



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.17475 of 2021

R.Sasikumar

... Petitioner

-Vs-

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Sub Collector,
Sub Collector Office,
Sivakasi,
Virudhunagar District.
- 3.The District Forest Officer,
The District Forest Office,
Virudhunagar District.
- 4.The Assistant Conservator Forest,
Conservator of Forests,
Virudhunagar Circle,
187, Malaipettai Street,
Virudhunagar District.
- 5.The Forest Ranger,
The Forest Range,
Srivilliputhur Range,
Virudhunagar District.
- 6.The Wildlife Warden,
Grizzled Squirrel Wildlife Sanctuary,
Srivilliputhur,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to grant permission to the devotees and necessary protection to worship the goddess Arulmigu Pemalaiyamman @ Rakkatchi Amman temple in the Tamil month of Puratasi (October) situated at Srivilliputhur Forest



range, Virudhunagar District based on the petitioner's representation dated 15.09.2021.

For Petitioner : Mr.D.Selvanayagam
For Respondents : Mr.R.Sureshkumar
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Mandamus, directing the respondents to grant permission to the devotees and necessary protection to worship the goddess Arulmigu Pemalaiyamman @ Rakkatchi Amman temple in the Tamil month of Purattasi (October) situated at Srivilliputhur Forest range, Virudhunagar District, based on the petitioner's representation dated 15.09.2021.

2.The petitioner claimed to be a resident of a village called Idaiyankulam, Srivilliputhur Taluk, Virudhunagar District and belongs to a particular community. It is a further case of the petitioner that, there is a community deity, namely Arulmigu Pemalaiyamman @ Rakkatchi Amman, situated on the top of the mountain in a reserved forest area, under the control of third and fifth respondents. Within the said forest, especially in the area, where the said temple is situated, there is a Grizzled Squirrel Wildlife Sanctuary.

3.In view of the said strategic location within the forest area, though the practice of worshipping the community deity by these community people of the petitioner, every year in the tamil month of Purattasi, ie., October to November, which practice according to them, had been there for centuries ago, they wanted permission to visit the temple to have the annual worship. In this regard, it seems that, in respect of some past years, ie., in the year 2011 & 2019, permission seems to have not been given by the Forest Department for those people to enter into the forest land and to have a darshan of the deity during the festival season. Hence, they were constrained to file writ petitions in the year 2011 & 2019.

4.In 2019, writ petition in W.P.(MD)No.17626 of 2019 was filed by one Selvakumar, on behalf of the community people, which was decided by a Division Bench of this Court by order dated 13.08.2019, where, among other things, the Division Bench has passed the following order.

"8.This Court considering the facts and circumstances is inclined to pass the following orders with directions:

(i) The second respondent shall accord necessary permission to 21 devotees identified by the petitioner from among the list of 86 devotees found in the additional typed set of papers dated 13.08.2019.



(ii) The second respondent shall depute necessary Forest Personnels to accompany them to visit and worship the above said temple on 14.08.2019 and the necessary expenses for them shall be borne out by the petitioner.

(iii) The petitioner and other devotees, who are permitted to go shall not create any law and order problem and shall adhere to the instructions and guidelines given by the Forest Personnels, who will accompany them.

(iv) In the event of any unforeseen mishap happens, the petitioner and other devotees may not be entitled for any compensation or Government employment for the reason that on their own volition they are going to the said Temple, which is located in the midst of Grizzled Squirrel Wildlife Sanctuary.

(v) The second respondent apart from the said conditions is at liberty to impose such or other reasonable conditions in this regard.

(vi) It is also made clear that this order came to be passed taking into account the significance of the peculiar facts and circumstances and the petitioner or the worshippers of the deity shall not claim any right or future claim as to the right of their worship.

9. This Writ Petition is disposed of accordingly. Consequently, connected Writ Miscellaneous Petitions are closed. No costs."

5. It is the further case of the petitioner that, since every year during the festival season, ie., October - November, the community people are facing this kind of hurdle to visit the community deity, they seems to have given a representation in the year 2020, by representation dated 31.12.2020 seeking for a permanent solution ie., permanent permission from the authorities for these people to have entry through the forest land to reach the deity and to have a darshan once in a year.

6. The said common representation given on behalf of the community people of the village concerned, having been forwarded by the communication dated 07.01.2021 by the first respondent to the second respondent, the same is still pending consideration before the authorities.

7. In the meanwhile, for the year 2021, the annual festival in the tamil month of Puratasi has come. Therefore, they have to visit the temple and for the said purpose, they wanted temporary permission for this year also and in this regard, the petitioner on



behalf of the community people seeks permission and has given representation to the first respondent with the copy marked to all the respondents, especially the respondents 3 and 6. However, since the said representation having not been considered, the petitioner has approached this Court by filing the present writ petition.

