

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.552 of 2016

and

W.M.P.No.388 of 2016 & W.M.P.No.4926 of 2016

V.Kesavan

... Petitioner

Vs.

- 1.The Executive Engineer,
Tamil Nadu Water and Drainage Board,
Rural Water Scheme (RWS),
Salem, Salem District.
- 2.The Assistant Executive Engineer,
Tamil Nadu Water and Drainage Board,
Rural Water Scheme (RWS),
Camp at Veerakkal,
Mettur Taluk,
Salem District.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Salem-1.
- 4.Fit Person/Executive Officer
at Arulmigu Kottai Alagirinatha Perumal Temple,
Salem.
- 5.The State of Tamil Nadu
rep. by its Secretary to Government,
Hindu Religious and Endowment Department,
Secretariat,
Chennai-600 009.
- 6.The Commissioner,
Hindu Religious and Endowment Department (HR & CE),
Nungambakkam High Road,
Nungambakkam,
Chennai-600 035.

... Respondents

(R5 & R6 were impleaded as per the
order in WMP No.8054/2016 in
W.P.No.552/2016 dated 14.3.2016)

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents and their subordinates from interfering in any manner or any water project in the temple land in S.No.37/3 of Veerakkal Village, Mettur Taluk, Salem District without following due process of law established under the law in force viz., under Land Acquisition Act or Section 34 of the HR & CE Act.

For Petitioner : Mr.M.R.Jothimanian

For respondents : Mrs.S.Tamizharasi (For R1 & R2)
Mr.K.V.Dhanapalan, AGP (For R3 & R4)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, forbearing the respondents and their subordinates from interfering in any manner or any water project in the temple land in S.No.37/3 of veerakkal Village, Mettur Taluk, Salem District, without following due process of law.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.Arulmigu Vijayaraghava Perumal Temple is situated at Veerakkal Village, Mettur Taluk, Salem District, which is an ancient temple in the said locality. The said locality people are worshipping the deity of Arulmigu Vijayaraghava Perumal Temple, which is exclusively for the people of Veerakkal Village. The said temple is having agriculture land in S.Nos.37/3 and 90/5 in Veerakkal Village, Mettur Taluk, Salem District. The said temple is private temple and also non-listed temple under the HR & CE Department. The temple land has been leased out to the Archagar for maintaining the temple and also doing daily poojas as per the customary practice of the said temple.

2-2.Originally, the said temple's land has been leased out to the petitioner's father viz., Venkatachala Iyer and he was cultivating the same for the welfare of the temple and its administration. After demise of his father, the petitioner and his brother viz., V.Prabu are jointly doing the daily poojas as per the Hindu rituals after getting advice from the elders of the village and other persons belong to the said temple and also cultivating the said land. The temple land in S.No.37/3 totally measuring to an extent of 3.5 acres is under the control of the petitioner and the same is being cultivated by him without any disturbance from anyone.

2-3. While so, during the month of October, 2015, the officials of the respondents 1 & 2 came to the temple land and surveyed the land for constructing a water plant under the Rural Water Scheme (RWS) of the 1st respondent. The said action of the officials are totally shocking and surprising to the petitioner. According to the petitioner, the subject land belongs to the temple. The petitioner has paid the revenue tax to the authority concerned on behalf of the temple. But, the survey of the said land and interference to the temple land are depriving the rights of the temple and the petitioner. As the Dharmakarthha of the said temple, the petitioner has duty to protect the temple land. The petitioner is managing the day-to-day affairs of the temple administration. The petitioner was informed by the respondents that funds have been allotted by the Government for construction of water plant under the Rural Water Scheme (RWS). The entire 3.5 acres has been surveyed and is going to be taken over for the project by the water board without following due process of law. According to the petitioner, no permission was obtained from the HR & CE Department under Section 34 of the HR & CE Act, for carrying out the said project in the temple land. Further, there are several poramboke lands available in the Veerakkal Village, but, the respondents 1 & 2 have decided to utilize the temple land for their project; therefore, the action of the respondents is totally illegal and against the right of the temple to hold the property for its better administration.

2-4. On 15.10.2015, the petitioner made a representation to the respondents opposing the said construction of water plant in the temple land. Pursuant to his representation dated 15.10.2015, the 3rd respondent has directed the 4th respondent to inspect the temple land and to submit detailed report. But, no further action was taken by the 4th respondent herein and the same is pending without any further progress or reply.

2-5. While so, on 05.11.2015, the officials of the 2nd respondent came to the temple land and laid the foundation to construct the water plant in temple land in S.No.37/3 without following the mandatory procedures under the Land Acquisition Act or Section 34 of HR & CE Act. Hence, the petitioner has come forward with the present writ petition before this Court.

