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In Re: T. Nagalinga Mudaliar

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Court : Chennai

Decided On : Aug-08-1916

Reported in : (1916)31MLJ426

Appellant : In Re: T. Nagalinga Mudaliar

Judgement :

1. This is a motion under Section 45 of the Specific Relief Act of 1877 asking for an order in the nature of a writ of Mandamus for compelling the Commissioner of Police, Madras to issue a license to the petitioner to conduct the procession with music of Sri Ellamman temple Goddess in Triplicane through certain streets. The history of this matter is as follows:--The temple in question is in the middle of a district which in recent years has become increasingly populated by Muhammadans. In the year 1912, the musical procession which went directly past the Muhammadan mosque in Mallan Ponnappa Mudali Street, gave rise to a very serious disturbance. In consequence of that, in the succeeding years, the Commissioner of Police prohibited the procession to go past that mosque, which involved the missing out from the route of some part of Mallan Ponnappa Mudali St. and a certain length of Agathi Muthan Street. In 1914, the Dharmakartas of the temple brought a suit in the City Civil Court in order to have their rights established to carry on this procession in the way they had been accustomed to do before 1912. Judgment in that suit was delivered on the 5th May of this year wherein the learned Judge of that Court decided that the rights of the Dharmakartas to take the procession along the several streets they claimed including Surappa Mudali

Street, Agathi Muthan Street and Mallan Ponnappa Mudali Street, with music and to stop at the corner of the mosque to perform puja, must be upheld. He held that it was established by the evidence that these were immemorial rights and that the Hindus were entitled to exercise them. In these circumstances, an application was made this year, in June, by the Dharmakartas to the Deputy Commissioner of Police for a license to conduct the procession, on the route used before 1912; and he made an order refusing to allow the procession unless the petitioners would consent to a modification of that route. Not satisfied with this, the Dharmakartas went on renewing their applications until the matter was finally dealt with by Mr. Parankusam Naidu, Ag. Commissioner of Police on the 14th of July, when he made the following order:--' From local and other enquiries it has been ascertained that if the petitioner's prayer is granted, there will be a serious breach of the peace on the occasion of Brahmotsavam. Having regard to all the circumstances of the present occasion the undersigned has decided not to grant the petitioner a license under Section 41, Act III of 1888 to conduct the procession with music on the occasion in question.' I have before me the affidavit of the Commissioner of Police in which he says that before issuing the aforesaid order, he interviewed a number of people and consulted the Muhammadans in responsible positions living in the neighbourhood and that he had come to the conclusion that there was a very real danger of a riot taking place if the processions were held in July along the route desired by the petitioners. Now, the powers of the Police are derived from Section 41 of the City Police Act, (Act III of 1888). That section empowers the Commissioner of Police to keep order in public road and so forth and to license and regulate the use of music in the streets--which must obviously include the power to prohibit music in the streets and to prohibit any assembly or procession if he considers such prohibition to be necessary for the preservation of the public peace or public safety. He is thus given a wide discretion to take any steps for prohibiting any assembly which in his view is likely to lead to a breach of the peace. It is contended on behalf of the applicant and with great force that it is a very dangerous principle to say that you are to prohibit a person from doing that which a court of law has declared to be lawful and within the exercise of his legal rights, merely because other persons announce their intention of illegally offering violence and obstruction to that lawful exercise of his rights. No court of law ought

to give colour or support to any such unlawful intention. Further, I entirely agree with Mr. Raja Aiyar that if this order is made year after year under colour of exercising the direction under Section 41 of Act III of 1888 applied to the circumstances of the moment, it would really be an attempt to evade the judgment of the City Civil Court, If I thought anything of the kind, I would make the order and tell the Police they must allow the processions to go on in what has been declared to be the lawful and customary manner. I go even further; if I thought that the object of the Police in refusing the license was merely to prevent the expense and trouble of assembling a very large force in order to prevent an unlawful outbreak on the part of the Muhammadans, I should not, in my opinion, be justified in refusing to give effect to the rights of the Hindus as declared by a judgment of a competent court. The view that the Commissioner of Police has formed, I think I can properly treat as directed only to the particular circumstances at the time when the application was made and not as an attempt to regulate the whole matter for the future. I think that his view, having regard to the short time that has elapsed since judgment was given in the City Civil Court and the special circumstances of strain and difficulty in the present year, is probably right. In any case, I am satisfied that it is a bona fide opinion and a bona fide exercise of the discretion vested in him by Section 41 of the City Police Act. On that ground and on that ground alone I am not prepared to interfere with his order. I think that on that special occasion, he was justified in refusing to grant a licence. At the same time I am constrained to say that if this refusal to grant a license goes on indefinitely, this Court will inevitably, in course of time, be forced to the conclusion, that the Muhammadans have by threats of unlawful action, endeavoured to render abortive the legal rights of the Hindus and that this Court must not permit such a state of things to continue indefinitely.

2. I dismiss this application with costs and discharge the Rule. This judgment is entirely confined to the special circumstances of this year and to this particular procession for which I am asked to compel a license to be issued on this occasion.

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