

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.743 & 2064 of 2019

and

C.M.P.Nos.5984 & 21568 of 2019

W.A.No.743 of 2019

Ramasamy Udayar,
S/o.Muthusamy Udayar,
No.3/88, Main Street,
V.Kalathur Village & Post,
Veppanthattai Taluk,
Perambalur District – 621 117

... Appellant

Vs

1.The District Collector,
Perambalur District,
Perambalur.

2.The Sub Divisional Executive Magistrate and
Revenue Divisional Officer,
Perambalur District, Perambalur.

3.The Deputy Superintendent of Police,
Mangalamedu Sub-Division, Perambalur District,
Perambalur.

4. Sunnath Val Jamath
V.Kalathur – 621 117,
Perambalur District,
Rep. by its President,
T.S.A.Abdul Rahim,
S/o.Abdul Majeed.

5.R.Srinivasa Rao,
S/o.Rajamuthu,
Rayappa Nagar,
V.Kalathur Post,
Veppanthattai Taluk,
Perambalur District.

... Respondents

PRAYER : Appeal against the order passed on 21.12.2018 in W.P.No.28016
of 2018 on the file of this Court.

For Appellant : Mr.G.Karthikeyan

For Respondent : Mr.J.Pothiraj (for R1 to R3)
Special Government Pleader

Mr.S.Doraisamy (for R4)

W.A.No.2064 of 2019

Sunnath Val Jamath
V.Kalathur – 621 117,
Perambalur District,
Rep. by its President,
T.S.A.Abdul Rahim,
S/o.Abdul Majeed

Appellant

Vs

1.Ramasamy Udayar,
S/o.Muthusamy Udayar,
No.3/88, Main Street,
V.Kalathur Village & Post,
Veppanthattai Taluk,
Perambalur District.

2.The District Collector,
Perambalur District,
Perambalur.

3.The Sub Divisional Executive Magistrate and
Revenue Divisional Officer,
Perambalur District, Perambalur.

4.The Deputy Superintendent of Police,
Mangalamedu Sub-Division, Perambalur District,
Perambalur.

... Respondents

PRAYER : Appeal against the order passed in W.P.No.28016 of 2018 dated
21.12.2018 by this Court.

For Appellant :Mr.S.Doraisamy

For Respondent :Mr.G.Karthikeyan (for R1)

Mr.J.Pothiraj (for R2 to R4)

Special Government Pleader

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COMMON JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

People can be religious;

Men may be communal;

Whether roads could be communal?

This is the question raised in these appeals.

2. These appeals have been filed against the common order passed by the learned Single Judge dated 21.12.2018 by which the learned Judge had modified the conditions No.1 to 3 and 6 to 8 contained in the order passed by the third respondent/Deputy Superintendent of Police, dated 12.10.2018.

3. For the sake of convenience, M.Ramasamy Udayar, the appellant in W.A.No.743 of 2019, who is the original Writ Petitioner is herein after referred as “petitioner” and Sunnath Val Jamath, the appellant in W.A.No.2064 of 2019 is referred to as “private respondent”, as per the array of parties in the original writ petition.

4.The facts of the case are as follows:

(a).The property comprised in S.F.No.119/1 of V.Kalathur Village, Veppanthatai Taluk, Perambalur District is the disputed site which has given raise to the above proceedings. V.Kalathur Village consists of both Muslims and Hindus population. On the Eastern side of the village Muslims are residing and on the Western side of the village, Hindus are residing. Right from the year 1951 onwards there is a dispute between the two religious groups regarding the usage of 96 cents of Government Poramboke land in S.F.No.119/1. Muslims wanted the land to be used as common place whereas the Hindus claim long use of Poramboke land and objected to common usage. Many clashes have also taken place between the two religious groups with regard to the said site pursuant to which many cases have also been filed against both the groups. Both the parties also approached the Police by way of complaints and Courts by filing writ petitions.

