

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2016

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.28043 of 2016

And

W.M.P.No.24196 of 2016

G.Namachivayam

... Petitioner

Vs.

- 1 The Revenue Divisional Officer,
Namakkal,
Namakkal District.
- 2 The Tahsildar,
Sendamangalam Taluk,
Namakkal District.
- 3 The Sub Registrar
Erumaipatti Sub Registrar Office,
Erumaipatti,
Namakkal District.
- 4 The Executive Officer
A/m.Varadharajaperumal Thirukoil,
Pavithram,
Sendamangalam Taluk,
Namakkal District.

5 S.Sakthivel

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus calling for the records relating to impugned order dated 05.08.2016 made in Na.Ka.No.2146/206/A6 passed by the 1st respondent, quash the same and consequently forbear the respondents from interfering with the petitioner's right, title and possession over an extent of 66 1/2 cents comprised in Natham New S.No.461/7A1 (Old S.No.136/3 Part), Pavithram Village, Sendamangalam Taluk, Namakkal District.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.R.Govindasamy for R1 to R3
Special Government Pleader
Mr.M.Maharaja for R4
Special Government Pleader (HR & CE)

O R D E R

By consent, the writ petition is taken up for final disposal.

2.One S.Sakthivel had filed W.P.No.34640 of 2015 against the Joint Commissioner, HR & CE, Salem and six others, praying for issuance of Writ of Mandamus directing the first respondent therein to make necessary corrections and rectify the errors and defects in the Revenue records and consequently, pass final orders based on his representation dated 01.10.2015, in favour of the seventh respondent namely, Arulmighu Varadharajaperumal Thirukoil, Pavithram, Sendamangalam Taluk, Namakkal District in respect of the Temple lands comprised in Old S.F.No.136/1, new Nos.461/1 to 461/14 admeasuring to an extent of 97 cents within a reasonable time fixed by this Court by taking into consideration, the report of the third respondent therein, dated 08.10.2012 and pass appropriate orders and this Court vide, order dated 29.10.2015, disposed of the writ petition by directing the respondents to pass orders on the representation of the petitioner, dated 01.10.2015 and take appropriate action, in accordance with law, by invoking Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, if there is any encroachment within a stipulated time frame.

3.Accordingly, the Revenue Divisional Officer, Namakkal/ first respondent herein, took up the matter and after putting the petitioner on notice, has passed the impugned order dated 05.08.2016, ordering deletion of the name of the petitioner in the records of the land and further, to enter the name of the said Temple and also ordered cancellation of all the documents with further direction, directing the concerned authority to initiate action under Section 78 of the said Act and challenging the legality of the said order, the present writ petition is filed.

4.Mr.N.Manokaran, learned counsel appearing for the petitioner, has drawn the attention of this Court to the impugned order and would submit that this Court in the order passed in W.P.No.34640 of 2015 has directed the first respondent herein to consider the question of removal of encroachment, but the said official has exceeded his jurisdiction and assumed the role of a Civil Court and given a finding and would submit that in the light of the voluminous documents, such a finding cannot be recorded and prays for interference.

5.Per contra, Mr.R.Govindasamy, learned Special Government Pleader who accepts notice on behalf of the respondents 1 to 3 would contend that even in the impugned order, the petitioner was informed about the availability of the effective alternative remedy in the form of appeal before the District Revenue Officer, Namakkal and therefore, he could avail the same and would further add that since factual disputes are also involved, this Court may not interfere with the impugned order, in exercise of its discretionary power under Article 226 of the Constitution of India and prays for dismissal of the writ petition.

6.This Court also heard the submissions of Mr.M.Maharaja, learned Special Government Pleader (HR & CE) who accepts notice on behalf of the fourth respondent.

7.A perusal of the impugned order coupled with the materials placed before this Court in the typed set of documents, would disclose that the matter involves adjudication as to documents and facts and in the light of the effective alternative remedy made available to the petitioner, this Court is of the considered view that the writ petition is not maintainable for the present.

8.However, the petitioner is at liberty to file an appeal before the District Revenue Officer, Namakkal, within the time stipulated along with the application for stay and if the papers are otherwise in order, the said Official is directed to entertain the appeal papers and take up the petition for stay first and give a disposal, in accordance with law, after providing an opportunity of personal hearing to the petitioner or to his authorized representative, within a period of two weeks from the date of filing of the said stay petition. It is further made clear that till the appeal time is over, the concerned official respondent need not take any precipitative action in terms of the impugned order.

9.The writ petition is dismissed subject to the above observations. No costs. Consequently, the connected miscellaneous petition is also closed.
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-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

- 1 The Revenue Divisional Officer,
Namakkal,
Namakkal District.
- 2 The Tahsildar,
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- 3 The Sub Registrar
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A/m.Varadharajaperumal Thirukoil,
Pavithram,
Sendamangalam Taluk,
Namakkal District.
- 5 The District Revenue Officer,
Namakkal.

Copy To: Despatch Section, C.O.Department, High Court, Madras.

+ 1 cc to Mr.N.Manokaran Advocate SR 46026

+ 2 ccs to Govt.Pleader SR 46243, 46102.

mg(co)
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