

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.25850/2017

R.Venkatesan

...

Petitioner

Vs

1 The District Collector
Dharmapuri District, Dharmapuri.

2 The Revenue Divisional Officer
Dharmapuri District, Dharmapuri.

3 The Tahsildar
Palacode Taluk, Palacode
Dharmapuri.

4 The Commissioner
Hindu Religious and Charitable Endowment
Nungambakkam, Chennai.

5 The Assistant Commissioner
Hindu Religious and Charitable Endowment
Dharmapuri.

6 The Executive Officer
Arulmighu Perumal Thirukoil
Pulikarai Village, Palacode Taluk
Dharmapuri District.

7 Paramasivam

...

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance a Writ of certiorarified mandamus calling for the records of the 3rd respondent pertaining to his letter dated 31.12.2016 made in Na.Ka.No.15258/2015/C2 and quash the same and direct the respondents 1 to 3 to remove

the encroachment in land in S.No.118 of Pulikarai Village.

For Petitioners : Mr.M.Selvam
For RR 1 to 3 : Mr.A.N.Thambidurai, Spl.GP
For RR4 & 5 : Mr.M.Maharaja, Spl.GP [HR&CE]

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition itself is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 3 and Mr.M.Maharaja, learned Special Government Pleader [HR&CE] accepts notice on behalf of the respondents 4 and 5.

2 The petitioner claims that he is the Chairman, Board of Trustees of Arulmighu Perumal Thirukoil, Pulikarai Village, Palacode Taluk, Dharmapuri District and his ancestors had established the said temple and it is also evidenced by the stone engravings on the wall of the ancient temple. The petitioner would further aver that there is a pathway to the temple in the Government land in S.No.118 of the said village and a portion of which has been encroached by the 7th respondent herein. The petitioner, in this regard, has also filed WP.No.31388/2015 against the official respondents as well as against the 7th respondent herein who was arrayed as the 6th respondent therein, praying for issuance of a writ of mandamus, directing them to remove the encroachment in the Government land / pathway in S.No.118 in the said village and to take appropriate action on the basis of his representation dated 26.09.2015 and the said writ petition was disposed of on 07.10.2015 by this Court, by directing the respondents 1 to 3 therein to consider the petitioner's representation dated 26.09.2015 and to take consequential action, on inspection and after affording proper opportunity of hearing to the alleged encroachers including the 6th respondent therein / 7th respondent herein and pass appropriate orders within the stipulated time.

3 The 3rd respondent, in compliance of the order, sent the impugned communication dated 31.12.2016 to the learned counsel appearing for the petitioner and also enclosed his communication dated 31.12.2016 addressed to the learned Additional Government Pleader, High Court, Madras, wherein, it has been indicated that the petitioner himself is an encroacher as the temple is located on "Oni Poramboke" and as such, the petitioner is not entitled to claim the right of pathway and therefore, rejected his request and challenging the legality of the same, the petitioner came forward to file the present writ petition.

4 The learned counsel appearing for the petitioner would submit that the temple for which the petitioner is the Chairman of the Board of Trustees, is an ancient temple and it is also under the control of the Hindu Religious and Charitable Endowment Department and without affording any opportunity whatsoever, the 3rd respondent has reached the conclusion that the location of the temple constitutes an encroachment and therefore, prays for an opportunity to produce the materials to sustain their claim.

5 The Court heard the submissions of Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.M.Maharaja, learned Special Government Pleader [HR&CE] appearing for the respondents 4 and 5 and also perused the materials.

6 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits the petitioner to submit a representation along with a copy of this order as well as enclosing relevant and authenticated documents to the 3rd respondent within a period of four weeks from the date of receipt of a copy of this order and the 3rd respondent, upon receipt of the same, shall put the respondents 6 and 7 on notice and thereafter, consider and dispose of the said representation on merits and in accordance with law and pass appropriate orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner and the respondents 6 and 7 and the respondents 2 and 3, till the disposal of the representation by the 3rd respondent, shall defer further decision in terms of the impugned communication dated 31.12.2016 as to the removal of the encroachment said to have been made by the temple on the land classified as "Oni Poramboke".

7 The writ petition stands disposed of with the above direction. No costs.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

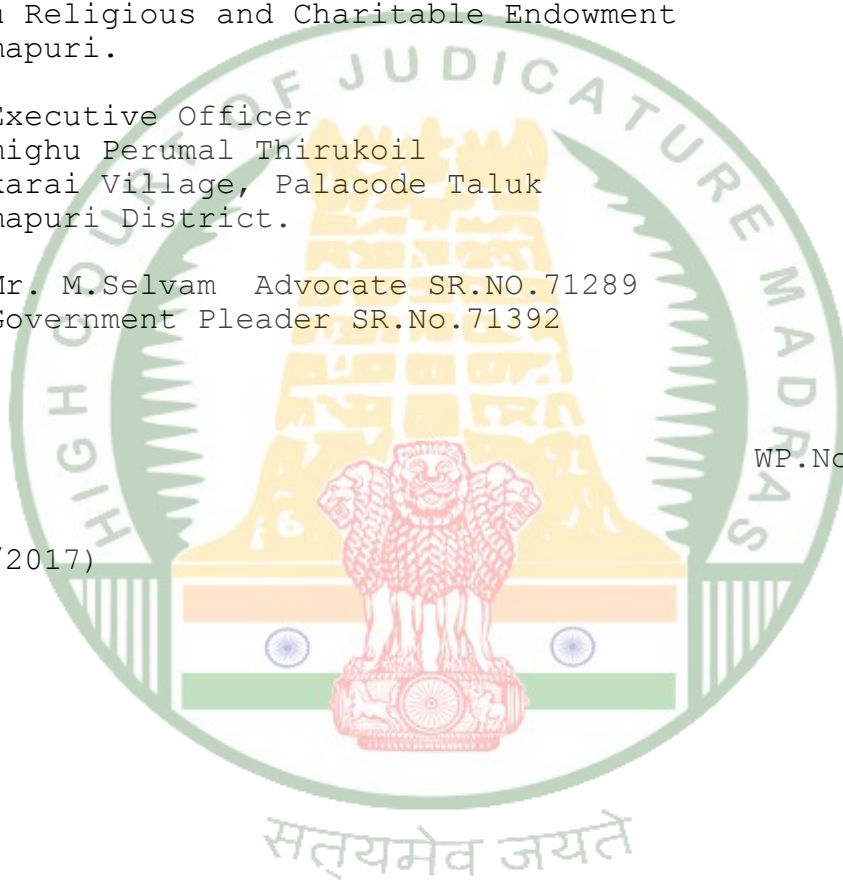
- 1 The District Collector
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Dharmapuri District.

+1 CC to Mr. M.Selvam Advocate SR.NO.71289
+1 CC to Government Pleader SR.No.71392

WP.No.25850/2017

SS (CO)
VC (28/10/2017)



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