



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.11809 of 2016
and
W.M.P. (MD) No.9065 of 2016

S.Sethuram

.. Petitioner

vs.

1. The Commissioner,
Uthamapalayam Panchayat Union,
Uthamapalayam, Theni District.

2. The Tahsildar,
Uthamapalayam Taluk,
Theni District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pursuant to the impugned notice issued by the First Respondent dated 21.06.2016 in Na.Ka.No.502/2015/B3 and quash the same and directing the Respondents to consider the Petitioner's representation dated 27.06.2016 and conduct an enquiry by giving an opportunity to the Petitioner to explain the case then decide the issue in respect of Arulmigu Andisamy Thirukovil situated in Pallavarayanpatty, Uthamapalayam Taluk, Theni District.

For Petitioner : Mr.M.Karthikeya
Venkitachalapathy

For Respondents : Mr.M.Govindan
Special Government Pleader

O R D E R

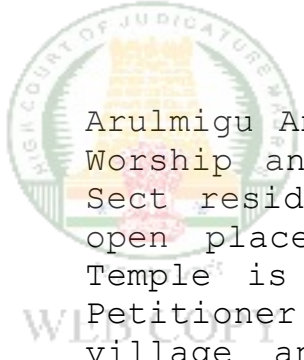
[Order of the Court was made by **M.VENUGOPAL, J.**]

Heard both sides.

2.No counter affidavit is filed on behalf of the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The stand of the Petitioner is that there is a Temple called



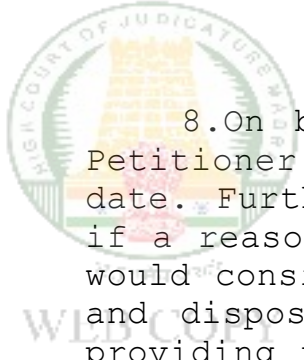
Arulmigu Andisamy Thirukovil. The Temple is continuously under the Worship and Maintenance of a Sect of people called Vekkalikarai Sect residing in the village. The said Temple is situated in an open place without any building and roof. The land where the Temple is situated is assumed to be a 'Temple Poramboke'. The Petitioner and his relatives belong to 'Vekkalikarai Sect' in the village and constructed a small building over and above the sanctum sanctorum of the Temple and performed the consecration function.

4. Based on the vengeance against the Petitioner and other Committee members, who constructed the Temple building, one Periasamy filed a writ petition before this Court making an allegation that the Temple was constructed in a Poramboke Land and he mentioned the wrong Survey number. However, no action was taken because of the fact that the Survey number mentioned by the said Periasamy was a wrong one.

5. When that be the ground reality, the First Respondent/Commissioner, Uthamapalayam, Theni District, had issued a notice, dated 21.06.2016, in and by which, it was claimed that the Temple is constructed at Survey No.676, which is described as 'Jakkaiyan Goundan Tank'. Soon after the receipt of the impugned notice, the Petitioner submitted his explanation on 27.06.2016, wherein he had denied the allegation of encroachment upon the Water Body and also brought to the knowledge of the First Respondent that the Temple in question is not situated in the Water Body. Also, it was mentioned in the explanation that the Temple is situated on the Western side of the road. The Water Body is situated on the Eastern side of the road and fully covered with a strong bund.

6. The version of the Petitioner is that on the Western side of the Temple building, there is another Temple namely Surangamalai Kaleeswari Temple, which was constructed on the land. The Petitioner purchased from a third party. The Andiamy Temple is in existence for long time as a lonely with Trident on the ground and the same is not situated on the Poramboke land belonging to the 'Water Body'. Therefore, if a proper enquiry is conducted with reference to the old records, these facts will come to the fore. Therefore, the Petitioner has requested the authorities concerned to provide opportunity to put forward his case and also require them to conduct an enquiry and determine the issue of 'alleged encroachment' in the Water Body.

7. The grievance of the Petitioner is that his representation dated 27.06.2016, till date has not seen the light of the day and the same is pending as on date. Furthermore, the impugned notice, dated 21.06.2016, was issued by the First Respondent without issuance of prior notice to the Petitioner and as such, there is a breach/violation of the Principles of Natural Justice.



8. On behalf of the respondents, it is not disputed that the Petitioner's representation dated 27.06.2016 is pending as on date. Further it is represented on behalf of the respondents that if a reasonable time is fixed by this Court, the First Respondent would consider the explanation of the Petitioner, dated 27.06.2016 and dispose of the same in accordance with Law, ofcourse after providing requisite opportunity to the concerned parties.

9. This Court, while accepting the plea taken on behalf of the respondents that time limit is to be fixed for considering the explanation of the Petitioner, dated 27.06.2016 by the First Respondent, in the Interest of Justice and on Equity, directs the First Respondent to look into the explanation/objections/remarks of the Petitioner, dated 27.06.2016, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the First Respondent is directed to pass a speaking order both on qualitative and quantitative terms, ofcourse after providing necessary opportunity to the Petitioner and others concerned by adhering to the Principles of Natural Justice. It is open to the Petitioner to raise all factual and legal pleas before the concerned Respondent, who shall, at the time of passing the final orders in the subject matter in issue, advert to the same and deal with it in the manner known to Law, within a period of four weeks thereafter. Till final orders are passed, the Petitioner shall not be disturbed of his possession in respect of the property in question by the respondents in any manner whatsoever.

10. With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The Commissioner,
Uthamapalayam Panchayat Union,
Uthamapalayam, Theni District.
2. The Tahsildar,
Uthamapalayam Taluk,
Theni District.

+1cc to The Special Government Pleader in SR.No.84216

rj2

AE/GT/SAR2/06.11.2017/3P/4C