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(b).While things stand so, the petitioner sought for permission to conduct festival for the temples in V.Kalathur village and the same was

granted with certain conditions. In view of the earlier disputes and clashes between the two religious groups, an order came to be passed by the Revenue Divisional Officer under Section 144 of Cr.P.C from 28.09.2018 to 04.10.2018.

(c).Writ petition was also filed by the petitioner in W.P.No.26114 of 2018 challenging the order passed by the second respondent viz., Revenue Divisional Officer initiating proceedings under Section 144 Cr.P.C from 28.09.2018 to 04.10.2018 and further direction to permit the petitioner to celebrate three days festival in the village temples.

(d).The petitioner approached the authorities seeking to perform Oorani Pongal Vizha on 28.09.2018 and the third respondent viz., Deputy Superintendent of Police granted permission imposing certain conditions by an order dated 23.09.2018 including conditions with regard to the conduct of procession. The said order passed by the third respondent was challenged before this Court in W.P.No.25501 of 2018. The petitioner sought for further direction to the respondent to permit the petitioner to celebrate the

village festival for three days from 12.10.2008 to 14.10.2018.

(e).Another writ petition in W.P.No.28016 of 2018 was also filed by the petitioner challenging the order dated 12.10.2018 passed by the third respondent viz., Deputy Superintendent of Police and seeking further direction to permit the petitioner to conduct temple celebration and procession of Mariamman Temple as per the customs on 26.10.2018, 27.10.2018 and 28.10.2018.

(f).All the aforesaid three writ petitions were disposed of by a common order dated 21.12.2018 by the learned single Judge modifying the conditions imposed in the impugned order. As against the said common order, two writ appeals have been filed. The Writ Appeal in W.A.No.743 of 2019 is filed by M.Ramasamy Udayar against the order passed in W.P.No.28016 of 2018 and the W.A.No.2064 of 2019 was filed by Sunnath Val Jamath against the order passed in W.P.No.28016 of 2018.

(g).When the matter came up before the learned Single Judge, the

learned Single Judge tried to solve the matter by appointing Mr.V.Lakshminarayanan, Advocate as Mediator. However, the mediation did not yield any positive result and therefore, after hearing the submissions made on either side, the impugned order dated 21.12.2018 came to be passed by the learned Single Judge.

4. Heard Mr.G.Karthikeyan, learned counsel for the appellant in W.A.No.743 of 2019, Mr.S.Doraisamy, learned counsel for the appellant in W.A.No.2064 of 2018 and Mr.J.Pothiraj, learned Special Government Pleader on behalf of the official respondents.

5. It is seen from the records that by an order dated 21.08.2019, this Court constituted a panel consisting of two Government authorities and Mr.V.Lakshminarayanan, Advocate to resolve the issue. A Peace committee was called on 26.08.2019 and in the said meeting the Court appointed Mediator did not participate. However, the meeting was conducted in the presence of Government Officials along with the participation of 8 persons from the side of Hindus and 8 persons from the side of Muslims.

Subsequently, another Peace committee meeting was conducted on 30.08.2019 in which the Muslim parties stated that they would get verdict from the Court and therefore, the issue could not be settled.

6. Further, it is also evident from the records that there was a dispute between the parties from the year 1952 onwards. The learned Single Judge taking note of the fact that there would be celebrations for three days festival and considering the averments made in paragraph 6 of the reply affidavit dated 14.11.2018 filed by the private respondent, who accepted two processions to go through in a single day in the Muslim area, granted permission. Based on the undertaking given by both the parties, the learned Single Judge held that

1. There will be celebration of village festival for three days.
2. The first procession of the first day would be taken only through the Main Roads and the procession would come to halt at the temple.
3. The second procession of the first day shall be taken from 10 P.M to 2 A.M via Periyakadai Veedhi, Pallivasal Street and Agraharam Street and would return on the same route to halt at Mariamman Koil.

4. Similarly, on the second day the first procession would be taken only through the Main Roads and the procession would come to halt at the temple.

5. The second procession of the second day would be taken from 10 P.M to 2 A.M via Periyakadai Veedhi, Pallivasal Street and Agraharam Street and return on the same route to halt at Mariamman Koil.

