*W.P.(MD)No.20364 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	11.11.2024
Delivered on	13.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**W.P.(MD) No.20364 of 2023**
and WMP (MD) No.16794 of 2023

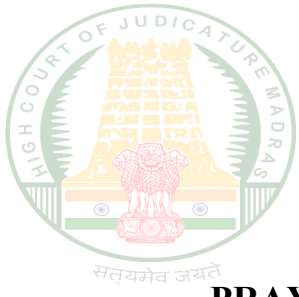
Bharathiya Janatha Party
Rep. by Virudhunagar East
District President
G.Pandurangan

... Petitioner

Vs.

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 3.The Tahsildar,
Virudhunagar Taluk,
Virudhunagar.
- 4.The President,
Kooraikundu Village Panchayat,
Kooraikundu,
Virudhunagar District.

... Respondents



W.P.(MD)No.20364 of 2023

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent No.2 to handover the Statue of Bharatha Matha to the petitioner and further forbear the respondents from intervening with the rights of the petitioner to install the statue of Bharatha Matha inside the Bharathiya Janatha Party Office premises situated at S.No. 328/1B2, Kottaipatti Village, Virudhunagar Taluk and District.

For Petitioner : Mr.Ananda Padmanaban
Senior Counsel
for Mr.Vanangamudi
For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.S.Ravi
Additional Public Prosecutor

ORDER

This writ petition has been filed by the Bharathiya Janatha Party represented by its District President seeking for the issue of a writ of mandamus directing the second respondent to hand over the Bharatha Matha statue to the petitioner and to further forbear the respondents from interfering with the rights of the petitioner to install the statue of Bharatha Matha inside the party office premises situated at Survey No. 328/1B2, Kottaipatti Village, Virudhunagar District.

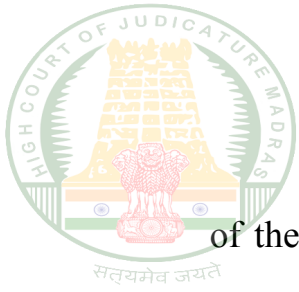


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2.The case of the petitioner is that the Bharathiya Janatha Party is a national level political party recognized by the Election Commission of India. A property was purchased in the name of the political party through a registered sale-deed dated 28.04.2016 which was registered as Document No.6020 of 2016. The patta was also transferred in favour of the petitioner in patta No.1314.

3.The petitioner constructed an office building in the said property and the same is effectively functioning for the past few years. Additional construction was also made by means of putting up a first floor after getting necessary permission from the concerned authority. Thereafter, a statue representing Bharatha Matha holding the flag in her hand was installed.

4.The petitioner has taken a specific stand that Bharatha Matha is a symbol of nation “India” and such statue was installed in the office premises as a symbolic representation of one nation. The grievance



W.P.(MD)No.20364 of 2023

of the petitioner is that the ruling party in Tamil Nadu with the help of police made them enter the premises illegally and they took away the statue. It is under these circumstances, the present writ petition came to be filed before this Court seeking for appropriate directions.

5.The first respondent has filed a counter-affidavit. The first respondent has taken a stand that the Government of Tamil Nadu had accepted the guidelines given by this Court in W.P. (MD) No.22120 of 2022, dated 08.11.2022, whereby, a direction was given to the effect that no new statue should be installed for any leader, there must be proper maintenance of the already established statue and statues which has a proclivity of causing unrest should be relocated to other places. The counter-affidavit also takes note of G.O.(Ms) No.183, dated 23.05.2017 which talks about getting prior approval of the Government before installation of any statue. Insofar as a statue in a private patta land, the interim direction given by the Division Bench in the pending writ appeal in W.A. (MD) No.1386 of 2022 by order dated 17.11.2022 has been relied upon wherein, it has been directed that the authorities concerned must have vigil over the area where the statue is installed even in a



W.P.(MD)No.20364 of 2023

private place and that no one must be permitted to install the statue without getting proper permission.

6.The first respondent has therefore taken a stand that in compliance with the order passed by this Court, the petitioner was put on notice and since there was no response and in order to maintain peace and harmony in the society, the statue was removed and it has been safely kept in the office of the Revenue Department. Accordingly, the respondents have sought for the dismissal of this writ petition.