3. When the matter came up on 07.01.2016, this Court has granted an interim order of status quo.

4. The respondents 1 & 2 have filed a petition in W.M.P.No.4926 of 2016 praying to vacate the interim order of status quo, contending inter alia that the petitioner has no locus standi to file the preset writ petition, since as per the proceedings No.3840/2006/A2 dated 25.07.2006 issued by the

Assistant Commissioner / HR & CE Department / Salem, the subject temple comes under 49(i) schedule and the Thakkar is Executive Officer / Arulmigu Meenakshi Sundereswarar Thirukoil/ Mettur Taluk. The land bearing S.F.No.37/3, having an area of 1.31.0 hectares, belongs to the temple and it is in the name of the Deity Vijayaragava Perumal Thirukoil, Veerakkal and it belongs to HR & CE Department. The petitioner is neither an Archagar nor Dharmakarthha and he is no way associated with the said land. Further, the scheme of combined Drinking Water Supply Scheme to 698 Rural Habitations and 6 town panchayats in Mechari and Nagavalli Unions in Salem District was administratively sanctioned vide G.O.Ms.No.57 MAWS/(WS 4)/dated 14.05.2014 for Rs.158.64 crores. All the survey works were completed and Detailed Project Report was submitted during the year 2014 itself to the TWAD Board for scrutiny and approval by fixing Veerakkal Temple land as the Treatment Site. It is also stated that no other poromboke land is available in Veerakal Panchayat at the designed elevation of 320.25 m. Thus, they sought for dismissal of the writ petition.

5.The respondents 3 & 4 / HR & CE Depart, have also filed a counter contending, inter alia, that the subject temple is under the administrative and supervisory control of the the Tamil Nadu Hindu Religious and Charitable Endowments Administration Department, as per the provisions of the HR & CR Act. The Deity of the said Vijayaraghavaperumal Temple owns landed properties in Survey Nos.37/3 and 90/5 at Veerakkal Village, Mettur Taluk, Salem District and the Patta also stands in the name of the Deity. As there was no regular Trustees, the Executive Officer of Arulmigu Meenakshi Sundareswarar Temple, Mettur was appointed as the Fit Person to discharge the duties and perform the function of a trustee vide Proc.Rc.No.3840/2006 B.2 dated 25.07.2006 issued by the 3rd respondent and the Fit Person had already taken charge and has been functioning as such. The Tamil Nadu Water Supply and Drainage Board Rural Water Supply Division, Salem has under taken a scheme to provide combined drinking water supply to 698 Rules habitations and 6 Town Panchayats in Mecheri and Nagavalli Unions in Salem District and for that scheme, it is proposed to construct a water treatment plant in the temple land admeasuring 1.31.0 hectares covered by S.F.No.37/3 and sent a proposal in C.No.698/A.1/2015 dated 07.12.2015 to the 3rd respondent expressing their willingness to purchase the said land at the rates specified by the Department as per the provisions of the HR & CE Act. Similar proposal has also been forwarded by the Fit Person of the temple dated 31.2.2015 to the 3rd respondent who has also requested the District Revenue Officer, Salem to inform the prevailing market value of the property in his office Rc.No.4399/2015 C.2 dated 18.01.2016 and the proposal to seek appropriate sanction of the Government/Commissioner under Section 34 of the HR & CE Act is pending consideration with the

3rd respondent. It is further stated by the respondents 3 & 4 that first of all, the petitioner is not a person in the administration of the temple as alleged by him. The 4th respondent was appointed by the HR & CE Department as Fit Person under Section 49 of the Act and he is the person in administration of the temple. The petitioner is also not having any authority to lease out the property belonging to the temple and the petitioner is also not a lease holder of the temple land. The petitioner has filed the present writ petition with a malafide intention for his personal gain. Thus, the respondents 2 & 3 sought for dismissal of the writ petition.

6.Today, when the matter is taken up for consideration, the learned counsel for the petitioner submitted that without obtaining any permission from the HR & CE Department under Section 34 of the HR & CE Act, the respondents 1 & 2 cannot construct the water plant in the temple land.

7.But, the learned Additional Government Pleader appearing for the HR & CE Department submitted that as on date, the proposal is pending with the Commissioner of HR & CE, under Section 34 of the Act; during the pendency of consideration of the said proposal, the 3rd respondent will not allow the respondents 1 & 2 to construct the water plant in the temple land.

8.In view of the above submission made by the learned Additional Government Pleader, this Court is of the view that there is no need to give any specific direction to the respondents as sought for by the petitioner in the writ petition.

9.Hence, recording the submission made by the learned Additional Government Pleader, the writ petition is closed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Executive Engineer,
Tamil Nadu Water and Drainage Board,
Rural Water Scheme (RWS),
Salem, Salem District.

2.The Assistant Executive Engineer,
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at Arulmigu Kottai Alagirinatha Perumal Temple,
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5.The Secretary to Government,
Government of Tamil Nadu,
Hindu Religious and Endowment Department,
Secretariat,
Chennai-600 009.

6.The Commissioner,
Hindu Religious and Endowment Department (HR & CE),
Nungambakkam High Road,
Nungambakkam,
Chennai-600 035.

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.16280
+1cc to Mrs.S.Thamizharasi, Advocate, S.R.No.16170
+1cc to the Government Pleader, S.R.No.16664

W.P.No.552 of 2016
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W.M.P.No.4926 of 2016

bvr (CO)
srg (04/04/2016)

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