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W.P.No.6504 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.09.2023

PRONOUNCED ON: 09.11.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P.No.6504 of 2018

R. Parasuraman (Deceased)

2. P. Kanagasundaram

... Petitioner

[P2 substituted as LR of the deceased sole petitioner]

Vs.

1. State of Tamilnadu,
By the Secretary to Government,
Revenue Department,
Secretariat, Chennai 600 009.
2. The District Collector,
Collectorate,
Tiruvarur District,
Tiruvarur 610 001.
3. The Revenue Divisional Officer,
Tiruvarur 610 001.
4. The Tahsildar,
Tiruvarur Taluk,
Tiruvarur 610 001.



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5. A Sundaramoorthy

...Respondents

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Writ Petition filed under Article 226 of the Constitution of India for issue of Writ of Mandamus against the respondent Nos.1 to 4 directing them to remove forthwith all encroachments, constructions and the Mandapam unauthorizedly built and existing in the pathway in S. No.82/16 Government Poramboke Land, being the Petition Schedule Property forbearing Respondent No.5, his brothers, family members, agents servants or any persons from putting up any constructions in any form upon the public path way in S.No.82/16 and 15 Government Poramboke Land, being Petition Schedule Property.

For Petitioner : Mr. Dr. S. R. Sundaram

For R1 to 4 : Mr. A. Selvendran,
Additional Government Pleader

For R5 : Mr. M. Govindaraju

ORDER

(Judgment of the Court was Delivered by K. Rajasekar, J.)

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the Mandapam unauthorizedly built and existing in the pathway in S. No.82/16 Government Poramboke Land, being the Petition Schedule Property forbearing Respondent No.5, his brothers, family members, agents servants or any persons from putting up any constructions in any form upon the public path way in S.No.82/16 and 15 Government Poramboke Land, being Petition Schedule Property.

2. The facts of the case in brief as follows:

2.1 The petitioner is the owner of the land situated in R.S.No.82/14 D of Devarkandanallur Village, Tiruvarur Taluk. He has inherited the same from his grandfather and they were in possession and enjoyment of the same for long years. A portion of the property was also gifted by him to his daughter-in-law namely, Chitra and his property has been assessed to Property Tax and having Electricity Service Connection.

2.2 One Ayyasamy Pillai in the same Village with his 3 sons namely, Sundaramoorthy, Narayanan and Rajendaran, have unlawfully occupied a Government poramboke land, situated in Survey No 82/16 and installed small statue for worshipping and used it as religious



premises. Subsequently in the year 2015-2016, he constructed a big shed around the statue and encroached the entire Government land. He has also got the Electricity Connection and also laid a pathway for his own private property. He has also obstructed laying of pipeline for drinking water supply to the petitioner's house through underneath common passage.

2.3 The Temple is not under the control of HR & CE Department and no permission or approval granted for constructing the Temple. In spite of various complaints lodged by the petitioner for removal of encroachment, the authorities have not taken any steps to remove the same. Hence the petitioner has approached this Court seeking direction to removal of all encroachment, constructions and the Mandapam.

3. The fourth respondent has filed counter, dated 16.07.2018 stating that the lands in R.S.No.82/15 and R.S.No.82/16 of Devarkandanallur Village, Tiruvarur Taluk has been classified in the revenue records as follows:



R.S. No.	Extent	Classification
82/15	0.40.5 hec	Kulam
82/16	0.07.0	Temples

4. In R.S.No.82/16, there is one Pillayar Temple. On the Eastern side of the Temple, there is a pathway running from South - North and width of the pathway is 4.6 metres and length is 10.8 metres which is being used by the petitioner and others who are residing in R.S.No.82/14 A, lies on the North of Temple poramboke in R.S.No.82/16. On the Eastern side of the pathway, the fifth respondent has constructed the Mandapam (RCC). Due to construction of the Mandapam, the pathway has been reduced. Earlier the Temple was under the control of Hindu Religious Department hence no action was taken earlier and subsequently, it revealed that the Temple was not under the control of HR & CE Department.

5. In R.S.No 82/16, the following persons are in occupation of the Government Poramboke land.

S. No.	R.S.No.	Name of Occupier	Extent occupied	Nature of Occupation
1.	82/16	Sundaramoorthy S/o. Ayyasamy	0.01.25	House



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S. No.	R.S.No.	Name of Occupier	Extent occupied	Nature of Occupation
2.	82/16	Temple Part	0.02.25	Temple Part
3.	82/16	Temple Pathway	0.00.50	Temple Pathway
4.	82/16	Rajendran S/O. Iyyasamy	0.00.65	House Part
5.	82/16	Temple front portion	0.00.75	Temple Front Portion
6.	82/16	Ramalingam S/o. Rethinam Pillai	0.01.60	House

6. The Temple is built in the land under the unauthorised occupation and it has to be evicted after observing the formalities. Hence the proceedings under the Tamil Nadu Land Encroachment Act, 1905, has been issued to the fifth respondent alone for removal of Mandapam.

7. On behalf of the fifth respondent, it is submitted that they were in possession of the Temple in R.S.No.82/16 for a very long period and the Mandapam was also constructed long long years ago. The Temple has not blocked the pathway as projected by the petitioner. Already in the Revenue Records, the existence of Temple is recorded and hence the prayer to removal of temple is not permissible.