7.Heard Mr.Ananda Padmanaban, learned Senior Counsel for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing on behalf of the respondents.

8.This case raises an interesting issue concerning the boundaries of the right to freedom of speech and expression on private property. Does the power of the State extend to control or regulate the installation of statues on one's private property? The position as regards public property is no longer *res integra*. Public spaces are held in trust by



W.P.(MD)No.20364 of 2023

WEB COPY

the State for the greater collective good of the community. It is for this reason, that the installation of statues on public property requires the prior approval of the State who is ultimately the custodian of the public space. However, with the passage of time the State applied its regulations even in the private sphere of a persons' home. Useful reference can be made in this regard to G.O. (Ms) No.186, dated 21-09-98, G.O. (Rt) No. 221, dated 20-11-98 and G.O. (Ms) No.183, dated 23-05-2017. By referring to the government orders, the Commissionerate of Revenue Administration and Disaster Management by Circular dated 26-03-19 issued detailed guidelines for installation of statues in private property as well.

9.The issue of whether the State could prevent the erection of statues on private property has come up before this Court on several occasions. In *Maniyarasan v. State*, reported in *2011 (1) CWC 379*, it was held that the State cannot prevent a political party from installing a bust-size statue of a person who in their esteem is a Martyr, in its private land. The same view is reiterated in *Vijayan v. District Collector*, reported in *2017 (5) MLJ 641(DB)*, and more recently by N. Seshasayee,



W.P.(MD)No.20364 of 2023

J., in *Tamil Nadu Yadava Mahasabai vs State, (WP 23485 of 2023)*,

where the learned judge declared:

“Right to property is a Constitutional right, and it cannot be interfered with except as per a fair procedure established by law. No legislature or the executive can arrogate to themselves any power to interfere with the private life of a citizen. A citizen has every right to use his property subject only to any objectual regulation. Directing a citizen not to erect a statue as a mark of respect for a freedom fighter in his property involves both a right to faith and right to privacy, both of which are fundamental rights now recognised under the Constitution.”

10. These decisions appear to have little or no effect in permeating the obstinate hide of the State and its officials. Nevertheless, the callousness of the State must not dampen the vigil of the Court. Justice William O’ Douglas once remarked that *“as nightfall does not come at once, neither does oppression. In both instances, there is a*



W.P.(MD)No.20364 of 2023

twilight when everything remains seemingly unchanged. And it is in

WEB COPY

such twilight that we all must be most aware of change in the air –

however slight – lest we become unwitting victims of the darkness.”

Twilight now hovers in the air, and if the Court does not perform its constitutional duty as a sentinel on the *qui vive*, there is a great danger that a citizen’s precious right of enjoyment of private property would be imperilled.

11. Long before the advent of the Constitution, the sanctity of a person’s private property was recognised by Lord Camden, CJ in *Entick v. Carrington, (1765) 19 St Tr 1029 : 95 ER 807*. Entick's house had been forcibly entered into by agents of the King. The Chief Justice declared:

“By the laws of England, every invasion of private property, be it ever so minute, is a trespass.”

12. Justice Bradely said much the same thing in *Boyd v. United States*, reported in *1886 SCC OnLine US SC 58*, when he observed:

8/16



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“The principles laid down in this opinion affect the very essence of constitutional liberty and security.

... they apply to all invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offence; but it is the invasion of his inalienable right of personal security, personal liberty, and private property ... it is the invasion of this sacred right....”

13.The position is no different here in India where the right to property, apart from being a constitutional right under Article 300-A has been held to be a human right under Article 21 (vide **B.K Ravichandra v. Union of India, 2021 14 SCC 703**).

14.That apart, the right of privacy and its exercise in the private space of one's home has been held to be a fundamental right under Article 21 in **K.S. Puttaswamy (Privacy-9J.) v. Union of India,**



W.P.(MD)No.20364 of 2023

(2017) 10 SCC 1. In his concurring opinion Justice R.F Nariman observed that the expression “liberty” in the Preamble is of thought, expression, belief, faith and worship. He quoted with approval the following passage from J.S Mill’s treatise on “Liberty” :

“Liberty consists in being able to do anything that does not harm others; thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by law.”