6. Since there was an objection by the Muslim community people about the sprinkling of turmeric water, based on the undertaking affidavit dated 11.10.2018 filed by the petitioner, it was directed that the Hindus shall not sprinkle turmeric water on the third day and they would restrict their celebrations and rituals on the third day.

7. Police protection was also directed to be given.

7. Aggrieved over the aforesaid order of the learned Single Judge, both the petitioner as well as the third respondent have come up by way of these two appeals.

8.Mr.G.Karthikeyan, learned counsel for the appellant in W.A.No.743 of 2019 would submit the following:

1. There cannot be any restriction for having procession on the roads or streets which are meant for common passage.
2. Merely because a particular section of people or group are owning properties in a road or a street, it cannot be a factor to prohibit the celebration of any other religious procession.
3. If at all any power is available with the police or revenue authorities, it is only the power to regulate and not to prohibit.
4. As far as the permission granted by the learned Single Judge for the first day festival is concerned, there is no problem and the petitioner is only aggrieved with regard to the restricted permission granted for the first procession on the second day only through the main roads.
5. The petitioner requires the first procession on the second day to go in the same route as that of the second procession of the first day as well as the second day viz., via Periyakadai Veedhi, Pallivasal Street and Agraharam Street and return on the same route to halt at Mariamman Koil and it cannot be restricted to main roads alone.

6.As far as the third day function is concerned, there is no problem for the petitioner as they themselves agreed that the Hindus shall not sprinkle turmeric water on the third day and they would restrict their celebrations and rituals on the third day.

9.The learned counsel would rely upon the following judgments in support of his arguments:-

1) *Mohamed Gani Vs. The Superintendent of Police and others*

reported in **CDJ 2005 MHC 1276.**

2) *Pooja Samiti, Fulwaria Vs. State* reported in **CDJ 1985 Bihar HC 018.**

3) *Chandu Sajan Patil and others Vs. Kyahalchand Panamchand and others* reported in **CDJ BHC 009.**

Relying on the above decisions, the learned counsel would contend that the procession cannot be prohibited through the roads and he would seek permission for first procession of the second day of the temple festival to go through all the streets for which permission was already granted for the second procession of the first day as well as the second day.

10. On the other hand, Mr.Doraisamy, learned counsel appearing on behalf of the third respondent would submit the following:-

1. The learned Single Judge inspite of the objections raised by the third respondent erroneously granted permission to conduct two processions on the first two days. The third respondent had only agreed for conduct of two processions in a single day and further objected for conduct of procession after 9.00 P.M as the same would affect peace and tranquility in the area, especially the ones which are occupied by Muslim. Hence, there should not be any procession beyond 9.00 P.M.
2. Some of the areas viz., Periakadai Veedhi, Post Office Street, Pallivasal Street are occupied only by the Muslim people and not even a single Hindu family resides in those areas and hence there is no reason to insist upon taking out the procession in those Muslim areas.
3. The petitioner's intention to take out the procession in those Muslim dominated areas is only to create the law and order problem.

4. During the previous years viz., 2016 and 2017, only two processions were permitted on a single day through Muslim area with police protection.

5. Therefore, the permission granted by the learned Single Judge for taking out procession on the first day as well as the second day beyond 9.00 P.M. has to be set aside and only two processions in a single day viz., the second day of the temple festival should be permitted.

11. Mr.J.Pothiraj, learned Special Government Pleader appearing on behalf of the State would submit that restrictions have been made by the authorities only to maintain the law and order in the interest of peace and harmony among the public. He would further submit that the authorities would abide by any order passed by this Court.

12. An impleading petition has been filed claiming certain rights by the scheduled caste people. However, subsequent to the filing of the said impleading petition, an agreement is said to have been reached upon by

both the parties to give certain rights to the Scheduled Caste people and a memo of compromise has also been filed by the people belonging to the Scheduled castes and other Hindu community people. Therefore, the impleading petitioner sought to close the said petition recording the above said compromise.

