

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No.26870 of 2009
and M.P.No.1 of 2009

D.Meshack Peter

.. Petitioner

v.

1.The District Collector,
Office of the District Collector,
Villupuram District.

2.The President,
Nagandoor Panchayat,
Vallam Union, Gingee Taluk,
Villupuram District.

3.Rt.Rev.Dr.Y.Williams,
Bishop C.S.I.Diosease of Vellore,
Vellore.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first and second respondents to demolish the illegal construction of CSI Church constructed in S.No.58/3 and part of S.No.58/4 the Naganthoor Village, Gingee Taluk, Villupuram District.

For petitioner : Mr.K.J.Saravanan

For respondents : Mr.S.Gunasekaran,
Government Advocate for R1
Ms.D.Suriya Narayanan for R2
Mr.V.Parthiban for
M/s.Paul and Paul for R3

ORDER

Heard Mr.K.J.Saravanan, learned counsel for the petitioner, Mr.S.Gunasekaran, learned Government Advocate for R1, Ms.D.Sarida Narayana for R2 and Mr.V.Parthiban for R3 and perused the materials placed on record.

2.The petitioner seeks for issuance of writ of mandamus directing the respondents 1 and 2 to demolish the construction put up in S.No.58/3 and part of S.No.58/4 the Naganthoor Village, Gingee Taluk, Villupuram District.

3.It appears to be a church and according to the petitioner, the offending construction has been put up by the third respondent. The petitioner would state that on account of the said construction, the petitioner's house cannot be accessed and there is a constant problem and the only way to go to the church is through the petitioner's property and part of the petitioner's land has already been encroached and a building has been put up. Further the case of the petitioner is that no permission has been obtained from the Panchayat and in any event, construction has been put up on the Government property and partly encroaching the property is illegal and therefore it has to be demolished.

4.Counter affidavit has been filed by the second respondent in which it has been stated that the construction has been put up in the Government land and the allegations made by the petitioner has been denied. It is stated that permission was obtained from the third respondent on 11.02.2009 and permission was granted on production of all records, patta, title deeds etc. Further it is submitted that the permission granted by the Panchayat was being delayed on account of death of the previous Panchayat President, who died on 17.12.2009 and the new President, who took over charge on 28.07.2010 and the matter has been proceeded further. Further it is submitted that on account of the functioning of the third respondent church, the petitioner's right and pathway are not affected and no prejudice is caused to the petitioner.

5.From the counter affidavit filed by the second respondent, it is seen that the second respondent has admitted that the construction has been put up in Government land and it is not known under what circumstances, Panchayat had granted permission to put up the construction in a Government land. Further more to establish the classification of the land, the second respondent has not produced any document. However, the other issue is as to whether the petitioner's right of pathway has been affected and whether portion of his patta land in Survey No.58/4 has been encroached, cannot be denied in the writ petition and the matter cannot be examined, as they are disputed questions of fact.

6.In the light of the stand taken by the second respondent, this Court is of the view that thorough verification has to be done at higher level and the revenue records to be verified and spot inspection has to be conducted and to examine the entire facts and to bring out the truth. Accordingly, there will be a direction to the first respondent to conduct an enquiry into the matter concerned and

the entire records pertaining to the said village by directing the Tahsildar to verify the entire records and to submit a report as regards the allegation made by the petitioner and the stand taken by the second respondent and after hearing the petitioner and respondents 2 and 3, the first respondent is directed to pass appropriate orders on merits and in accordance with law, as expeditiously as possible. The writ petition is disposed of accordingly. Consequently, connected M.P. is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1.The District Collector,
Office of the District Collector,
Villupuram District.

2.The President,
Nagandoor Panchayat,
Vallam Union, Gingee Taluk,
Villupuram District.

1 cc to Mr.K.J.Saravanan ,Advocate, SR.No.9320
1 cc to Ms.D.Sarida Narayana ,Advocate, SR.No.9495
1 cc to M/s.Paul and Paul ,Advocate, SR.No.9463
1 cc to Government Pleader,Sr.No9411

W.P. No.26870 of 2009

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pmk.10.3.2015

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