

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.07.2017

CORAM:

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

W.P.No.18331/2017

K.V.Madhavaraj

..

Petitioner

Vs

- 1.The District Collector
Kancheepuram District,
Kancheepuram.
- 2.The Secretary
Revenue Department
Government of Tamil Nadu
Secretariat, Chennai 600 009.
- 3.The Director General of Police
Government of Tamil Nadu
Chennai.
- 4.The Panchayat President / Special Officer
Karuveppampoondi Village Panchayat
Block Development Office,
Uthiramerur 603406.
- 5.The Block Development Officer
BDO Office, Uthiramerur 603406.
- 6.The Tahsildar
Uthiramerur Taluk Office,
Uthiramerur 603406.
- 7.The District Revenue Officer
Kancheepuram District,
Kancheepuram.
- 8.The Under Secretary
National Commission for Minorities
5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi 110003.

9.The Additional Collector/Project Officer
District Rural Development Agency
Kancheepuram 631501.

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Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents 1 to 7 to stop the lawless activities against them and provide land in Survey No.176/6, Karuveppampoondi Village, Uthiramerur Taluk, Kancheepuram District and fund to reconstruct the Church building.

For Petitioner : Mr.K.V.Madhavaraj
Party-in-Person

For R1 to R7 & R9 : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 7 and 9.

2 The petitioner / Party-in-Person in the affidavit filed in support of this writ petition, would aver among other things that he is a Christian Pastor by profession and also carrying out social service activities in and around Uthiramerur, Kancheepuram areas for the past two decades and also exposing the cause of socially and financially weaker sections of the Society as well as the under privileged people and he also belongs to financially downtrodden category. It is the claim of the petitioner that during the year 1998, he has put up a small religious structure in the form of a Church in Karuveppampoondi Survey No.176/6 and he also submitted an application for issuance of patta in respect of the said land and it was registered by the office of the Sub Registrar, Uthiramerur, vide endorsement dated 18.06.2008 in O.Mu.No.122/2008/A11 on the ground that the said land is classified as "Mayanam Poramboke" [Cremation/burial Poramboke] and it is further stated that as per G.O.Ms.No.854, dated 31.12.2006, such a kind of land cannot be given for the purpose of construction of a Temple, Church and Mosque.

3 The petitioner / Party-in-Person expresses the grievance that without recourse to due process of law, the Church was vandalised and demolished and thereafter, he submitted repeated representations praying for necessary permission to reconstruct the Church or the authorities themselves shall reconstruct the Church and since so far, not

succeeded in his endeavor, the petitioner / party-in-person is constrained to approach this Court by filing the present writ petition.

4 The petitioner / Party-in-Person has also drawn the attention of this Court to various documents in the typed set of papers and would further add that though there are very many religious structures put up by the people belonging to other religion remain, the small Church put up by the petitioner in an unobjectionable Pormaboke land, was demolished without recourse to law and therefore, prays for interference.

5 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 7 and 9 would submit that admittedly, the petitioner / Party-in-Person had encroached upon the Mayanam Poramboke land in S.No.176/6 and without getting any permission or authorisation, has put up a religious structure and he has also submitted an application for issuance of patta in respect of the said land and the 6th respondent, vide endorsement dated 18.06.2008, has rejected the same and admittedly, the religious structure is no longer in existence and therefore, the petitioner, as a matter of right, cannot insist for according permission or direction to the concerned authority to put up religious construction once again and hence, prays for dismissal of the writ petition.

6 This Court paid its best attention and anxious consideration to the rival submissions and also perused the materials placed before it.

7 The Tamil Nadu District Municipalities Building Rules, 1972, came to be framed and in supersession of the same, the Tamil Nadu Panchayat Building Rules, 1997, came to be framed vide G.O.Ms.No.255, Rural Development [C2] Department, dated 18.08.1997. Rule 2[g] defines "Public Building" and it is relevant to extract the same:-

"2.(g) "Public building" means any building to which the public or any class or section of the public are granted access or any building which is open to the public or any class or section of the public and includes any building-

(a) used as a:

(i) Educational institution including school or college;

(ii) hostel
(iii) library;
(iv) hospital, nursing home, dispensary, clinic, maternity centre or any other like institution;
(v) club;
(vi) lodging house;
(vii) coffee house, boarding house or hotel or an eating house;

(b) used by any association;
(c) Ordinarily used by the-

(i) Central or any State Government or any local authority or any body corporate, owned or controlled by the Central or any State Government;
(ii) Public or any class or section of the public for religious worship or for religious congregation."

