

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.5919 of 2014

and

M.P.Nos.1 to 3 of 2014

Mumtaj,
W/o.(Late) Sayed Mahaboob (a) Babulal,
present Caretaker and the Hereditary Muthavalli,
Hazarath Syed Shah Ali Masthan
Chaman Shah Ali Zindey Masthan,
Madarsha E-Shah Ali Masthan
No.17/5, Laskar Street, Alandur,
Chennai-600 016.

... Petitioner

Vs.

- 1.The Director General of Defence Estates,
Raksha Sampada Bhawan,
Ulaanbaatar Marg,
Delhi Cantt.-10.
- 2.The Secretary to Government,
Ministry of Defence,
Government of India,
South Block,
New Delhi-110 011.
- 3.The Principal Director,
Defence Estates,
Southern Command,
Manekji Mehta Road,
Pune-411 001.
- 4.The General Officer Commander In Chief,
Defence Estates,
Southern Command, Manekji Mehta Road,
Pune-411 001.
- 5.The Defence Estates Officer,
Madras Circle,
306, Anna Salai,
Teynampet, Chennai-600 018.
- 6.The President,
St. Thomas Mount-cum-Pallavaram
Cantonment Board,
St. Thomas Mount, Chennai-600 016.
- 7.The Chief Executive Officer,
St. Thomas Mount-cum-Pallavaram Cantonment Board,

- St. Thomas Mount, Chennai-600 016.
- 8.Prabhakaran,
Chief Executive Officer,
St. Thomas Mount-cum-Pallavaram Cantonment Board,
Defence Quarters,
St. Thomas Mount, Chennai-600 016.
- 9.The Station Commander,
Fort St. George,
Chennai-9.
- 10.The Commandant,
Officers Training Academy,
St. Thomas Mount,
Chennai-600 016.
- 11.Selva Rani,
Junior Engineer,
St. Thomas Mount-cum-Pallavaram Cantonment Board,
St. Thomas Mount, Chennai-600 016.
- 12.The Revenue Divisional Officer,
Tambaram,
Kanchipuram District,
Tamil Nadu. ... Respondents

The writ petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 to consider and pass orders on the petitioner's representation, dated 19.2.2014.

For Petitioner : Mr.T.Velumani

For Respondents: Ms.R.Maheswari, SCGST for RR1 to 4
Mr.R.Masilamani, SC
for Mr.C.Mohan for M/s.King & Partridge
for RR5 to 11
Mr.P.Kathikeyan, GA for R-12

ORDER

Heard the learned counsels appearing on behalf of the petitioner, as well as the respondents.

2 This writ petition has been filed praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to consider and pass orders on the representation of the petitioner, dated 19.2.2014, and pass such further orders, as this court may deem fit and proper in the facts and circumstances of the case.

3 The petitioner has stated that she is the caretaker and the hereditary Muthavalli of the Hazarath Syed Shah Ali Masthan Chaman Shah Ali Zindey Masthan Madarsha E-Shah Ali Masthan Dargah (hereinafter referred to as the "Dargah"), situated at

No.10/1, G.S.T. Road, St. Thomas Mount, Chennai, having an extent of 0.3698 acres. It has been further stated that the husband of the petitioner, namely, late Syed Mahaboob @ Babulal, had been serving as the hereditary Muthavalli of the Dargah. The Dargah finds a place in the GLRS field map of the Department of Defence Estates, Madras Circle, Chennai. It has also been stated that the petitioner is paying the taxes and the electricity bills relating to the Dargah, regularly. While so, the petitioner had applied for a building plan, relating to the Dargah and it had been sanctioned by the office of the 7th respondent, vide his proceedings, dated 11.9.2013, granting permission for certain renovation and construction works. The petitioner had started constructing of a room, having an extent of about 500 sq.ft., as per the building plan sanctioned by the 7th respondent, from the funds collected from the devotees of the Dargah. While so, the respondents 9 and 10 had started interfering with the construction works.

