

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.Nos.39135 of 2015 and 1208 of 2016
and
W.M.P.No.939 of 2016

Porur Krishna Nagar Makkal Nala Sangam,
Regd. No.333/2009,
represented by its President,
No.3, 2nd Cross Street,
Krishna Nagar,
Chennai-600 116.

.. Petitioner in W.P.No.39135 of 2015

J.Jayabalan

.. Petitioner in W.P.No.1208 of 2016

Vs.

1.The Executive Officer,
Porur Panchayat, Porur.

2.The Tahsildar,
Ambathur Taluk,
Ambathur, Thiruvallur District.

3.The Zonal Officer,
Zone 11,
Chennai Corporation,
Valasaravakkam, Chennai-87.

4.The Executive Engineer,
Tamil Nadu Electricity Board,
Porur, Chennai-116.

5.D.Selvaraj

6.J.Jayabal. .. Respondents in W.P.No.39135 of 2015

1.The Chennai Corporation,
Zone 11 Chennai Corporation,
Valasaravakkam, Chennai-87.

2.The Executive Officer,
Porur Town Panchayat,
Porur.

3.Porur Krishna Nagar Makkal Nala Sangam,
Regd. No.333/09,
represented by its President,
No.3, 2nd Cross Street,
Krishna Nagar,
Porur, Chennai-116. ... Respondents in W.P.No.1208 of 2016

W.P.No.39135 of 2015 is preferred under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, seeking direction to respondents 1 to 4 to take action against the encroachment in the corner of 3rd street, Junction at Krishna Nagar, Porur as per the order of the third respondent in Ma.Aa.11 Na.Ka.No.A2/6193/2013 dated 4.9.2013 and notice No.Zone-XI U-34/C.No./2013 dated 28.11.2013.

W.P.No.1208 of 2016 is preferred under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, forbearing the respondents 1 and 2 from interfering with or demolishing the temple in S.F.No.328/1A/A1 as a part of the private house at Krishna Nagar, Porur, Chennai-116 in view of the order of this court in W.P.No.17649 of 2010 and M.P.No.1/09 dated 22.1.2010 and also in Review Application No.43/11 dated 30.3.2011.

For Petitioners : Mr.A.Arulmozhi in W.P.No.39135
of 2015

Ms.R.Suchitra for M/s.M.Srividhya
in W.P.No.1208 of 2016

For Respondents : Mr.P.S.Sivashanmugasundaram,
Spl.G.P for RR1 & 2 in WP.No.39135/15
Mr.K.Soundararajan for R-3
in W.P.No.39135 of 2015
for R-1 in W.P.No.1208 of 2016
Mr.S.K.Rameshwar for R-4
in W.P.No.39135 of 2015

Ms.R.Suchitra
for M/s.M.Srividhya for RR5 and 6
in W.P.No.39135 of 2015
Mr.A.Arulmozhi for RR2 and 3
in W.P.No.1208 of 2016

COMMON ORDER

(The Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Seeking a direction against the official respondents 1 to 4 for removal of the alleged encroachment in the corner of the 3rd street, Junction at Krishna Nagar, Porur, the writ petition, being W.P.No.39135 of 2015, is filed.

2 Another writ petition, being W.P.No.1208 of 2016, is filed by the 6th respondent in W.P.No.39135 of 2015, the alleged encroacher, seeking forbearance against the official respondents from demolition of the temple.

3 The grievance of the petitioner Association is that despite notice dated 28th November, 2013 issued under the provisions of Section 220 read with Section 222 of the Chennai City Municipal Corporation Act, 1919 to the Vinayagar temple, in question, managed by the 5th and 6th respondents, no consequential action was taken thereafter for removal of the encroachment.

4 Pursuant to the notice, the third respondent-Zonal Officer, Zone-XI of Corporation of Chennai has filed a counter affidavit dated 22nd January, 2016. It was stated therein that the sixth respondent had erected temporary barricade and shelter. After the issuance of notice dated 28th November 2013, he had removed the same and restored it to its original position. It was further observed that no further action could be taken on account of the order passed by this court in W.P.No.17649 of 2009 [Porur Krishna Nagar Makkal Nala Sangam Vs. The District Collector, Tiruvallur and others] dated 22nd January, 2010.