13. It is seen from the records produced before this Court that the major community residing in the village are Hindus and Muslims and that there was no problem till the year 2011 for conduct of festivals in the four major temples viz.,

(I).Arulmighu Lakshminarayana Perumal Temple

(II).Arulmighu Selliamman Temple

(III).Arulmighu Rayappa Temple

(IV).Arulmighu Mariamman Temple

It is evident from paragraph 5 of the counter affidavit filed by the third respondent (in W.A.743 of 2019) viz., Deputy Superintendent of Police that three days festival of the aforesaid temples were peacefully conducted till the year 2011 and only from the year 2012 onwards the Muslims started

objecting to some of the Hindu festivals terming them as Sins. Even though Muslims objected for conducting of temple festival and procession, the petitioner approached the police authorities seeking protection for conducting temple festival and procession. By an order dated 20.08.2012, the police authorities granted permission with certain restrictions. The operative portion of the order reads as follows:-

“**j'fsJ** **kDty;** 31/08/2012 **Mk;** **nij** **khly** 03/00
kzast; **bryyak;kDf;F** **kh****tsf;Fk;** **uhag;gh.** **bry;yak;kd;**
kh**hak;kd;** **Rthk****fSf;F** **Cudp** **bgh';fy.** **kh****tyff** **g****i\$** **kw;Wk;**
,ut 10/00 **kz****f;F** **nky;** **Rthk** **tj** **cyh** **kw;Wk;** **fufHL;LKk;**
 01/09/2012k; **nij** **gfy;** **kh****hak;kDf;F** **myF** **FjJjy.** **ghyFLk;**
mfd **rLo** **nks****j;JLd;** **Ch****tyk;** **kw;Wk;** **,ut** 10/00 **nky**
kzff

Rthk **tj** **cyh****t****w;F** **fufHL;Lk;** **kw;Wk;** **thdntof;ifa****k;** 02/09/2012k;
nij **fhiy** 10/00 **kz****f;F** **k"rs;** **euHLL** **tHhtk;** **eL****j;Jtjhf**
nfh**ha** **kD****t****w;F** **fH****fzL** **ege****j****idaid;** **nghy;** **mDkj**
tH **fg;gL****f****wJ/**

1) **K****!****yk;** **kf****fs;d;** **bjhGif** **neuj****j;d;** **nghJ** **jhiu** **jg****gL;iL**
mo**f****ff;TLhJ/**

2) **K****!****yk;** **kf****fs;** **bjhGif** **neuj****j;d;** **nghJ** **xygbgUf****f****fs;**
gad**gL****j;jfTLhJ/**

3) **K****!****yk;** **bjUf****fs;d;** **th****ahf** **bryYk;** **nghJ** **m****ikj****ahd** **K****iway**
bry;y **ntzLk;/**

- 4) K!;yk; *kjj*;jdh;d; kdk; Lk;go nfhrk; , *LfT*LhJ/
gfg
- 5) , e;jia , *iwahz*;ik *th*gHL;ow;F *vjuhf* bray;gL*f*;TLhJ/
6)Tk;g[*tot* xy;g;bgU*f*;f*ia* gad;gL*j*;j*f*;TLhJ/ gh*f*!; *tot*
xy;g;bgU*f*;f*ia* kLLk; *jhd*; gad;gL*j*;j ntz;Lk;/
- 7)bguk;gYhh; CL;nfHL;L *tUtha*; nfHLLHL*nah*; m*th*;fs; 16/08/2012k;
*njj*ad;W nkW;go *jUt*Hh rk;ke;jkhf m*ikj* ngrR *thh*;j*ij* eL*jj*
m*jd*; eige;j*ids*d;go K!;yk; b*jUf*;fs; *tHahf* bry;Yk;nghJ
eLe*Jbfs*;s ntz;Lk;/”

From the abovesaid order, it is clear that on the first day, “Oorani Pongal” and “Maavilakku Poojai” were permitted to be conducted and on the same day, Deity's procession along with folk dance was permitted after 10.00 P.M onwards. On the second day, for Mariamman deity, “Milk Pot” and “Fire Pot” procession along with music was permitted to be conducted and the Deity's procession along with folk dance and fire works was permitted to be conducted after 10.00 P.M onwards. Likewise, on the third day, sprinkling of turmeric water was permitted to be conducted in the morning time with certain conditions.