4 In such circumstances, the petitioner had filed a civil suit, in O.S.No.78 of 2014, on the file of the Additional District Munsif Court, Alandur. During the pendency of the said suit, the officers of the St. Thomas Mount-cum- Pallavaram Cantonment Board had started to demolish the construction being put up at the Dargah, on 30.1.2014, on the instructions of the 8th respondent. No prior notice had been issued to the petitioner, before starting of the demolition of the building.

5 It has also been stated that the 7th respondent had entered into the premises and demolished the structure, without any valid reasons for doing the same. The 11th respondent had taken away the original building plan, on the instructions of the 8th respondent. The 8th respondent had given a complaint to the police, stating that the petitioner and her son are having a bogus document, based on which the construction had been started. Therefore, the petitioner had sent a representation to the 10th respondent, dated 25.9.2013, stating that the necessary permission for the construction of the building had been granted by the office of the 7th respondent. However, the 10th respondent had refused to acknowledge the receipt of the said representation. Thereafter, the petitioner had sent a legal notice to the 10th respondent, under Section 80 of the Civil Procedure Code.

6 It had been further stated that the 8th respondent had threatened the petitioner, on 20.2.2014, with dire consequences. Further, an enquiry had also been ordered to be conducted by the Revenue Divisional Officer concerned, under Section 145 of the Criminal Procedure Code, by a proceedings, dated 4.2.2014. It had also been stated that a number of persons had put up illegal constructions, without obtaining any permission from the authorities concerned. Many commercial complexes, hotels and other buildings are being run, close to the Dargah, without

obtaining any valid license, for carrying on their business. Even though an order had been passed by this Court, on 9.11.2012, in W.P.No.25819 of 2012, directing the Chief Executive Officer of St. Thomas Mount-cum-Pallavaram Cantonment Board, to take action against the unauthorised construction, no steps had been taken by the said authority, till date. While so, the interference with the constructions, being put up by the petitioner, by the respondents concerned, is highly arbitrary and illegal in the eye of law. Hence, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

7 Detailed counter affidavits had been filed on behalf of the 5th, 7th and 8th respondents, who are the main contesting respondents in the present writ petition.

8 In the said counter affidavits, it had been stated that the claims made by the petitioner that she is the Muthavalli of the Hazarath Syed Shah Ali Masthan Chaman Shah Ali Zindey Masthan Madarsha E-Shah Ali Masthan Dargah, is false and incorrect. It had also been stated that no permission had been granted, for the construction of the room, by extending the existing structure. It had also been stated that there has been no valid building plan approval, as claimed by the petitioner, and that the said document had been forged. An enquiry had also been ordered with regard to the same.

9 Mr.G.Masilamani, the learned Senior Counsel, appearing on behalf of the main contesting respondents, had stated that the issue raised by the petitioner, in the present writ petition, pertains to the land, in St. Thomas Mount-cum-Pallavaram Cantonment Board, which is, presently, governed under the provisions of the Cantonment Act, 2006. The lands in the cantonment area are regulated, by the Cantonment Land Administration Rules, 1937. Under the said rules, the lands are classified and maintained in a register, called the General Land Register (GLR) and such lands are classified and given numbers, as General Land Register Survey numbers (GLRS).

10 It has been further stated that the lands, in GLRS No.336, is classified as A1 Defence land, having an extent of 10.96 acres. The ownership, possession and control of the said land is vested with the 9th respondent, through the 10th respondent. The land in question is required for military purposes. It has been further stated that an extent of 524 sq.ft, forming part of the larger extent of 10.96 acres, had been classified, in S.No.339/B3, as land tomb. The said land was under the control and management of the Defence Estate Officer, the 5th respondent herein. The tomb is classified as such, for religious purposes and its control is vested with the Regiment Committee of the unit. Therefore, the claim of the petitioner

that she has been the caretaker of the Dargah, in S.No.339, is contrary to the official Government of India records. As such, the writ petitioner is a rank encroacher. The writ petitioner cannot have any right or claim over the Dargah or the land in which it is situated. The construction, which the petitioner was attempting to put up, is totally illegal in nature. Therefore, the construction had been stopped and it had been removed by the authority concerned, as it was unauthorised. An appropriate action has also been initiated against the petitioner.

