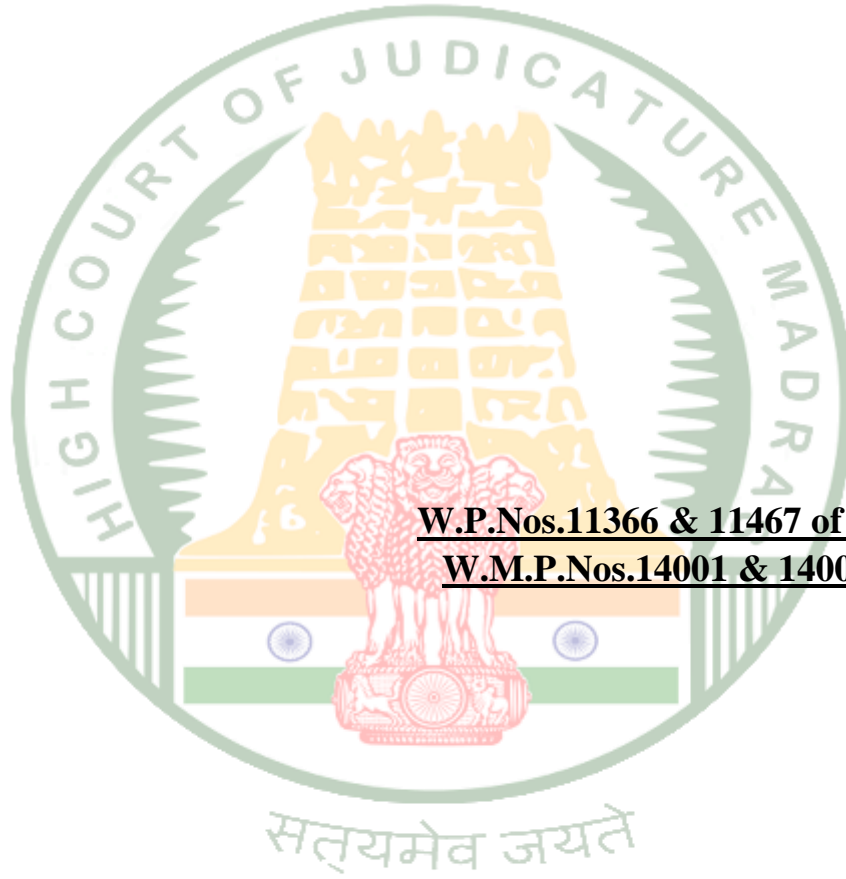
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M.M.SUNDRESH, J.

and

R.HEMALATHA, J.

JRL/kk



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