14.A Writ Petition was filed by one A.Nattar Basha in W.P.No.23487

of 2012 seeking Writ of Mandamus directing the official respondents not to permit any procession on 30.08.2012 or any other subsequent dates either conducted by the 10th respondent [petitioner herein] or any other person acting through him, to proceed in the Bazaar Street, Chinna Street, Nadu Street, West Street, Pallivasal Street at V.Kalathur Village, Veppanthatai Taluk, Perambalur District for the purpose of avoiding communal disharmony.

15. The said Writ Petition was disposed of on 29.08.2012 with a direction to the police authorities to give sufficient police protection for conducting the processions and functions, as per the order passed by the police authorities dated 20.08.2012. Even though the Muslim people objected, the police authorities granted permission and infact it had been relied upon by this Court and a positive direction was issued to provide police protection for the purpose of conducting the festival as well as the processions.

16. Subsequently, in the year 2015 also, during the festival season,

Jamma Masjid Sunnath Val, the private respondent herein, filed a Writ Petition in W.P.No.33288 of 2015 seeking the very same relief as sought for by A.Nattar Basha in the year 2012 vide W.P.No.23487 of 2012. The prayer sought for in W.P.No.33288 of 2015 is extracted hereunder:-

“Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents not to permit the procession organized by Village Hindu Public V.Kalathur to be held on 23.10.2015 to 25.10.2015 through the streets where the Muslim Community people are predominantly residing and where the Mosque is situated and to permit the procession through the ultimate route upon the representation submitted by the petitioner 12.10.2015.”

The said Writ Petition was filed apprehending that there would be communal clash in the procession to be held on 23.10.2015 to 25.10.2015 organized by the temple authorities. However, this Court by order dated 15.10.2015 disposed the said writ petition directing the police authorities to take appropriate action to avoid any law and order problem that might likely to occur in the procession to be held between 23.10.2015 to 25.10.2015. The

said order dated 15.10.2015 is usefully extracted hereunder:-

“Apprehending communal clash in the procession to be held on 23.10.2015 to 25.10.2015 organized by the third parties, petitioner made as representation to the respondents on 12.10.2015 and thereafter filed the present writ petition.

2.The learned Special Govt. Pleader submitted that appropriate steps would be taken to avoid any possible law and order problem. The said statement is recorded.

3.The writ petition is disposed of by directing the respondent No.2 and 3 to take appropriate action to avoid any possible law and order problem that may likely to occur in the procession to be held between 23.10.2015 to 25.10.2015.

The writ petition stands disposed of accordingly, No costs.”

17.The counter affidavit filed by the police authorities in this case as well as the previous orders passed by this Court would make it clear that temple festivals as well as processions are being conducted years together. Therefore, the conduct of temple's processions through the roads/streets cannot be prohibited. Rightly the police authorities in the

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year 2012 had only imposed conditions and that was also approved by this Court.

18. However, in the subsequent years, the police authorities permitted to conduct two processions on a single day from 9.00 P.M to 5.00 A.M. In the year 2018, the police authorities by an order dated 12.10.2018 permitted to have the procession on the first day via., Main Road upto temple and to have Oorani Pongal. The first procession of second day carrying “Milk Pot” and “Fire Pot” was permitted to be conducted from at 10.00 A.M to 1.00 P.M and the second procession on the second day was permitted to be conducted from 9.00 P.M to 5.00 A.M through Raja Veedhis. On the third day, the procession for sprinkling of turmeric water was permitted to be conducted from Theradi to Main road via Pillayar Koil street, Mela street, Perumal Koil street, Agraharam street and to return back through the same route. The said order passed by the police authorities was challenged before this Court in W.P.No.28016 of 2018. The learned Single Judge by an order dated 21.12.2018 had modified the conditions and the said order is the subject matter of the present Appeal.