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8. Apart from the counter filed by the Tahsildar, Tiruvarur, on 29.07.2022, another Tahsildar filed Status Report stating that the Mandapam constructed by the Temple was within the Government Poramboke Temple and the Mandapam has not reduced the pathway and there is alternative pathway available to the petitioner and others residing in R.S. No.82/14A.

9. The learned counsel for the petitioner submitted that admittedly, the fifth respondent has encroached the Government Poramboke land who has originally put up a small statue and subsequently keep on encroaching the Government poramboke land. He has also relied on the Board Standing Order to state that the lands adjacent to the religious temple falls within the Temple poramboke shall not be used for constructing any permanent structure. In this case the Madabam has blocked the pathway and hence they have approached this Court for removal of encroachment.

10. This Court, after considering the submissions of both sides, as per order dated 21.07.2023 had directed the second respondent-District Collector to conduct an enquiry and submit his Status Report



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reflecting the correct state of affairs. Accordingly, the District Collector filed his Report, dated 15.08.2023, wherein he has stated that Pillayar Temple was originally built in approximately 0.02.00ares long ago in Survey No.82/16, which is Government Poramboke Land. In 2016, the Mandapam (vimanam) was built in 0.01.00 ares totally now the Temple premises covering the extents of 0.03.00 ares out of total extent of 0.07.00 ares. Now, it is being under the control of the fifth respondent and all general public are offerings and worshipping the Temple. It is not under the control of HR & CE Department. There is a pathway running from East to West in between the Temple, Mandapam and a dilapidated building. There is a portion of land currently used as pathway leading to residences of R.S.No.82/14A. There is one pathway running from South to North on the Western side of the Tank, situated in R.S.No.82/15 and that is also being used by the general public.

11. We have considered the Report and submissions made by the parties.

12. Admittedly, the Revenue Records classified the lands in Survey No.82/16 as Government Poramboke Land in which, the Temple



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is also situated. It is not the case of the fifth respondent or the Government that the entire land is a Temple Poramboke Land i.e., the land which was used as a temple and its adjacent areas for the purpose of doing various Temple activities from the very long period.

13. It is the admitted case of the parties that in the Government Poramboke Land, the father of the fifth respondent namely Ayyasamy had put up a small statue and thereafter, he has put up a tatched temple and subsequently, he developed it. In the year 2016, the Mandapam has also been built up without any permission or approval from any of the authorities. Admittedly, the authorities are duty bound to protect the Government Lands/Pormboke Lands and they cannot taken a stand that since the temple has been built up in the Government Poramboke Land, the lands are to be treated as a Temple Poramboke as classified in the Revenue Standing Order. Unless the nature of lands reclassified as a Temple Poramboke, the Government Poramboke Land could not be allowed to be used by the encroachers of land to continue the expansion of Temple, disturbing the existing rights of neighbours, land owners from using pathway. If the same is permitted then it would pay premium to the encroacher of land, who adopts the *Modus operandi*



by putting up small statue in the Government Land, slowly expand the Temple and thereafter they would claim Government Poramboke as Temple Poramboke.

14. In *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan [1997 (11) SCC 123]*, the Hon'ble Apex Court has observed as follows:

“ The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment.”

15. R.S.No.82/16 is consisting of 7 ares and the father of the fifth respondent namely, Sundaramoorthy has build up a small Temple in the land. But no one in this case, given exact date of instalation of statue by him. However, it is a specific case of petitioner that, Mandapam was constructed in the year 2016 and affirmed in the report of officials. The



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report of Tahsildar dated 06.07.2018, listed out that, there are houses, built by the family members of encroachers. Eventhough the exact period in which the Temple was built up was not mentioned, this Court is of the view that the encroachments i.e., houses and Mandapam constructed in the pathway shall be removed, since this Court in umpteen number of orders directed the authorities to protect the Government Lands and violation of the same attracts the departmental proceedings against the concerned officers.

16. Hence, the first respondent is directed to take immediate steps to remove the encroachment in R.S.No.82/16 in the light of the judgment of the Apex Court in **Kerala State Costal Zone Management Authority vs. Maradu Municipality [(2021) 16 SCC 822]**. In case of failure on the part of the Officials in removal of the encroachment, disciplinary proceedings can be initiated against them in terms of the decision of a Coordinate Bench of this Court, in which one of us (SVNJ) was a Member, in **P.Vasantha vs. The District Collector, Ramanathapuram and others [W.P.(MD) Nos.24234 to 24239 of 2017]** decided on 28.12.2017.



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17. With the above observation, the Writ Petition is partly allowed and the authorities concerned is directed to remove all the encroachments except the Original Temple which is situated in the extent of 0.02 ares in S.No.82/16 and take possession of the remaining land. No costs. Cosequently, the connected miscellaneous petition stands closed.

(S.V.N.J.) (K.R.S.J.)
09.11.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case : Yes/No

To

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Secretariat, Chennai 600 009.
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S. VAIDYANATHAN, J.

AND

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Pre-delivery Order made in
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09.11.2023