8.Heard, Mr.D.Selvanayagam, learned counsel for the petitioner, who having reiterated the aforestated facts, would submit that, though the permission sought for on permanent basis has been pending consideration before the authorities, insofar as the present year is concerned, the representation given by the petitioner dated 15.09.2021 can be directed to be considered and accordingly permission can be given of course by imposing the conditions already given by this Court by the Division Bench order as referred to above and any another conditions in addition to that. If such a direction is given to the respondents 1, 3 & 6 to decide the same on merits within the time frame that may be stipulated by this Court, the petitioner would be satisfied, he contended.

9.On the other hand, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondents, on instructions would submit that, it is an admitted case that it is a reserved forest area, where there is a declared Grizzled Squirrel Wildlife Sanctuary. Therefore, under the provisions of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the "Act"), except the persons mentioned under Section 27 of the Act, no one would be permitted to enter into the forest land, especially the sanctuary area and therefore, the petitioner, as a matter of right cannot seek for any permission from the authorities.

10.The learned Government Advocate would also submit that, even though there is power to grant permission on specific cases to enter into the forest or wildlife sanctuary area, that power is vested with the Chief Wildlife Warden and even the said authority can consider the application to be submitted in this regard, for getting such permission to enter into the wildlife sanctuary area, only for the specific reason as has been enumerated under Section 28 of the Act. Therefore, According to the learned Government Advocate, since the petitioner or his group of people do not come under any of the categories, as has been enumerated under Section 28 of the Act, whether they would be entitled to get any such permission is a question. Anyhow, the said representation given by the petitioner on behalf of the community people would be considered by the concerned authorities, for which reasonable time is required and accordingly, it would be considered and decided on merits and such decision would be communicated to the petitioner, he contended.

11.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



12. Insofar as the claim made by the petitioner that, for centuries ago, the community deity located in the midst of reserved forest is being worshiped by the community people is concerned, this Court cannot go into that aspect. However, at least in some years in the recent past, when they make such an attempt to go for worship, permission since has not been not given, they were triggered to file writ petitions and one such writ petition was decided by the Division Bench in the year 2019, as referred to above, where at para no.8 by directing the respondents to give permission to the petitioner therein and other people, certain conditions have been imposed, which have been quoted hereinabove.

13. However, the learned Government Advocate, by quoting Sections 27 and 28 of the Act, would submit that, the petitioner would not come under any such category as provided under Section 28 of the Act. Therefore, the restrictions to be made against them by invoking Section 27 of the Act would also be available to the respondents. Therefore, as a matter of right, they cannot seek permission from the respondents.

14. Section 28 of the Act, reads thus:

"28. Grant of Permit.- (1) The Chief Wild Life Warden may, on application, grant to any person a permit to enter or reside in a sanctuary for all or any of the following purposes, namely:-

- (a) investigation or study of wild life and purposes ancillary or incidental thereto;*
- (b) photography ;*
- (c) scientific research ;*
- (d) tourism ;*
- (e) transaction of lawful business with any person residing in the sanctuary.*

(2) A permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed."

where certain purposes have been mentioned, for which permission can be considered and granted by Chief Wild Life Warden, such as investigation or study of wild life, photography, scientific research, tourism and transaction of lawful business with any person residing in the sanctuary.

15. Herein the case on hand, it should be noted that the community deity as claimed by the petitioner and his people has been located in the midst of forest, ie., also in the sanctuary area. Therefore, the entry is either prohibited or at least restricted. Such restricted entry can be permitted only under the special permissions to be given by Chief Wild Life Warden under Section 28 of the Act for specific purposes. Among the specific purposes,



whether the purpose of the petitioner and his men can be fit in, is in question.

16.In this context, even though it was submitted by learned Government Advocate that the purpose for which now the permission sought for by the petitioner does not fall under any of the purposes mentioned in Section 28 of the Act, this Court feels that, when permission can be granted for tourism, definitely, the plea of the petitioner, even though the main purpose is for pilgrimage can be considered, because, pilgrimage cannot be separated from the purview of tourism.

17.In most of the pilgrimaging places, where the people are visiting, for which the Tourism Department of Government of India as well as State Government are having so much of schemes to encourage. However, insofar as the reserved forest is concerned, there must be some distinction between the other areas and the reserved forest areas.

18.However, under Clause (d) of Sub Section (1) of Section 28 of the Act, the tourism has also been mentioned as one of the purposes and therefore, this Court feels that, insofar as the plea of the petitioner is concerned, for the purpose of visiting the temple, where according to them, their community deity is located, their plea can very well be considered by the respondents, especially the 1st, 3rd and 6th respondents.