19. As stated earlier, before the year 2012, Temple's processions were conducted through all the streets in the village and there was no problem. Even from the year 2012 to 2015, processions were conducted through all the streets and roads which have been approved by this Court in W.P.No.23487 of 2012 and W.P.No.33288 of 2015 filed by the private respondent herein. Therefore, it is evident that taking out Temple's processions through all the streets and roads in V.Kalathur village have been the custom and practice of the Hindus for the past many decades. It seems from the year 2012 onwards, when the Muslims started objecting, the problem seems to have started.

20. Section 3(21) of the District Municipalities Act 1920, defines public street which is usefully extracted as follows:

“(21) 'Public street' means any street, road, square, court, alley, passage or riding-path [over which the public have a right of way] whether a thoroughfare or not, and include
(a) the roadway over any public bridge or causeway;
(b) the footway attached to any such street, public bridge or

causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah, or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property whether that property is private property or property belonging to [the Government]”

Section 180-A of the District Municipalities Act 1920, states as follows:

“All streets vested in or to be vested in or maintained by a Municipal Council shall be open to persons of whatever caste or creed.”

As per Section 180-A of the District Municipalities Act 1920, roads or streets should be used as access to the people irrespective of their religion, caste or creed. Merely because one religious group is dominating in a particular locality, it cannot be a ground to prohibit from celebrating religious festivals or taking processions of other religious groups through those roads. If it is to be accepted, then a day will come when a particular religious group which is predominantly occupying the area, will not allow

the people belonging to other religious groups even to use the roads even for movement, transportation or the normal access. Even the marriage processions and funeral processions would be prohibited/prevented which is not good for our society.

21. The temples are there for decades together. Merely because a religious group got settled in a locality and has become vociferous, they cannot object to the custom of taking Temple's procession through all the streets in the Village and consequent upon their objections, the customary and traditional practices cannot be prevented or prohibited. Though the learned Single Judge permitted the procession viz., one procession on the first day and two processions on the second day, it is proved by the petitioner through the proceedings passed by the District police and revenue authorities which were approved by this Court in the earlier proceedings that the festivals have been conducted for three days and the procession have been conducted on all the three days viz., two processions each on the first two days and the procession for sprinkling of turmeric water in all the streets of the village on the third day.

22.(a).The Hon'ble Supreme Court in ***Gulam Abbas Vs. State of Uttar Pradesh and Others*** reported in ***AIR 1981 SC 218*** held that religious faith and the performance of the rites, customary practices and observances constitute one's fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India.

22.(b).The Apex Court in ***The Commissioner of Police and others Vs. Acharya Jagdishwarananda Avadhuta and Another*** reported in ***2004 (12) SCC 770*** declared that protection given under Article 25 & 26 of the Constitution, is extended to rituals, ceremonies and modes of worship. Para 9 states as follows:

"The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion. (See generally the Constitution Bench decisions in Commr.,

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H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] , Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] and Seshammal v. State of T.N. [(1972) 2 SCC 11 : AIR 1972 SC 1586] regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not.) What is meant by “an essential part or practices of a religion” is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the “core” of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential (sic essential) part or practices.”

22.(c).A Division Bench of this Court in ***Mohammed Gani Vs. The Superintendent of Police & others*** reported in ***CDJ 2005 MHC 1276*** held that muslims are entitled to take their dead bodies through public streets. In the above case, Harijans objected funeral procession by muslims through their streets. Paragraphs 13 to 16 and 33 are usefully extracted as follows:

"13.This is a free, democratic and secular country. In our country people of all religions, castes and communities are equal under the Constitution, vide Articles 14 to 18, and they have a right freely to practice their religion, vide Article 25. This country does not belong to Hindus alone. It belongs equally to Muslims, Christians, Buddhists, Jains, Parsis, Sikhs, Jews, etc., and all are equal under the law. Also, it is not that only Hindus can live in this country as first rate citizens while others can live only as second rate citizens. That is not so. In our country all citizens are, and are entitled to live, as first rate citizens. It is the greatness of our Founding Fathers who made the Constitution that at the time of Independence in 1947 when the sub continent was engulfed in religious madness they insisted that our country shall not be declared as a Hindu State, but shall be a secular State. This was indeed a very difficult thing to do at that time, because when passions are inflamed it is difficult to keep a cool mind. There must have been tremendous pressure on our Founding Fathers to declare India a Hindu State, particularly since Pakistan had declared itself an Islamic State. It is the

greatness of our Founding Fathers that they kept a cool mind and resisted these pressures, and provided for a Secular State in India under our Constitution.

