

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 29.08.2017

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.4783 of 2017

Arulmigu Pazhandiamman Thirukoil
Rep. by its Hereditary Trustee
A.T.Subbarayan
No.1, Pazhandiamman Thirukoil Street,
Adambakkam, Chennai - 600 088. Petitioner

.. Vs ..

1. The Collector,
Kancheepuram District,
Collectorate, Kancheepuram.
2. The Revenue Divisional Officer,
Tambaram Taluk, GST Road,
Tambaram, Chennai.
3. The Tahsildar,
Alandur Taluk, I Main Road,
Nanganallur, Chennai - 600 061.
4. R.V.Arulrajan @ R.V.Arul Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the third respondent to forthwith evict the 4th respondent from the property in Survey No.109/2, T.S.Nos.3 to 8 of Adambakkam Village, Alandur Taluk, Kancheepuram District, measuring an extent of 10.5 ares (26.05 cents).

For Petitioner : Mr.S.R.Rajagopal
for Mr.T.S.Vijaya Raghavan

For Respondents: Mr.P.Sanjay Gandhi
Addl.Govt.Pleader for R1 to R3
No appearance for R4

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN,J.)

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

2. Mr.P.Sanjay Gandhi, learned Additional Government Pleader appears on behalf of respondents 1 to 3. Private Notice ordered by this Court was served on the respondent on 22.07.2017 and an affidavit of service has been filed vide USSR No.11779 dated 28.07.2017. The name of the 4th respondent also appears in the cause list. There is no representation on his behalf.

3. A perusal of the materials placed before this Court in the form of affidavit and typed set of documents would reveal the following facts:-

Arulmigu Pazhandiamman is the presiding deity of the temple, which is situated near St.Thomas Railway Station. The temple is a village temple and its origin is lost in antiquity. The deponent of the affidavit claims to be the Hereditary Trustee of the temple. The said temple is situate in the adjoining areas belonging to the temple, measuring a total extent of 10.5 ares or 25.94 cents (11297.29 sq.ft) and it has been classified as "Temple Poramboke" in the revenue records. The lands are situate in Ward-G, Block 12 of the Adambakkam Village and are comprised in Survey Nos.109-2 Part, T.S.Nos.3 to 8.

4. The petitioner would state that there was a rival claim to the property belonging to the temple by Sri Kunrakkudi Tiruvannamalai Mutt and the said claim has been negatived vide proceedings of the Settlement Tahsildar, Chingleput, dated 15.05.1973 in S.R.No.24-B1/73/GR/SDT/Act 30/63. It is the categorical case of the petitioner that certain people, including the 4th respondent had encroached the lands ad measuring 10 cents by putting up bunk shops and thatched sheds.

5. When attempts were made to evict, the 4th respondent filed two suits in O.S.No.135 of 2006 and O.S.No.377 of 2007 for declaration and for consequential injunction and both suits were dismissed. Challenging the same, he filed appeals in A.S.Nos.13 and 14 of 2009 and the Appellate Court, viz., Principal District Court, Chengelpet, vide judgment and decree dated 29.11.2010 dismissed both the appeals. The 4th respondent made a challenge by filing S.A.Nos.410 and 411 of 2011 and vide judgment and decree dated 25.07.2011, this Court has dismissed the second appeals. The Review Petition was also dismissed on 06.08.2014.

6. This Court, while dismissing the second appeals directed the concerned authority to evict the 4th respondent by following due process of law and accordingly, the third respondent has evicted him on 04.01.2012 and handed over the said land to the Temple Authorities.

7. The 4th respondent, thereafter, filed a writ petition in W.P.No.305 of 2012 against the official respondents alone without impleading the Temple as a party, praying for issuance of a Writ of Mandamus, to forbear the respondents from interfering with his peaceful possession and enjoyment of the property situated in S.Nos.109/1 and 2, Paimash No.912 (Part) Ward "G", T.S.No.3, Block 12, admeasuring to an extent of 2828 sq.ft in Pazandi Amman Koil Street, Adambakkam Village, Tambaram Taluk, Kancheepuram District. This Court, after taking note of the submissions made by the 4th respondent that a portion of the property has already been demolished has directed the Government Advocate to instruct the concerned officers not to demolish the building immediately, vide order dated 05.01.2012. Thereafter, in M.P.No.1 of 2012 in W.P.No.305 of 2012, this Court, by order dated 06.01.2012 has granted interim injunction. Subsequently, the writ petition was dismissed by a detailed order dated 16.07.2012. Thereafter, the 4th respondent preferred writ appeal in W.A.No.1668 of 2012 and the same was dismissed, by judgment dated 02.08.2012.