8 Rule 25 speaks about the Multi-Storeyed Buildings and Public Buildings and it is relevant to extract the same:-

"25. Multi-storeyed and Public buildings:
Every person intending to construct or reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-storeyed and Public Building Rules, 1973 issued under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920):

Provided that the Executive Authority shall not grant approval for construction, reconstruction, addition or alteration of any such building without consulting the concerned Joint Director or Deputy Director of Town and Country Planning."

9 The said rule contemplates that every person intended to construct or reconstruct or to add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public Building Rules, 1973, issued under the Tamil Nadu District Municipalities Act, 1920.

10 The Multi-Storeyed and Public Buildings Rules, 1973, came to be framed in exercise of powers conferred under section 191 and sub-section [1] of section 303 of the Tamil Nadu District Municipalities Act, 1920, and as per Rule 3, "every person intending to construct, reconstruct, add to or alter any multi-storeyed building in addition to the general requirements

laid down in the rules, shall also comply with the following special rules".

11 Part B of the Multi-Storeyed and Public Buildings Rules, 1973, deal with public buildings also.

12 Admittedly, the petitioner / Party-in-Person before putting up a religious structure in the form of Church during the year 1998, did not obtain any permission and admittedly, he had encroached upon the "Mayanam Poramboke" and though made an attempt to grant

patta, the same was rejected by the 6th respondent vide endorsement dated 18.06.2008. According to the petitioner / Party-in-Person, the religious structure itself was demolished without due course to law during the year 2000.

13 The Hon'ble Supreme Court of India, in Special Leave SLP [Civil] No.8519/2006 [Union of India Vs. State of Gujarat and others], had taken cognizance of the unauthorised religious structures existing in public lands and vide order dated 29.09.2009, has passed an order as an interim measure and directed that "henceforth, no unauthorised construction shall be carried or permitted in the name of Temple, Church, Mosque or Gurudwara in public streets, public space or other public places etc., in respect of unauthorised construction of religious nature, which has already taken place, the State Governments and Union Territories shall review the same on a case by case basis and take appropriate steps as expeditiously as possible". The Hon'ble Apex Court has also directed the District Collectors, Magistrates and Deputy Commissioners in-charge of the Districts, to ensure that there is total compliance of the order passed by it and also monitoring the same.

14 It is also brought to the knowledge of this Court that there are very many religious structures came to be put up by the people professing various religions and in the light of the statutory provisions and the above said interim orders passed by the Hon'ble Supreme Court of India, this Court is of the considered view that the concerned District Collectors, District Superintendents of Police and other officials shall maintain a strict vigil and see to that such unauthorised structures are demolished and the possession of the lands be restored in favour of the concerned authorities.

15 This Court also directs the 1st respondent to inspect and enumerate as to how many unauthorised religious structures are in existence in Government / Public lands and take appropriate action in the light of the above cited statutory provisions and also in compliance of the above said

orders passed by the Apex Court and also file a Status / Compliance Report before this Court.

16 In the light of the reasons assigned above, this Court is of the considered opinion that the petitioner / Party-in-Person, as a matter of right, cannot seek a direction, directing the authorities to put up a religious structure on the same land and unless and until he follows the provisions of the above cited statutory regulations, he cannot put up the religious structure on a public land by way of an encroachment.

17 Therefore, the writ petition is dismissed at the admission stage itself, subject to the above observations. No costs.

18 The Collector, Kancheepuram District, shall file the Compliance / Status Report, in terms of the directions in this order on or before 04.10.2017. List this writ petition on 06.10.2017 for filing of the Compliance/Status Report.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

AP

To

1. The District Collector
Kancheepuram District,
Kancheepuram.
2. The Secretary to Government,
Revenue Department
Government of Tamil Nadu
Secretariat, Chennai 600 009.
3. The Director General of Police
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Copy To:

The Section Officer,
Writ Section,
High Court, Madras.

+1cc to Government Pleader in sr.no.52028

WP.No.18331/2017

NR 28/08/2017



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