14.A basic feature of India is that it is a country with tremendous diversity having so many religions (including their different sects), castes (including hundreds of sub-castes), communities, languages, ethnic groups, etc. Hence, the only policy that can work in this country, and keep it united and on the path of progress is the policy of secularism and giving equal respect to all religions, castes, ethnic groups, communities, languages, cultures, etc. Without such a policy our country cannot survive for long.

15. We can contrast our country with China which has a population of 125 crores, as compared to our population of 105 crores, and which has more than twice our land area, but in which there is broad homogeneity. 96% Chinese belong to one ethnic group called the Han Chinese. They all have Mongoloid features, and a common script (Mandarin). On the other hand, in India, there is tremendous diversity, so many religions, castes, languages, ethnic groups, cultures, etc., (which is because immigrations into India have been taking place for thousands of years). Hence, the only policy which will work in our country and hold it together and take us to the path of prosperity is the policy of secularism and equal respect to all communities. This was the path shown to us by our great Emperors Ashok and Akbar, who gave

equal respect to all religions and communities.

16. It is due to the wisdom of our Founding Fathers who insisted that India should be a secular country that India is today united and is progressing. The Constitution of India enshrines the modern values of secularism and equality which the Founding Fathers cherished.

...

...

33. As already stated above, Muslims are as much first rate citizens of this country as Hindus, Christians, Parsis, Sikhs, Buddhists, Jains, etc., and they have the right under [Article 25\(1\)](#) of the Constitution to practice their religion freely which includes the right to perform their religious rites and ceremonies including burying of their dead, in accordance with their traditional rites."

23. When such is the legal position, there cannot be any order prohibiting the religious festivals and Temple's processions through all the streets and roads of the village/town, when the same is being conducted for years together. If at all, there can be some regulations and there cannot be any prohibition.

24. If there going to be any law and order problem, the police

authorities have to intervene and prevent any untoward incidents and give appropriate police protection. Therefore, the case of the petitioner has to be accepted and there shall be a direction to the authorities to permit the Hindus to conduct two processions on the first and second day of the village temple festivals through all the streets and roads which have been conducted till 2015. As far as the procession on the third day of temple festival is concerned, the petitioner himself accepted that Hindus would not conduct the procession in which the turmeric water would be sprinkled.

25. The abovesaid facts of the case would reveal that all along there had been religious tolerance and the religious festivals were conducted very smoothly and religious procession were conducted without any problem through all the streets and roads of the village. If religious intolerance is going to be allowed, it is not good for a secular country. Intolerance in any form by any religious group has to be curtailed and prohibited. In this case, intolerance of a particular religious group is exhibited by objecting for the festivals which have been conducted for decades together and the procession through the streets and roads of the village are sought to be

prohibited stating that the area is dominated by Muslims and therefore, there cannot be any Hindu festival or procession through the locality. India is a secular country and merely because one religious group is living in majority in a particular area, it cannot be a reason for not allowing other religious festivals or processions through that area. If the contention of the private respondent is to be accepted then it would create a situation in which minority people cannot conduct any festival or procession in most of the areas in India. If resistance is being exhibited by one religious group and it is reciprocated by the other religious groups, there would be chaos, riots, religious fights causing loss of lives and destruction of properties. Consequently, the secular character of our country will be destroyed or damaged.

26. Hence, it is hereby declared,

1. Once it has been declared by the authorities as roads or streets as per Section 180-A of the District Municipalities Act, the roads and streets which are "secular", should be used as roads by all the people irrespective of their religion, caste or creed.

