

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO.6387 OF 2013

and M.P.No.1 of 2013

M/s.Coimbatore Diocese Society
Rep. by its Procurator Rev.Father
L.Kangaraj,
Bishop's House, Bazaar Street,
Coimbatore - 641 001.

.. Petitioner

Versus

1. The Revenue Divisional Officer,
Dharapuram Division,
Thiruppur District.
2. The Tahsildar,
Dharampuram Taluk,
Thirupur District.
3. The Superintendent of Police,
Dharapuram Town,
Dharapuram.
4. The Headmistress,
St. Aloysius Girls Higher Secondary School,
Dharapuram Town,
Dharapuram - 638 656.
5. The Correspondent,
St. Aloysius Girls Higher Secondary School,
Dharapuram Town,
Dharapuram - 638 656

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent in respect of the impugned order Na.Ka.No.2776/2012(E), dated 05.02.2013 and quash the same as exfacie, illegal and arbitrary and consequently direct the 1 and 2 respondents to restore status quo ante by raising the compound wall as it was on 11.02.2013 morning in the property of the petitioner with the minimum extent of 31 feet in Survey No.1161/1C of Dharapuram Municipality.

For Petitioner : Mr.S.Muthuraman
For Respondents : Mr.S.Gunasekaran
Govt. Advocate for RR 1 to 3
Ms.R.Meenal for RR 4 and 5

O R D E R

Heard Mr.S.Muthuraman, learned counsel for the petitioner, Mr.S.Gunasekaran, learned Government Advocate for the respondents 1 to 3 and Ms.R.Meenal, learned counsel for the respondents 4 and 5.

2. The petitioner is the Coimbatore Diocese and they challenged the order passed by the first respondent invoking the power under Section 133 of the Code of Criminal Procedure, by which, the second respondent was directed to take steps for removal of the wall, which has been constructed in the property by the petitioner, and submit a report to the first respondent.

3. From the rival claims, it is seen that the petitioner claims that the property is owned by the diocese and permission was granted to the respondents 4 and 5 to establish a school. On the other hand, the respondents 4 and 5 claim right over the property. Admittedly, as on date, civil suits are pending before the civil court and the civil court also granted order of status quo, in which situation, the first respondent ought not to have interfered in the matter, as it is purely a private dispute between two parties and presumably, belonging to the same organization/denomination.

4. If the petitioner claims absolute right over the property, then in the event of challenge, the same has to be established before the civil court which is having jurisdiction over the dispute. Likewise, if the respondents 4 and 5 also claim title over the property, then they should establish their right before the civil court.

5. The grievance of the petitioner is that during the pendency of the suit and when the order of status quo was in force and pursuant to an agreement between the parties, the compound wall is removed by the respondents 4 and 5 and they forcibly entered the property and demolished the remaining compound wall also.

6. It appears that fearing the issue can have an impact on the public, the first respondent is said to have initiated action. However, the dispute relates to a private property and within the property and it is not concerned with any public. Furthermore, there is no record placed by the first respondent to show that the public would be affected and there was a public nuisance necessitating to invoke the power under Section 133 of Cr.P.C.

7. Since the authorities lacks jurisdiction, the impugned order is liable to quashed. However, taking into consideration that on account of the dispute, students studying in the fourth and fifth respondent institutions likely to be affected, this Court, in order to ensure the students are not affected, is constrained to direct the petitioner as well as the respondents 4 and 5 to maintain status quo prevailing as on date.

8. If already the portion of the compound wall has been demolished, no further demolition takes place nor any construction activities. Likewise, if the students are using certain area of the land for playing, subject to the conditions, students are entitled to use the land and this arrangement shall continue, till the proceedings are concluded in the civil proceedings, wherein, both the parties are entitled to place their oral and documentary evidence.

9. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Revenue Divisional Officer,
Dharapuram Division, Thiruppur District.
2. The Tahsildar,
Dharampuram Taluk, Thirupur District.
3. The Superintendent of Police,
Dharapuram Town, Dharapuram.

+1cc to M/s S.Muthuraman, Advocate Sr.6782
+1cc to M/s R.Meenal, Advocate Sr.7066
+1cc to Government Advocate Sr.6977

ORDER IN W.P.NO.6387 OF 2013
and M.P.No.1 of 2013

PA (CO)
rvr 23/02/2015