

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.10.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.31590 OF 2015 &
M.P.No.1 of 2015

Arulmighu Dhandeeswarar Thirukoil
rep. by its Executive Officer
Chennai-42 [PETITIONER]

Vs

- 1.The Commissioner
Corporation of Chennai
Ripon Buildings,
Chennai 600 003.
- 2.The Executive Engineer - II
Corporation of Chennai
Zone 13, No.115, Dr.Muthulakshmi Road
Adyar, Chennai 600 020. [RESPONDENTS]

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the second respondent which culminated in his order M.A.13.Na.Ka.No./8209/2015 dated 19.09.2015, quash the same and forbear the respondents from in any manner interfering with the petitioner's peaceful possession and enjoyment of the said land measuring 120'x 12'in Survey No.124/1, Velacherry Village, which is situate between the petitioner Temple and the Temple Tank.

For Petitioner : Mr.Sriram
for A.S.Kailasam & Associates

For Respondents : Mr.V.C.Selvasekaran

O R D E R

With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal at the admission stage itself.

2.The petitioner is a Temple which is located in Survey No.123, Velacherry Village, measuring around 12.83 acres and the said land is classified as 'Grama Natham'. Out of 12.83 acres, the Temple, Temple Tank, Sannathi Street and the flower garden are situate in 1.50 acres. Apart from that some small plots have been leased out and there are encroachers in other plots. In the affidavit filed in support of the Writ Petition, it has been stated

that there is a gap between the Temple and the Temple Tank bund, which has been formed like a street on the northern and eastern side of the tank, used by the devotees for performing last rites for their ancestors. The said land which looks like a passage between the Temple and the Temple Tank are sought to be misused by some passers. Therefore, the Temple kept an iron gate on the southern side entrance of the passage to avoid public nuisance. When things stand so, the second respondent issued the impugned notice directing the petitioner to remove the grill gate within seven day, as if the petitioner put up the gate on the Pasupathy street. Challenging the said order only the petitioner is before this Court.

3.Heard Mr.Sriram, learned counsel appearing for the petitioner and Mr.V.C.Selvasekaran, learned counsel appearing for the respondents.

4.On instructions, Mr.V.C.Selvasekaran, learned counsel appearing for the respondent Corporation would submit that since usage of public is being prevented by the petitioner Temple by putting up the grill gate, the second respondent passed the order dated 19.09.2015, which is impugned in this Writ Petition.

5.However, a perusal of the record would reveal that the impugned order has been passed without issuing any show cause notice to the petitioner and called upon the petitioner to remove the grill gate within a period of seven days. Therefore, on this short ground alone, the impugned order has to be interfered with.

6.Accordingly, the Writ Petition is allowed and the order passed by the second respondent dated 19.09.2015, is set aside. It is needless to state that the respondents can issue show cause notice to the petitioner and after getting explanation and after affording adequate opportunity to the petitioner, shall pass appropriate orders. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rpa

To

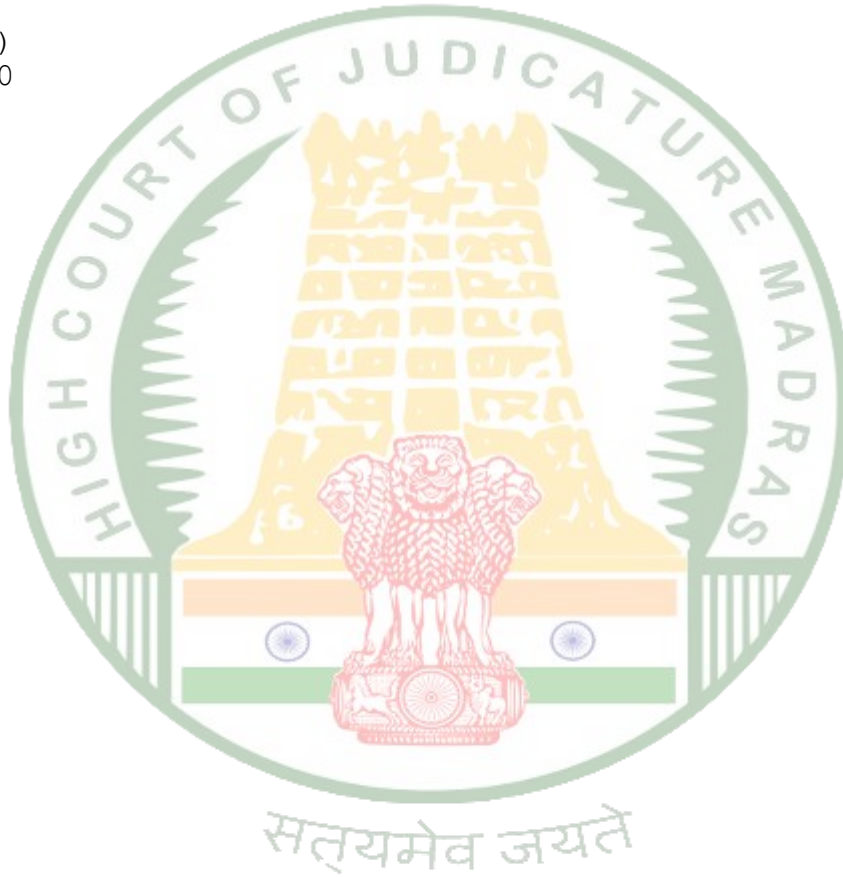
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1 cc to M/s.A.S. Kailasam Associates, SR. 54843

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