

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.37090 of 2015
and
M.P.No.1 of 2015

R.Subramanian

... Petitioner

-Vs-

1. The Assistant Engineer (Highways)
Highways Department
Perundurai Taluk, Erode District
2. The District Collector
Erode District
3. The Tahsildar
Perundurai Taluk
Erode District

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents not to remove and demolish the petitioner's temple, shops and other structures in R.S.No.302/6 in Thingalur, Perundurai Taluk, Erode District except due process of law.

For petitioner : Mr.V.Bharathidasan

For respondents : Mr.R.Rajeswaran,
Special Government Pleader

O R D E R

Heard Mr.V.Bharathidasan, learned counsel for the petitioner and Mr.R.Rajeswaran, learned Special Government pleader for the respondents.

2. The petitioner is said to be a Trustee of Arulmighu Sri Poomanaswamy Thirukkivil, Perundurai Main Road, Thingalur, Perundurai Taluk, Erode District and he has filed this writ petition seeking a direction to the respondents not to remove

and demolish the above said temple, shops and other structures in R.S.No.302/6 in Thingalur, Perundurai Taluk, Erode District except due process of law.

3. The petitioner claims that the said temple is "Kula Deivam" Temple of families belonging to a particular community and it is a private temple and it does not come under the control of Hindu Religious and Charitable Department. The petitioner claims that the temple is about 500 years old and is situated in Survey No.302/6 measuring an extent of 0.872 hectares i.e., nearly 22 cents, which they claim to have been granted to the temple, which is a Natham land. Therefore, the petitioner would state that there is no encroachment in the Highways Property.

4. The 1st respondent has filed counter affidavit, inter alia contending that there is encroachment in the Highways Road in both sides by the local people and were evicted under Highways Act, except the temple in question, which has encroached the Highways land in Survey No.209 to an extent of 435 sq.meter and by one Kaliappa Asari S/o.Marappa Asari to an extent of 36 sq. meter. Further it is stated that they have issued a notice of eviction on 22.06.2015 in a printed format to the petitioner and it was received by the petitioner on 23.06.2015 and therefore, the contention that notice was not served on the petitioner is incorrect. Further, it is stated that the land in R.S.No.209 belongs to the Highways Department and this is clear from the revenue records maintained in the office of the 3rd respondent. Further it is stated that the respondent authorities have surveyed the area and submitted that it was found that R.S.No.209 is classified as Salai Poramboke and there is encroachment by the temple to an extent 435 sq.meters.

5. The learned counsel for the petitioner submitted that the notice which was issued by the 1st respondent is in a printed format and the notice calls upon the petitioner to remove the encroachment, but does not afford an opportunity to the petitioner to produce documents to establish that they have got a right over the property and it is not an encroachment.

6. The said submission of the learned counsel for the petitioner is correct since the copy of the notice in printed format issued on 22.06.2015 has been produced by the learned Special Government Pleader, which shows that it is a notice of eviction, but not a notice calling upon the petitioner to produce documents in their position to show their right over the property. Therefore, the petitioner should be afforded an opportunity to show that there is no encroachment in the

Highways for which purpose they can very well produce documents to show how they came into that property. That apart, the petitioner is bound to prove that the temple is an ancient temple said to have been established about 500 years ago.

7. Thus, taking note of the above and taking into account that interim order has been granted in this writ petition earlier on 01.12.2015 and the Highways work has been stalled, a direction is issued to the respondents to issue notice to the petitioner calling upon him to produce documents to prove their stand. On such production of documents, the 1st respondent shall enquire into the matter in the presence of revenue officials from the office of the 3rd respondent and peruse the documents produced by the petitioner as well as revenue records and pass a reasoned order on merits and in accordance with law. The above direction shall be complied with within a period of 8 weeks from the date of receipt of a copy of this order.

8. The Writ Petition is disposed of accordingly. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Assistant Engineer (Highways)
Highways Department
Perundurai Taluk, Erode District

2. The District Collector
Erode District

3. The Tahsildar
Perundurai Taluk
Erode District

+1cc to M/s.P.T.Ramadevi, Advocate, S.R.No.8744

W.P.No.37090 of 2015

CTK(CO)
CA(19/02/2016)