

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN  
AND  
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.16142 of 2017  
&  
WMP.Nos.17436 & 17686 of 2017

P.Dhandapani

... Petitioner

Vs

1. The District Collector  
O/o.The District Collector  
Tiruppur District, Tiruppur.
2. The Assistant Divisional Engineer  
The State Highways & Construction &  
Maintenance Department,  
Travellers' Bungalow, Trichy Road,  
Vellakovil, Tiruppur District 638 111.
3. The Commissioner  
Vellakovil 2<sup>nd</sup> Grade Municipality  
Vellakovil, Tiruppur District 638111.
4. The Tahsildar  
Kangeyam Taluk, Kangeyam  
Tiruppur District 638 701.

5. S.Manikandan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus, calling for the records relating to the impugned notice issued by the 2<sup>nd</sup> respondent herein dated 28.04.2017 and quash the same and consequently, direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein to pass necessary orders on the petitioner representation dated 13.05.2017.

For Petitioner : Mr.G.Karthikeyan

For RR 1 to 4 : Mr.C.Jagadish,  
Special Government Pleader

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.C.Jagadish, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 4.

2. The petitioner, in the affidavit filed in support of this writ petition would aver among other things, that a temple, viz., Arulmighu Sri Siddhi Vinayagar Temple, was constructed in the year 1979, for the benefit of the worshippers in the area, in and around Kamarajapuram, Vellakovil, Kangeyam Taluk, Tiruppur District and in the year 1991, the first consecration also took place and for the past 38 years, the festival "Thaipooasam" has been celebrated in a grand manner. It is further averred by the petitioner that the temple is situate in a small area of 230 sq.ft., and the location of the same did not cause any disturbance or obstruction to road traffic and also to the pedestrians. However, the 5<sup>th</sup> respondent, who is a non-believer, has filed WP.No.7606/2016 purported to be a Public Interest Litigation, praying for appropriate direction to demolish the alleged unauthorised construction of the said temple and this Court, vide final order dated 09.02.2017, has directed the Tahsildar, Kangeyam Taluk, to take appropriate steps after issuing notice to all the concerned and pass orders.

3. It is also averred by the petitioner that the 2<sup>nd</sup> respondent has issued the impugned notice under Rule 3 of the Tamil Nadu Highways Rules, 2003, stating among other things, that on the road side margin of the land belonging to the Highways Department, the temple admeasuring to an extent of 3.78 sq.m. has been constructed and as per the Tamil Nadu Highways Act and Rules framed therein and also in the light of the orders passed by the Hon'ble Apex Court that encroachment put up for religious worship, has to be removed, calling upon the petitioner to remove the offending structure within a period of ten days from the date of receipt of the notice, failing which, it will be removed at the cost of the petitioner.

4. Mr.G.Karthikeyan, learned counsel for the petitioner has drawn the attention of this Court to the photographs and would submit that the location of the temple is not causing any obstruction to the public as well as to the pedestrians and only at the instigation of the 5<sup>th</sup> respondent, who is a non-believer, this Court had entertained the Public Interest Litigation and passed orders, directing the concerned official to take appropriate action in accordance with law and though there is no need or necessity to demolish the offending superstructure, action is being taken and threat of demolition is imminent. It is the further submission that the Secretary of the temple has also submitted a detailed representation

dated 13.05.2017 to the 1<sup>st</sup> respondent with copies marked to the respondents 3 and 4 and it would be suffice to direct the 2<sup>nd</sup> respondent to consider and dispose of the representation on merits and in accordance with law and till such time, further precipitative action may be deferred.

5. Per contra, Mr.C.Jagadish, learned Special Government Pleader appearing for the respondents 1 to 4 has drawn the attention of this Court to the photographs and would submit that admittedly, the temple is located very close to the road margin and in the event of any accident, the structure is likely to be affected, so also the worshipping public and in compliance of the above said orders only, action is being taken strictly in accordance with law and prays for dismissal of this writ petition.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. A perusal of the photographs would disclose that the temple is located very close to the Highways. However, taking into consideration of the submissions made by the learned counsel for the petitioner, the temple is in existence for very many years and the representation in response to the show cause notice is to be considered and disposed of at an early date, this Court permits the petitioner to submit one more representation to the 2<sup>nd</sup> respondent along with a copy of this order as well as the copy of the earlier representation dated 13.05.2017 submitted to the Collector, Tiruppur District, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 2<sup>nd</sup> respondent is directed to put the 5<sup>th</sup> respondent 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 four weeks thereafter and communicate the decision taken, to the petitioner as well as to the 5<sup>th</sup> respondent. The 2<sup>nd</sup> respondent, till the disposal of the representation to be submitted by the petitioner, as directed by this Court, shall defer further proceedings, in furtherance of the impugned notice.

8. The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

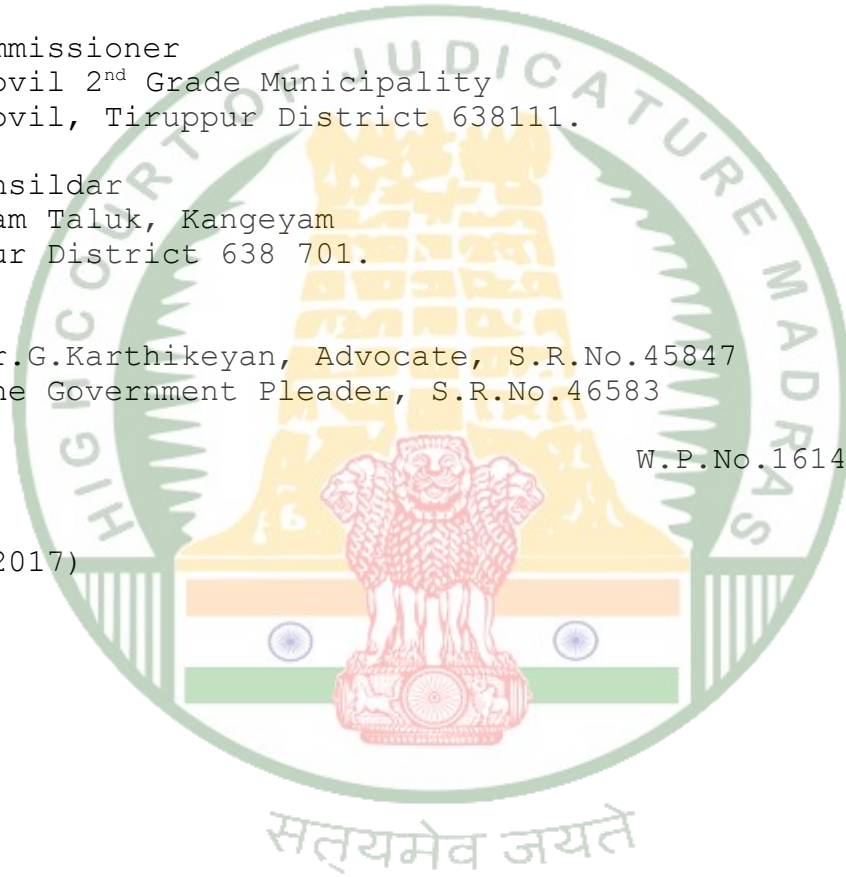
To

1. The District Collector  
O/o.The District Collector  
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Kangeyam Taluk, Kangeyam  
Tiruppur District 638 701.

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.45847  
+1cc to the Government Pleader, S.R.No.46583

W.P.No.16142 of 2017

VG II(CO)  
CA(18/07/2017)



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