

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 02.08.2017****CORAM :****THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P (MD) No.12873 of 2017****and****W.M.P. (MD) Nos.9964, 9965 and 11294 of 2017**

Sri Arulmighu Viralimalai Murugan Temple,
rep. By its the Executive Officer,
R.Pandiaraju

... Petitioner

Vs.

1. The District Collector,
Pudukkottai District,
Pudukkottai.

2. The Block Development Officer,
O/o.the Block Development Officer,
Panchayat Union,
Viralimalai,
Pudukkottai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents from making any permanent structure in the land owned by the Petitioner's Temple comprised in Survey No.277/3 at Viralimalai Village, Pudukkottai District with a consequential relief directing the respondents to remove the encroachment already made in the land survey No.277/3 at Viralimalai Village, Pudukkottai District.

For Petitioner : Mr.S.T.Sasidharan Tamilkani

For Respondents : Mr.T.S.Md.Mohideen, AGP for R1
Mr.Pandiarajan for
VR.Shanmuganathan for R2.

**O R D E R**

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The writ petitioner is Sri Arulmighu Viralimalai Murugan Temple represented by its Executive Officer. The land in S.No.277/3, Viralimalai Village belongs to the temple. The Block Development Officer, Panchayat Union, Viralimalai sent a communication dated 07 April 2017, calling upon the writ petitioner to grant permission to construct Amma Gym and Amma Park in the said property. Earlier, the Executive Officer, Pudukkottai Temples received a complaint from one Arumugam to the effect that the said land in S.No.277/3 measuring an extent of 3.78.5 Hectares being encroached by levelling and putting up of cement slabs. A specific allegation was made in the complaint of the said Arumugam that a water body had been destroyed. There is a water body known as Ayyarkulam located in the said survey number, which is a sanctuary for Peacocks.

2.One can see the National bird in large numbers in and around Viralimalai village. The petitioner therefore wrote vide letter bearing No.330/2012/J dated 30 November 2016, calling upon the second respondent to protect the said temple land. The second respondent instead of favourably responding to the said communication dated 30 November 2016 sent by the petitioner, requested the Executive Officer, Hindu Religious and Charitable Endowment Department, Pudhukkottai vide communication bearing Na.Ka.Thi.2/3350/2016 dated 07 April 2017 seeking permission to put up Amma Gym and Amma Park in the said temple land. A reading of the said letter of the second respondent is very revealing of the intent of the second respondent.

3.According to the second respondent, the said land belongs to Hindu Religious and Charitable Endowments Department. Property of Arulmighu Viralimalai Murugan temple is not the property of the Hindu Religious and Charitable Endowments Department. The Hindu Religious and Charitable Endowments Department was formed for protecting the interest and welfare of the temples. That is why Section 34 of Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 nullifies any exchange, sale or mortgage and any lease beyond five years of any immovable property belonging to any religious institution unless there is prior sanction by the Commissioner. The Commissioner can sanction such an alienation only if it is necessary or beneficial to the religious institution concerned.

4.The statutory mandate being thus, it is not known as to how administrative sanction could have been sought for putting up Amma Gym and Amma Park in the said temple land. The temple land has been described as Government Poramboke. It is also not known as



to how the second respondent conceived the idea setting up of a Gym in a temple land.

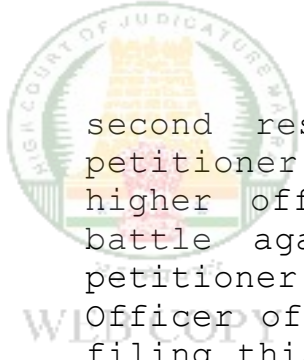
5.The Executive Officer, Pudukottai temples, Pudukottai sent one more communication dated 23 June 2017 pointing out that Ayyarkulam in S.No.277/3 is being encroached upon through the office of the second respondent. The writ petitioner made it clear that unless there is prior approval granted by the Commissioner, Hindu Religious And Charitable Endowments Department, Chennai, it is not open to the second respondent herein to indulge in such arbitrary actions. Photographs have been enclosed. There is also a media expose in this regard.

6.This Court finding prima facie case in the contention of the writ petitioner granted interim order on 12 July 2017. Counter affidavit has been promptly filed by the second respondent and an application for vacating the interim order has also been taken.

7.The second respondent herein has contended that an announcement was made by the Honourable Chief Minister on the floor of the Tamil Nadu Legislative Assembly on 29 August 2010 under Rule 110 for establishment of Amma Gym and Amma Park throughout the State. G.O.Ms.No.132 (RD&PR) Department dated 02 November 2016 was also issued. The second respondent has stated that he chose 0.15 ares land in the said S.No.277/3 to locate such Amma Gym and Amma Park and to get permission has moved the concerned authorities. It is at this stage that the petitioner had rushed to this Court. The second respondent herein also questioned the motive of the writ petitioner. He has alleged that the writ petitioner wants to support certain private parties and give patta to them. The second respondent would further contend that setting up Amma Gym and Amma Park, Lawns, Toilets at a cost of Rs.30 lakhs would definitely improve the standard of Viralimalai Panchayat. He also would contend that children and aged people would get entertainment benefits.

8.We heard the learned counsel for writ petitioner as well as the respondent.

9.The Government has only directed that Amma Gym and Amma Park should be established in all Panchayats, which have more than Rs.20 lakhs annual income. But, the Government has not directed that the Amma Gym and Amma Park should be located in the lands belonging to the temples. It is open to the second respondent to choose any other appropriate site. It would not be legal to set one's eyes on temple lands for implementing government projects, however laudable they may be. These lands have been endowed by charitable and religious minded persons for the benefit of the religious institutions. Only for necessity or benefit to the religious institutions, the said lands can be dealt with. Therefore, we reject the stand of the second respondent. The



second respondent had expressed his grievance that the writ petitioner had moved this Court without giving permission from his higher officials and that one wing of Government cannot wage battle against another wing. But in this case, the writ petitioner had no option. The writ petitioner as the Executive Officer of the temple has a duty to protect the temple lands. By filing this writ petition, he has only discharged his duty. We direct that the land in S.No.277/3 in Viralimalai village shall be maintained only for the benefit of the temple and the pilgrims who visit the temple. The writ petitioner can certainly undertake such measures which would benefit the devotees. The temple land should continue to be remain as temple lands. We also take note of the fact that there is a water body in S.No.277/3 and that it is a sanctuary for the National Bird. Therefore, any activity, which would disturb the natural habitat of Peacocks should not be undertaken. It is alleged that certain concrete slabs have been put up in the said land. We direct the first respondent to depute the jurisdictional Tahsildar to cause removal of the said slabs forthwith.

10.The writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Pudukkottai District,Pudukkottai.
2. The Block Development Officer,
O/o.the Block Development Officer,
Panchayat Union,
Viralimalai,Pudukkottai District.

+1 cc to Mr.S.T.Sasidharan Tamilkani , Advocate in SR.No. 69533
+1 cc to The Special Government Pleader in SR.No.70260

Skm/Arul

AE/SKN RSK/SAR3/22.08.2017/4P/5C

**W.P(MD)No.12873 of 2017
and**

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