11 It had been further stated that the Government of India has also initiated action through the Tamil Nadu Wakf Board, claiming that the petitioner is an encroacher and that her claim that she is the Muthavalli of the Dargah is contrary and illegal in nature. In such circumstances, the management of the Dargah had been taken over by the Wakf Board and a person had been appointed for the day-to-day administration of the Dargah.

12 It had been further stated that the writ petitioner has challenged the action of the Tamil Nadu Wakf Board, before the Wakf Tribunal, at Chengalpattu, in W.O.P.No.1 of 2014, which is pending disposal. The respondents 5,7, 9 and 10 herein have also been made as parties, in W.O.P.No.1 of 2014. While rival claims had been made with regard to the rights of the various persons to administer the Dargah, as Muthavalli, it may not be appropriate for this Court to issue a Writ of Mandamus, as prayed for by the petitioner, in the present writ petition.

13 It had been further stated that the petitioner cannot be said to be an aggrieved person and that there is no legal right vested in her to be enforced, by way of a Writ of Mandamus. It had also been stated that, as per the decision of the Supreme Court, in Union of India Vs. Ibrahim Uddin and another, reported in (2012) 8 SCC 148, the General Land Register and other documents maintained by the Cantonment Board are public documents and the certified copies of the same are admissible in evidence and they would be conclusive in nature, with regard to the title of the land in question. Further, it has been held that, in a suit for declaration of title of ownership of the land against the Union of India, the burden of proof lies on the plaintiff.

14 The learned Senior Counsel had relied on the following decisions of the Supreme Court, in support of his contentions :

- (i) Chief Executive Officer Vs. Surendra Kumar Vakil and others reported in (1999) 3 SCC 555;
- (ii) Union of India and others Vs. Robert Zomawia Street reported in AIR 2014 SC 2721;
- (iii) Union of India and others Vs. Vasavi

Cooperative Housing Society Limited and others
reported in (2014) 2 SCC 269.

15 The learned Senior Counsel had also relied on a decision of the Supreme Court, in Shabi Construction Company Vs. City & Industrial Development Corporation and another, reported in (1995) 4 SCC 301, wherein it had been held that, before one can seek a Writ of Mandamus, he has to prove that he has a legally protected and judicially enforceable right.

16 He had further submitted that a person, coming before the Court of law, should come with clean hands, as held by the Supreme Court, in Manohar Lal (Dead) by LRs Vs. Ugrasen (Dead) by LRs and others, reported in (2010) 11 SCC 557.

17 Since there is no enforceable right vested in the petitioner and as there is no concomitant obligation on the part of the respondents to perform certain duties, no Writ of Mandamus could be issued, as prayed for by the petitioner, in the present writ petition. The learned Senior Counsel had also relied on a decision of this Court, in Prof.Saraswathi Govindaraj Vs. The Secretary to Government, Ministry of External Affairs, Government of India, reported in MANU/TN/2279/2013, dated 29.10.2013, in W.P.No.28656 of 2013, in support of the said contention.

18 The learned Senior Counsel had further submitted that a petition has also been filed by one Sheik Fareed, before the Wakf Tribunal, at Chengalpattu, in W.O.P.No.1 of 2015, for permitting the vehicles into the property belonging to the St. Thomas Mount-cum-Pallavaram Cantonment Board. The said petition is pending disposal, on the file of the Wakf Tribunal, Chengalpattu. Similarly, a petition filed by the petitioner, in W.O.P.No.1 of 2014, challenging the order passed by the Tamil Nadu Wakf Board, for taking over the direct management of the Dargah, is also pending disposal. A suit has also been filed by the petitioner, in O.S.No.78 of 2014, on the file of the District Munsif Court, Alandur, praying for a decree of permanent injunction against the respondents, which is also pending disposal. In such circumstances, the reliefs prayed for by the petitioner, in the present writ petition, ought not to be granted by this Court, by issuing a Writ of Mandamus. Therefore, the writ petition is liable to be dismissed.