19.In this context, if at all, the third and sixth respondents need such a permission from the Chief Wild Life Warden as contemplated under Section 28 of the Act, such a permission can also be obtained from them by explaining the earlier permission granted in this regard of course pursuant to the orders of the Division Bench of this Court as referred to above and accordingly, the representation submitted by the petitioner dated 15.09.2021 can be considered and decided within a time frame, so that, the petitioner and his men can get a early permission from the respondents to visit the deity during the festival season ie., October - November.

20.In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following order:

that there shall be a direction to the respondents 1, 3 and 6 to consider and decide the representation of the petitioner dated 15.09.2021 and in this regard, after getting the nod from the Chief Wild Life Warden, as contemplated under Section 28 of the Wild Life (Protection) Act, 1972, the respondents 1,3 and 6 shall decide and pass orders on the said representation, with regard to the permission to be granted for them for visiting the temple, which is situated in the



reserved forest area as referred to above. Such order shall be passed with a period of two (2) weeks from the date of receipt of copy of this order. It is made clear that incase the respondents come forward to give such permission, after considering the representation of the petitioner, in the light of the discussion made above, it is open to the respondents to adopt the same conditions as has been imposed by this Court by order dated 13.08.2019 in W.P.(MD)No.17626 of 2019, especially in para 8 and also, it is open to the respondents to put additional conditions. Accordingly, such order can be passed within the time frame as indicated above.

21. With these directions, this Writ Petition is disposed of.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PNM/SM

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Sub Collector,
Sub Collector Office,
Sivakasi,
Virudhunagar District.
3. The District Forest Officer,
The District Forest Office,
Virudhunagar District.



4.The Assistant Conservator Forest,
Conservator of Forests,
Virudhunagar Circle,
187, Malaipettai Street,
Virudhunagar District.

5.The Forest Ranger,
The Forest Range,
Srivilliputhur Range,
Virudhunagar District.

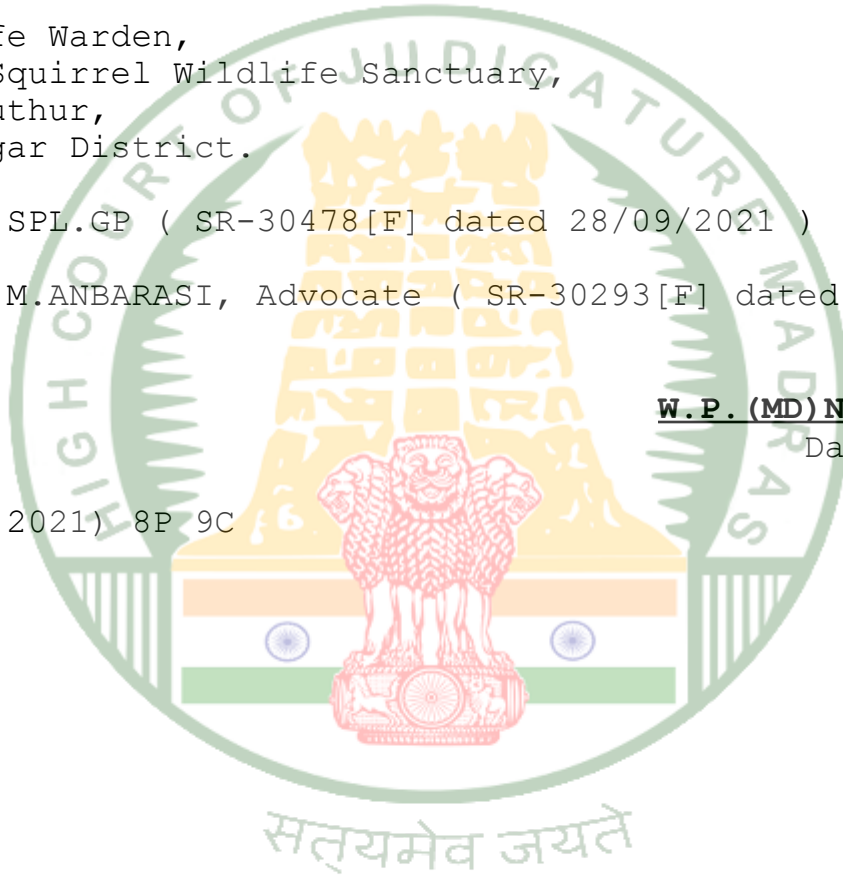
6.The Wildlife Warden,
Grizzled Squirrel Wildlife Sanctuary,
Srivilliputhur,
Virudhunagar District.

+1 CC to M/s.SPL.GP (SR-30478[F] dated 28/09/2021)

+1 CC to M/s.M.ANBARASI, Advocate (SR-30293[F] dated 27/09/2021)

SMV(CO)
TR/SKN(28.09.2021) 8P 9C

Order made in
W.P. (MD) No.17475 of 2021
Dated: **27.09.2021**



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