2.Any procession including religious procession shall be conducted through all the roads and streets without any restriction.

3.Any procession including religious procession cannot be prohibited or curtailed merely because another religious group is residing or doing business in the area predominantly.

4.There cannot be a prohibition for any procession including religious processions through roads by the District administration or police authorities and there can be only regulation by the police or other Government authorities to see that no untoward incident occurs or any law and order problem arises.

5.Every religious group has got fundamental right to take out religious procession through all the roads without insulting the other religious sentiments and without raising any slogans against other religious groups, affecting their sentiments, public law and order.

6.Merely because there is one place of worship belonging to other religious group, the same cannot be a ground to decline/deny permission to conduct procession including religious procession of other religions to go through those roads or streets.

7.The presence of religious structures/places of worship cannot take away the right of other religious groups who have been enjoying all the rights including the conduct of religious procession for the past many years.

8.The criminal cases filed against both the parties are directed to be withdrawn.

27.In fine, the appeal in W.A.No.743 of 2019 is ordered in the above terms and the appeal in W.A.No.2064 of 2019 is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

(N.K.K.,J.)

(P.V.,J.)

30.04.2021

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P.VELMURUGAN, J.

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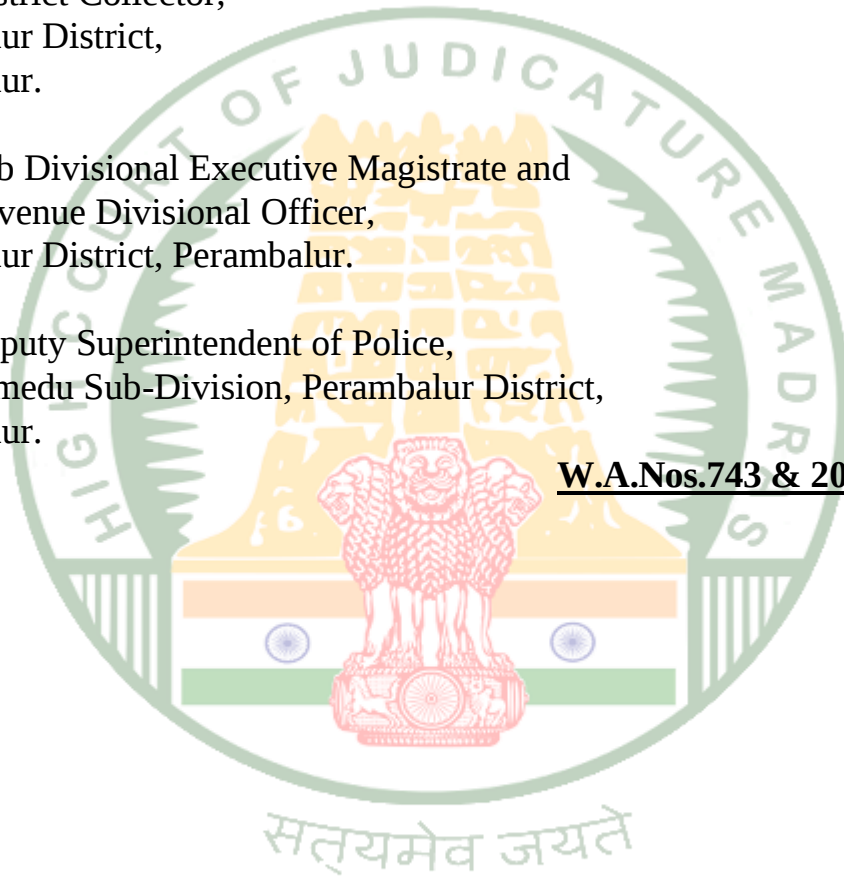
To

1. The District Collector,
Perambalur District,
Perambalur.

2. The Sub Divisional Executive Magistrate and
Revenue Divisional Officer,
Perambalur District, Perambalur.

3. The Deputy Superintendent of Police,
Mangalamedu Sub-Division, Perambalur District,
Perambalur.

W.A.Nos.743 & 2064 of 2019



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Dated : 30.04.2021