15.The Supreme Court declared that the privacy of choice is directly protected by Articles 19(1)(a) to (c) and 21. Consequently, the authority of the State must normally end where the boundaries of the private property starts. Right to property is a constitutional right, and it cannot be interfered with except as per fair procedure established by law. No legislature or the executive should arrogate to themselves any power to interfere with the private affairs of a citizen or an association. It is not the business of the State and its officers to control or regulate the affairs



inside the private space of a citizen. Such a course is constitutionally forbidden.

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16.The installation of a statue of Bharatha Matha on private property is a deeply personal and symbolic act that reflects an individual's reverence for their motherland. Unlike public figures, whose statues often require permissions due to their potential impact on public sentiment and communal harmony, the installation of a statue representing one's cultural and national identity in a private space can be viewed through a different lens. While it is essential to respect local laws and community sentiments, the act of honoring Bharatha Matha is fundamentally an expression of love and pride. It serves as a reminder of the values and sacrifices associated with one's heritage.

17.Ultimately, placing a statue of Bharatha Matha in one's garden or home is akin to creating a personal shrine that embodies hope, unity, and respect for the land. It invites reflection on the ideals of freedom, resilience, and cultural identity that Bharatha Matha represents. As pointed out in *Union of India v. Naveen Jindal, (2004) 2 SCC 510*,



W.P.(MD)No.20364 of 2023

the right of a citizen to manifest his nationalism, patriotism and love for

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the motherland, by way of expression of those sentiments is a

fundamental right guaranteed under Article 19(1)(a) of the Constitution.

That was a case which concerned the national flag, but the principle

remains the same whether the expression of patriotism is by way of a flag

or a statute. Where Article 19(1)(a) is triggered, the State must

demonstrate that any restriction that it seeks to impose on the exercise of

this fundamental right is reasonable in terms of Article 19(2). In *Shreya*

Singhal v. Union of India, (2015) 5 SCC 1, the Supreme Court

observed:

“Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest.”



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18.No person in his right senses could seriously contend that expressing one's patriotism and love for one's country would imperil the interests of the State or the community. Indeed, the position is precisely the converse as the Constitution itself enjoins the citizen to promote such values in terms of the Fundamental Duties under Article 51-A.

19.In the process of writing the above order, I thought it fit and befitting to end the order with the poem which flew from my heart;

“In the heart of my land, I seek to stand,

A statue of love, crafted by hand.

Mother India, in stone and grace,

A symbol of unity in this sacred space.

May her presence bloom, in peace reside,

In my private garden, where dreams abide.

Let no voice of discord mar this sight,

For love knows no bounds, only pure light.”



W.P.(MD)No.20364 of 2023

20.I have no doubts in my mind that the respondents have high-handedly taken away the statue of Bharatha Matha from a private property, probably due to pressure exerted elsewhere. This act on the part of the respondents is highly condemnable and should never be repeated in future. We are living in a welfare State which is governed by Rule of Law. Therefore, such high-handness can never be tolerated by a Constitutional Court exercising its jurisdiction under Article 226 of the Constitution of India.

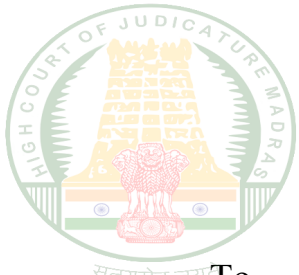
21.In the result, there shall be a direction to the respondents to forthwith hand over the statue of Bharatha Matha to the petitioner and it will be left open to the petitioner to install the statue in the office premises of the petitioner.

22.This writ petition stands allowed. Consequently, connected miscellaneous petition is closed.

13.11.2024

NCC : Yes
Index : Yes
Internet : Yes
PKN

14/16



W.P.(MD)No.20364 of 2023

To
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1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
3. The Tahsildar,
Virudhunagar Taluk,
Virudhunagar.
4. The President,
Kooraikundu Village Panchayat,
Kooraikundu,
Virudhunagar District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VERDICTUM.IN



W.P.(MD)No.20364 of 2023

N.ANAND VENKATESH,J.

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W.P.(MD)No.20364 of 2023

Dated: 13.11.2024