

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.1437 of 2015 and M.P. No.1 of 2015

M. Thiagarajan ... Petitioner

vs.

1. The District Collector
Kanchipuram District
Kanchipuram
2. The Revenue Divisional Officer
Kanchipuram District
Kanchipuram
3. The Tahsildar
West Tambaram
Chennai 600 045
4. The Village Administrative Officer
East Tambaram
Chennai 600 059
5. Christ King Girls Higher Secondary School
represented by its Headmistress
East Tambaram
Chennai 600 059

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 to 3 to remove the encroachment and the unauthorised construction made by the 5th respondent in Survey No.143/1, 143/3 and the Government land at East Tambaram, Chennai - 600 059, based on the petitioner's representation dated 10.09.2014 within a time frame.

For petitioner : Mr. K.S. Ilangovan
for M/s.Achary and Antoni Associates

For RR 1-4 : Mr. P.S. Sivashanmugasundaram
Special Government Pleader

For R5 : Dr. Fr. A. Xavier Arulraj

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI)

By this petition, the petitioner seeks a writ of mandamus directing the respondents 1 to 3 to remove the encroachment and the unauthorised construction made by the 5th respondent in Survey No.143/1, 143/3 and the Government land at East Tambaram, Chennai - 600 059, based on his representation dated 10.09.2014, within a stipulated time.

2. The petitioner, claiming to be the resident in the neighbourhood of the fifth respondent school, seeks the aforestated direction, alleging that the fifth respondent is putting up illegal construction in the area, which is reserved for playground.

3. Pursuant to the notice ordered by this Court on 22.01.2015, the third respondent, viz., the Tahsildar, West Tambaram, has filed a counter affidavit stating as under:

"5. It is humbly submitted that the school has constructed the compound wall around the land which was alienated to them in S.No.143/3 and also constructed a stage and two rows of cement gallery for watching the games conducted in the playground, which does not affect the playground. There is no church in the playground, instead a four storied pillar holding a statue of "Mary" is put up at the North-West corner of the playground.

6. It is humbly submitted that the school has not encroached any Government lands and they have occupied only the lands which has been alienated to them.

7. It is humbly submitted that as per G.O. Ms.No. 1676 Revenue dated 02.07.1938, the school is utilizing the lands alienated to them. Hence, the prayer of the petitioner is not sustainable and liable to be dismissed for devoid of merits."

4. The fifth respondent also has responded to the notice ordered by this Court, stating that it has not made any encroachment as alleged by the petitioner.

5. The learned counsel for the respondents would categorically submit that the allegation of encroachment made by

the petitioner has no basis and also, is not supported by any document or material. The fifth respondent has not made any encroachment on any land, which is earmarked for playground.

6. We have examined the rival contentions advanced by the learned counsel, perused the pleadings and documents appended thereto.

7. The allegation of the petitioner that there is an encroachment in the playground is a disputed question of fact, particularly, in the teeth of the clear statement by way of counter affidavits filed by the third respondent, the Tahsildar and the fifth respondent school to the effect that there is no encroachment and as such, no direction as sought by the petitioner can be issued.

8. In view of the foregoing, this writ petition is frivolous and devoid of any merit and as such, is liable to be dismissed and it is accordingly dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar

/true copy/

CAD

Sub Assistant Registrar.

To

1. The District Collector
Kanchipuram District
Kanchipuram
2. The Revenue Divisional Officer
Kanchipuram District, Kanchipuram
3. The Tahsildar
West Tambaram
Chennai 600 045
4. The Village Administrative Officer
East Tambaram
Chennai 600 059

+1cc to M/s.Achary and Antoni Associates, Advocate, S.R.No.10884

W.P. No.1437 of 2015

SAI (CO)
CA(09/03/2015)