



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22892 of 2023

Prakash

... Petitioner

Vs

1.The District Collector,
Tirunelveli District

2.The Commissioner of Police
Tirunelveli City

3. The Inspector of Police
Palayamkottai Police Station
Tirunelveli City

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus by directing the first respondent not to interfere into my right of profession /business by selling idols inclusive of Lord Vinayaga idols which has been guaranteed under Article 19(1)(g) of the Constitution of India.

For Petitioner : M/s.V.Moushica

for M/s.V.Ramasubbu

For Respondents : Mr.S.S.Madhavan

Government Advocate (Crl.Side)



ORDER

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Heard both sides.

2. Lord Vinayaka symbolizes luck. He is worshipped by Hindus who believe that He will remove all obstacles. It was the great patriot Sri. Bal Gangadhar Tilak who organized Ganesh Chaturthi Processions. They have helped to unify the society by cutting across caste differences. The right to organize Vinayakar Chaturthi processions is not the subject matter of this writ petition and I therefore refrain from going into the issue.

3. Tomorrow the nation observes Vishwakarma jayanthi. Vishwakarma is particularly worshipped by artisans and workers. Vishwakarma is the supreme architect. It is ironic that the petitioner who is a Rajasthani artisan engaged in making Vinayaka idols is encountering difficulties at the hands of the authorities.

4. The petitioner hails from Rajasthan. He and his team are presently in Palayamkottai for the purpose of making idols. He has made a few scores of Vinayaka idols. His grievance is that the third respondent, on instructions from the respondents 1 and 2 is preventing him from selling the idols that have



already been made. The petitioner is said to have borrowed a substantial sum. If he is unable to sell the idols, he will be financially ruined. For forbearing the respondents from interfering with his right, the present writ petition came to be filed.

5. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon the Court to grant relief as prayed for.

6. The learned Government Advocate(Crl.Side) appearing for the respondents submitted that the respondents have merely complied with the direction issued by the District Environmental Engineer, Tamil Nadu Pollution Control Board, Tirunelveli. My attention has been drawn to the revised guidelines issued by the Central Pollution Control Board as well as G.O.Ms. No.598 dated 09.08..2018. He placed reliance on the order of the Hon'ble Division Bench of this Court in W.P(MD) No.21124 of 2023 dated 31.08.2023. He also contended that since complaint was received from the jurisdictional Village Administrative Officer that the petitioner is using plaster of paris for making idols, the impugned action came to be taken. He pointed out the police have not arrested the petitioner; they have only prevented the petitioner from



selling the idols and nothing more. He called upon this Court to dismiss the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The Hon'ble First Bench of this Court vide order dated 31.08.2023 in W.P(MD) No. 21124 of 2023 took note of the revised guidelines issued by the Central Pollution Board with regard to the idol immersions. As the very title would suggest, they contain norms for idol immersion. Such guidelines would not come in the way of the petitioner from selling the idols as such.

9. If the idols are eco- friendly, they can be manufactured and sold and such activities cannot be stopped for any reason. If the police or the authorities indulge in any act of prevention, that would be rank illegality. They will have to answer if the aggrieved individual invokes public law remedy. Damages will have to be paid for the business loss caused.

10. In this case, the petitioner claims that the plaster of paris has been used only up to permissible level. According to him, the buyers may want the same for any purpose. They could be installed at homes or temples or even



marriage halls. While I endorse the said contention, I make it clear that

immersion of idols containing plaster of paris cannot be permitted. But their

sales cannot be prevented by the authorities. In order to ensure that the norms

regarding immersion are not violated, the petitioner is directed to furnish the

details of the purchasers. Sale of every idol will have to be duly accounted.

The petitioner shall make an register containing particulars of those who are

purchasing from him. The register shall be open for inspection by the

respondents. If the Vinayaka idol can be dissolved in an eco friendly manner ,

its installation cannot be stopped. Visarjan can be in any creative manner. In

any event, Tamirabarani or any water body cannot be used for immersion of

idols made with plaster of paris. The petitioner as an artisan is entitled to sell

the articles made by him and this right is guaranteed under Article 19(1)(g) of

the Constitution of India. The restraint on immersion is reasonable restriction.

But prevention of sale would amount to violation of the petitioner's

fundamental right. The respondents shall not prevent the petitioner from selling

the idols made by him. Of course the sale transactions are subject to the

condition mentioned above.



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11. This writ petition is allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

16.09.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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Note: Issue order copy on 16.09.2023

To

- 1.The District Collector,
Tirunelveli District
- 2.The Commissioner of Police
Tirunelveli City
3. The Inspector of Police
Palayamkottai Police Station
Tirunelveli City



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G.R.SWAMINATHAN, J.

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