5 The said counter affidavit was strongly contested by the learned counsel for the petitioner in W.P.No.39135 of 2015. Accordingly, by order dated 28th January, 2016, Mr.Naveen Kumar Murthi, Advocate was appointed as the Court Commissioner to visit the site in presence of all concerned and to submit a report. Accordingly, Mr.Naveen Kumar Murthi has submitted a report, dated 22nd February, 2016, stating as under :

"10.It is submitted that considering the fact that a number of visitors visit the temple for prayers every day and that the temple has been there for the past 8 years, and also that a considerable number of the Krishna Nagar residents particularly the ones residing in the street where the temple is situated are not objecting the temple, but are stating that the Grill and the

extended portion must be demolished. There also appears to be some personal animosity between the two groups of persons who are for and against the continuance of the temple. The fact that the temple is situated in the road maintained by the Corporation is undisputed."

6 While disposing of the petition in W.P.No.17649 of 2009, it was observed that the report then submitted did not show any encroachment causing any hindrance to the public as well as to the traffic as the Vinayagar Temple is located in between a house and an electric pillar on its left side, without causing disturbance to anybody. The aforesaid observation of the court in W.P.No.17649 of 2009 was made at that relevant point of time, but it does not grant any immunity to the temple authorities from extending the portion by way of encroachment and also causing nuisance, in future.

7 It is stated in the report of the learned Court Commissioner that a portion has been extended and grill has been installed, which is not as per the permission and within the limit and is causing nuisance to the public.

8 At this stage, the learned counsel appearing for the respondents 5 and 6 fairly submits that some time may be granted to remove the unauthorised extended portion and also the grill. The 5th and 6th respondents undertake to remove the same within a period of two weeks. Thus, it is ordered accordingly. The Zonal Officer, Zone-XI, Corporation of Chennai is directed to cause site inspection after completion of two weeks. If it is found that the extended unauthorised portion and the grill are removed, nothing further requires to be done. In default, the Zonal Officer is competent to remove the same and restore the building to its original plan.

9 At the time of appointment of the Court Commissioner, a sum of Rs.25,000/- was granted as honorarium, which was paid by the petitioner Sangam, as costs. It is submitted that the Court Commissioner has made further expenses of Rs.5000/- in addition to the honorarium. Having regard to the nature of job involved and also the dedication shown by the learned Court Commissioner, we are of the view that further sum of Rs.10,000/- (Rupees ten thousand only), including expenses, is payable to the Court Commissioner by the Zonal Officer, Zone XI, Corporation of Chennai, who has not come up with the earlier affidavit fairly as it was reported that all barricade and encroachments were removed. Thus, the said Zonal Officer is directed to make payment of Rs.10,000/-, as aforesaid, to the Court Commissioner within a period of four weeks from the date of receipt of copy of this order, which shall not be charged on the public account and file a receipt thereon.

10 With the aforesaid observations and directions, both writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Executive Officer,
Porur Panchayat, Porur.
- 2.The Tahsildar,
Ambathur Taluk,
Ambathur, Thiruvallur District.
- 3.The Zonal Officer,
Zone 11,
Chennai Corporation,
Valasaravakkam, Chennai-87.
- 4.The Executive Engineer,
Tamil Nadu Electricity Board,
Porur, Chennai-116.

+1cc to the Government Pleader, S.R.No.12734
+1cc to Mr.A.Arulmozhi, Advocate, S.R.No.12133
+1cc to Mr.r.Arunmozhi, Advocate, S.R.No.12093
+1cc to Mr.S.K.Rameshuwar, Advocate Sr.12126

W.P.Nos.39135 of 2015
and 1208 of 2016

kji(CO)
srg(10/03/2016)

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