8. The 4th respondent also filed Revision Petition under Section 10(A) of Tamil Nadu Land Encroachment Act, 1905. The Revisional Authority, viz., the Revenue Department of Government of Tamil Nadu, vide G.O.(Ms)No.155 Revenue Department, dated 30.05.2013 has dismissed the Revision Petition by holding that he has encroached the Government Poramboke land, which is mentioned as Arulmigu Pazhandi Amman Kovil in Village Records and not Gramantham and that he has not provided any valid reasons nor submitted any documents before the Government for consideration.

9. The 4th respondent suppressing the earlier orders filed a suit in O.S.No.547 of 2013 against the deponent of the affidavit in his individual capacity as well as against the Tahsildar, praying for permanent injunction restraining the defendants 1 and 2 from in any manner interfering with his peaceful possession and enjoyment of the above said property and pending disposal of the suit filed I.A.No.1179 of 2013, praying for an order of ad interim injunction. Initially, interim order was granted on 26.06.2013. The temple has also filed counter affidavit.

10. Thereafter, the petitioner/Temple filed a writ petition in W.P.No.28608 of 2013 against the Revenue Divisional Officer, Tambaram Taluk, the Tahsildar, Alandur Taluk and the 4th

respondent herein, praying for issuance of a writ of mandamus, directing the respondents 1 and 2 to evict the 3rd respondent/4th respondent herein from the lands comprised in S.No.109/2, T.S.Nos.3 to 8 of Adambakkam Village. A Division Bench of this Court, vide order dated 11.11.2013 has permitted the Temple to submit a representation to the respondents 1 and 2 with a further direction to consider the same in accordance with law.

11. Accordingly, the petitioner/Temple has submitted a representation, dated 28.11.2013 to the respondents 1 and 2. The Revenue Divisional Officer, Tambaram, vide proceedings dated 13.03.2014 has dismissed the representation, in view of the pendency of the suit in O.S.No.547 of 2013 and the subsistence of the interim order.

12. The petitioner/Temple made a challenge to the said order dated 13.03.2014 by filing a writ petition in W.P.No.17987 of 2014 and the said writ petition was dismissed vide order dated 14.10.2014 and to review the same, the petitioner filed Review Application 301 of 2014 and it was also dismissed on 03.12.2014. The petitioner/Temple had filed Special Leave Petition before the Hon'ble Supreme Court in SLP Nos.1176 and 1177 of 2016, challenging the order dismissing the writ petition as well as the review application and those petitions were dismissed on 29.01.2016.

13. While so, the interim order obtained by the 4th respondent in I.A.No.1179 of 2016 in O.S.No.547 of 2013 was vacated and IA was dismissed by the learned Principal District Munsif, Alandur, vide fair and decreetal order 20.11.2015. Thereafter, the 4th respondent filed C.M.A.No.16 of 2015 before the Sub-Court, Tambaram and according to the learned counsel for the petitioner, there is no interim order in operation.

14. Mr.S.R.Rajagopal, learned counsel for the petitioner has drawn the attention of this Court to the voluminous typed set of documents and would submit that at each and every stage, the 4th respondent has successfully stalled the proceedings by abusing the process of law. He would further submit that ultimately, the interim order obtained by him in I.A.No.1179 of 2013 in O.S.No.547 of 2013 has also been vacated on 20.11.2015. In the light of the same, there cannot be any impediment on the part of the respondents 1 to 3 to evict the 4th respondent and hand over possession of the property. It is also submitted by the learned counsel that the difficulty faced by the Revenue Divisional Officer, Tambaram, indicated in his proceedings dated 13.03.2014 will no longer subsist for the reason that the interim order granted in I.A.No.1179 of 2013 in n O.S.No.547 of 2013 in favour of the 4th respondent has been vacated and hence, prayed for appropriate relief.

15. Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader, appearing for the respondents 1 to 3 has invited the attention of the Court to the counter affidavit filed by the third respondent and would submit that in the light of the dismissal of the writ petition in W.P.No.17987 of 2014, in and by which, challenge has been made to the order of the Revenue Divisional Officer dated 13.03.2014 has become final, the remedy open to the petitioner Temple is to avail further appeal remedy. The learned Additional Government Pleader would further submit that in the light of the pendency of O.S.Nos.177 of 2012 and 547 of 2013 and subsistence of the interim order in the form of ex parte decree, they are unable to proceed further.

16. In response to the said statement, the learned counsel for the petitioner would submit that on an application filed by the defendants/official respondents herein, the ex parte order of permanent injunction has been set aside in O.S.No.177 of 2012 and no interim order is in operation. Ultimately, the interim order granted in O.S.No.547 of 2013 has been vacated and the challenge made by the 4th respondent in the form of Civil Miscellaneous Appeal is pending before the Court of Sub-ordinate Judge, Tambaram and in that appeal also, there is no interim order and as such, there cannot be any impediment on the part of the official respondents to vacate the 4th respondent and hand over the possession of the property.

17. This Court has considered the rival submissions made on either side and perused the materials placed before it.

18. A perusal of the materials placed before this Court would reveal that the 4th respondent has abused the process of law. It is also pertinent to point out at this juncture that after he was evicted, armed with the interim order dated 05.01.2012 in M.P.No.1 of 2012 in W.P.No.305 of 2012, he came back into possession. Ultimately, the said writ petition was dismissed on 16.07.2012 by a detailed order. The learned Judge of this Court has also taken note of the findings recorded by this Court in the common judgment, dated 25.07.2011 in S.A.Nos.410 and 411 of 2011. The writ appeal filed by the 4th respondent challenging the order passed in W.P.No.305 of 2012 was also dismissed on 02.08.2012. Therefore, the findings recorded by the learned Judge became final. The revision filed by the 4th respondent under the provisions of Tamil Nadu Land Encroachment Act was also dismissed by the Revenue Department of the Government of Tamil Nadu vide G.O(Ms) No.155 dated 30.05.2013.

19. The 4th respondent once again changed gears and very cleverly moved the Civil Court by filing O.S.No.547 of 2013 on the file of the Court of Principal District Munsif, Alandur and

obtained interim order in I.A.No.1179 of 2013 and the same was vacated on 20.11.2015 by the said Court, by passing a detailed order with tenable reasons. Though the 4th respondent filed an appeal in C.M.A.No.16 of 2015 on the file of the Sub-Court, Tambaram, no interim order has been granted. It is pertinent to note that the ex parte order of permanent injunction has also been set aside in O.S.No.177 of 2012 and no interim order is in subsistence in O.S.No.177 of 2012 as well as in O.S.No.547 of 2014.

20. In the considered opinion of the Court, mere pendency of the said suits would not create any impediment on the part of the official respondents herein to initiate appropriate proceedings to evict the 4th respondent and hand over possession of the property in favour of the Temple. This Court is also of the considered view that the suits filed by the 4th respondent in O.S.No.177 of 2012 and O.S.No.547 of 2014 prima facie appears to be abuse of process of law.

21. In the result, the writ petition is allowed and the respondents 1 to 3 is directed to initiate appropriate action for evicting the 4th respondent from the property in Survey No.109/2, T.S.Nos.3 to 8 of Adambakkam Village, Alandur Taluk, Kancheepuram District, measuring an extent of 10.5 ares (26.05 cents) within a period of two weeks from the date of receipt of a copy of this order. No costs.

Post the matter for reporting compliance on 14.09.2017.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

svki

To

1. The Collector,
Kancheepuram District,
Collectorate, Kancheepuram.
2. The Revenue Divisional Officer,
Tambaram Taluk, GST Road,
Tambaram, Chennai.
3. The Tahsildar,
Alandur Taluk, I Main Road,
Nanganallur, Chennai - 600 061.

4. R.V.Arulrajan @ R.V.Arul
Plot No.4, Surendra Nagar Extension,
VI Street, Adambakkam,
Chennai - 600 088.
(Copy of the order be marked to 4th
respondent as per order of the Court)

5.The Section Officer,
Writ Section,
High Court, Madras.
(To Post on 14/09/2017)

+ 1 cc to M/s.T.S.Vijaya Raghavan, Advocate, SR.62152

+ 1 cc to The Govt.Pleader, SR.62594

W.P.No.4783 of 2017

NR 06/09/2017



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