

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.14946 of 2004

M.Abdul Azeez

... Petitioner

vs.

1. The Commissioner,
Kumbakonam Municipality,
having its office at Cutchery Road,
Kumbakonam.
2. The District Collector,
Thanjavur,
having his office
at Cutchery Road,
Thanjavur.
3. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai.
4. The Executive Officer,
Arulmigu Santhana Gopalakrishnaswami Koil,
Kumbakonam.
5. G.Rajendran

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, forbearing the 1st and 4th respondents from in any manner demolishing the residential house bearing Old Door No.4/56-F, New Door No.56B/4, Town Survey No.4, belonging to the petitioner by force or otherwise under the pretext of any order, in which, the petitioner is not a party to the proceedings.

For Petitioner	:Mr.S.Vijayan
For Respondents 1 & 2	:Mr.Akhil Akbar Ali, Government Advocate
For 3 rd Respondent	:Mr.M.Maharaja,
For R4	

Special Government Pleader (HR & CE)

O R D E R

Seeking to forbear the 1st and 4th respondents from in any manner demolishing his residential house bearing Old Door No.4/56-F, New Door No.56B/4, Town Survey No.4, by force or otherwise, the petitioner is before this Court by way of the present Writ Petition.

2. According to the petitioner, he purchased the property in question for a valuable sale consideration from one Mr.Appar vide Document registered on 02.05.1985, before the Sub-Registrar, Kumbakonam, with proper boundaries mentioned therein. While so, the 5th respondent viz. G.Rajendran, filed a Writ Petition in W.P.No.7849 of 2000 before this Court in the capacity as a tenant of the 4th respondent Temple seeking the relief of a writ of mandamus directing the respondents 1 to 4 to remove all encroachments made in the land in T.S.No.3/2 of an extent of 3 acres 26 cents in Darasuram Village, Kumbakonam and obtained an order of interim direction in W.P.M.P.No.19352 of 2002 in W.P.No.7849 of 2000, whereby, this Court directed the respondents 1 to 4 to remove the encroachments in accordance with law. It is further stated by the petitioner that this Court in W.P.M.P.No.34705 of 2002, passed an order on 18.07.2002, impleading some persons as parties to the Writ Petition, who, as per the Report of the 1st and 4th respondents herein, have been ranked as 'Encroachers'.

3. It is the case of the petitioner that he is possessing and enjoying the property in Door No.56B, Door No.4, situated in Ward No.3, Pettai Vinai Theertha Street, Kumbakonam Town by constructing a pucca terraced building and the 1st respondent also assessed house tax in his name. According to the petitioner, he has not trespassed into the property of the 4th respondent Temple and he is not an encroacher. But, the 5th respondent along with the 1st and 4th respondents, invaded into his property a few months ago, and high handedly demolished a portion of his house, despite his strong and justifiable objections and protest.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Learned counsel for the petitioner submitted that when the petitioner was not made a party to the proceedings in W.P.No.7849 of 2000, the order passed in W.P.M.P.No.19352 of 2002 in the said Writ Petition is not binding on the petitioner and he cannot be considered as an encroacher and that the property in question cannot be demolished.

6. No counter is filed on behalf of the respondents. Learned Government Advocate appearing for respondents 1 and 2 submitted that as per the Plan available with the Municipality and the Revenue Records available with the Village Administrative Officer, the petitioner is an encroacher and he shall not be allowed to produce the documents created for the purpose of claiming ownership and admittedly, the person who sold the property in question to the petitioner, has no title to the property.

7. Learned Special Government Pleader appearing for the 3rd respondent submitted that the property in question belongs to the H.R. & C.E. Department and pursuant to the order of this Court in W.P.No.7849 of 2000, encroachments have been identified and removed. It is his further submission that in the case on hand, the petitioner is found to be an encroacher and the building in question has been partly demolished.

8. It is seen that as per the Plan available with the Municipality and the Revenue Records available with the Village Administrative Officer, the land in question belongs to Arulmigu Santhana Gopalakrishnaswami Koil, Kumbakonam and the petitioner, cannot, at any stretch of imagination, in the guise of any document, though it is a registered one, claim that he is the owner of the property, when the title to the property vests with the Temple. Hence, this Court does not find any merit in the relief sought by the petitioner herein and the Writ Petition is liable to be dismissed.

9. However, it is for the petitioner to proceed against the persons, who treated him as an encroacher. It is made clear that the said liberty will not give any right to the petitioner to claim against respondents 1 to 4, that he is entitled to own the property in question. It is further made clear that the remaining portion of the building in question shall be demolished by the respondents concerned, in accordance with law.

This Writ Petition is dismissed with the above observation. No costs. Consequently, connected W.P.M.P.No.17731 of 2004 is closed.

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Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

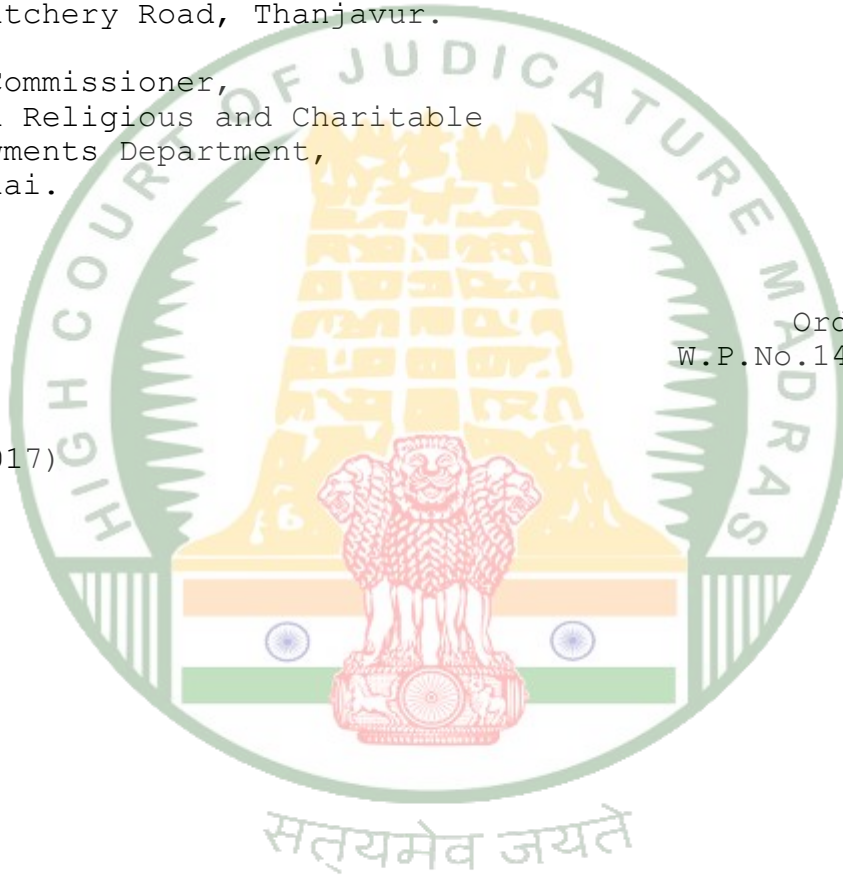
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To:

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2. The District Collector,
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Endowments Department,
Chennai.

Order in
W.P.No.14946 of 2004

SVI (CO)
VR(31/8/2017)



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