

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:30.11.2016

CORAM

The Honourable MR. JUSTICE N.KIRUBAKARAN

W.P.No.34202 of 2016
and W.M.P.No.29506 of 2016

Arulmigu Karattu Perumal Koil Trust [Petitioner]
Rep by its Secretary R.Sampath
RSP Building 464 Dharapuram Road
Perichampalayam Tirupur-641 608

Vs

- 1 The Director/Commissioner of
Town and Country Planning
807 Anna Salai
Chennai-600 002
 - 2 The Member-Secretary
Tiruppur Local Planning Authority
No.377 Kamarajar Salai Tirupur-4
 - 3 The Commissioner
Tiruppur Corporation Tiruppur
 - 4 The Executive Engineer
Tamil Nadu Slum Clearance Board Coimbatore
Special Division No.938-E Raj Chambers
Thadagam Road R.S.Puram Coimbatore
- [Respondents]

Writ Petition 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 stop the construction work by the 4th
respondent in S.No. 429 and 437 of Veerapandi Village Tiruppur Taluk
and District pursuant to the petitioner representation dated
11.08.2016 as well as the proceedings of the 2nd respondent dated
22.09.2016

For Petitioner : Mr.I.Nishar

For Respondents : Mr.T.M.Pappiah, SGP (R1&2)
Ms.P.Shanthi (R3)
Mr.K.Venkataramani, AAG
Assisted by Mr.S.Prabhu (R4)

ORDER

The petitioner has come before this Court seeking a writ of mandamus directing the respondents 1 to 3 to stop the construction work by the 4th respondent in the lands comprised in S.No. 429 and 437 of Veerapandi Village, Tiruppur Taluk, pursuant to the petitioner's representation dated 11.08.2016 as well as the proceedings of the 2nd respondent dated 22.09.2016.

2. It is the case of the petitioner that as per the Settlement Record dated 24.05.1979, the lands comprised in Survey Nos.429 and 437 of Veerapandi Village, Tiruppur Taluk is a karadu poramboke and a temple is situated in the said place. The said land is located in a hillock near Karattu Perumal Koil and there is a water body nearby. However, the 4th respondent, without getting any permission from any authorities, is indulging in constructing activities in the aforesaid properties, encroaching upon the water body. In this regard, the petitioner made a representation on 11.08.2016, to the 1st and 2nd respondents. By proceedings dated 24.08.2016, the 1st respondent referred the petitioner's representation to the 2nd respondent, who, in turn, directed the 3rd respondent to take appropriate action against the 4th respondent. Since no action has been taken, the petitioner is before this Court.

3. The learned Additional Advocate General, appearing for the 4th respondent would submit that it is a poramboke land, and after getting permission from the District Collector on 14.07.2014, construction has been done and there was no encroachment of water body.

4. Since there were rival contentions with regard to the existence of water body and the encroachment over the water body, this Court appointed an Advocate Commissioner to inspect the properties. The Advocate Commissioner filed a report dated 17.11.2016 stating that there is a Water Channel running from south to west in survey No.429/1 and the Water Channel borders the temple on both southern side as well as western side. The Water Channel is situated at a distance of 16.4 meters from the new construction site. Further, the temple and the new construction are situate adjacently in old survey number 429 which was later sub divided into new survey numbers 429/2 and 429/1 respectively. The distance between the temple and the new construction is on North 31.9 meters and on East 48.1 meters.

5. From the Advocate Commissioner's report dated 17.11.2016, it is very clear that even though the Water Channel runs, there is no construction by encroaching upon the Water Channel and the new construction is away from the temple. That apart, the respondent also obtained permission from the District Collector and as per the permission only new constructions have come up. Therefore, the allegations made by the petitioner do not find any support as the construction made by the 4th respondent is purely in accordance with

law.

6. That apart, an affidavit has also been filed by the 4th respondent stating that no construction or road will be executed over the water way. Paragraph 2 of the said affidavit reads as follows:-

"2. I further submit that there is a Nilavial Neerpathai runs from south to west along the portion of Southern Boundary of the land portion in SF No.429/1 to a length of 100 meters. Initially, a road has been proposed along the Nilavial Neerpathai by the Tamil Nadu Slum Clearance Board. As per the directions of the Hon'ble Court, any construction or road will not be executed over the said Nilavial Neerpathai".

7. In view of the above, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To

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+1 cc to MR.S.PRABHU Advocate SR.NO. 70885
+1 cc to MR.I.NISHAR Advocate SR.NO. 71082
+1 cc to Government Pleader SR.NO. 71245
ad[co]
RD 28/12/2016