19 In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available and in view of the decisions cited supra, it is noted that the land, in which the Hazarath Syed Shah Ali Masthan Chaman Shah Ali Zindey Masthan Madarsha E-Shah Ali Masthan Dargah is situated belongs to St. Thomas Mount-cum-Pallavaram Cantonment Board. It is also

noted that the petitioner has filed W.O.P.No.1 of 2014, challenging the order passed by the Tamil Nadu Wakf Board, for taking over the direct management of the Dargah in question, which is pending on the file of the Wakf Tribunal, at Chengalpattu. Similarly, the petition, in W.O.P.No.1 of 2015, filed by one Sheik Fareed, praying for an order permitting the entry of vehicles into the property, is also pending on the file of the said Tribunal. Further, a civil suit, in O.S.No.78 of 2014, filed by the petitioner, praying for permanent injunction against the respondents, is pending on the file of the District Munsif Court, Alandur.

20 The claim of the petitioner that the building plan had been sanctioned, by the 7th respondent, for putting up the new construction in the Dargah has been seriously disputed by the respondents. In fact, it has been stated that the alleged permission, said to have been granted by the 7th respondent, is a forged document. It has been brought to the notice of this Court that an enquiry has been ordered with regard to the same. Further, the petitioner has not been in a position to show, by way of clear evidence, that she is the legally recognised Muthavalli of the Dargah in question.

21 In such circumstances, it would not be appropriate for this Court to grant the relief, as prayed for by the petitioner, in the present writ petition. A number of issues relating to the status of the petitioner and the validity of the permission said to have been granted for putting up the additional constructions in the Dargah in question and the other such disputed issues, ought to be decided by the Wakf Tribunal concerned, in W.O.P.Nos.1 of 2014 and 1 of 2015. Further, a civil suit, in O.S.No.78 of 2014, filed by the petitioner, is also pending on the file of the District Munsif Court, Alandur, with regard to the grant of permanent injunction against the respondents herein. While so, the claims made by the petitioner, in the present writ petition, cannot be decided by this Court, especially, when they are seriously disputed by the respondents herein. It is for the Wakf Tribunal and the Civil Court concerned to decide such disputed issues, by way of evidence, both oral, as well as documentary. Further, this Court is not convinced that there is a vested right in the petitioner and a concomitant duty to be performed on the part of the respondents, for this Court to issue a Writ of Mandamus to enforce such rights.

22 In such circumstances, this Court is of the considered view that the present writ petition, filed by the petitioner, cannot be sustained. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Director General of Defence Estates,
Raksha Sampada Bhawan,
Ulaanbaatar Marg,
Delhi Cantt.-10.
- 2.The Secretary to Government,
Ministry of Defence,
Government of India,
South Block,
New Delhi-110 011.
- 3.The Principal Director,
Defence Estates,
Southern Command,
Manekji Mehta Road,
Pune-411 001.
- 4.The General Officer Commander In Chief,
Defence Estates,
Southern Command, Manekji Mehta Road,
Pune-411 001.
- 5.The Defence Estates Officer,
Madras Circle,
306, Anna Salai,
Teynampet, Chennai-600 018.
- 6.The Chief Executive Officer,
St. Thomas Mount-cum-Pallavaram Cantonment Board,
St. Thomas Mount, Chennai-600 016.
- 7.Chief Executive Officer,
St. Thomas Mount-cum-Pallavaram Cantonment Board,
Defence Quarters,
St. Thomas Mount, Chennai-600 016.

8.The Station Commander,
Fort St. George,
Chennai-9.

9.The Commandant,
Officers Training Academy,
St. Thomas Mount,
Chennai-600 016.

10.Junior Engineer,
St. Thomas Mount-cum-Pallavaram Cantonment Board,
St. Thomas Mount, Chennai-600 016.

11.The Revenue Divisional Officer,
Tambaram,
Kanchipuram District,
Tamil Nadu.

1 cc to M/s.King of Partridge, Advocage, sr.49395
1 cc to Government Pleader, sr.49836

W.P.No.5919 of 2014

rsy co
kra 22.09.2016



WEB COPY