

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.9252/2018 7 WMP.No.11060/2018

Church of Lamb [Regd.No.928/2010]
rep.by its Founder Rev.P.Gajendran @ P.Jose
No.12, Alandur Road, Arulayammanpettai
Guindy, Chennai 600 032.

.. Petitioner

Versus

1.The District Collector
Chennai District, Chennai.

2.The Revenue Divisional Officer
Egmore, Chennai 600 031.

3.The Tahsildar
Taluk Office,
Mambalam-Guindy Taluk,
Chennai 600032.

4.The Director
King Institute, Guindy
Chennai 600 032.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 3rd respondent in his notice dated 28.03.2018 issued to the petitioner u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, and quash the same in respect of the petitioner's property situated at No.12, Alandur Road, Arulayammanpettai, Guindy, Chennai 600032, under petitioner occupation, possession and enjoyment having the superstructure by name of Church of Lamb.

For Petitioner : Mr.S.Silambanan, Senior Counsel for
for Mr.A.Damodaran
For Respondents: 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.

2 The petitioner claims that his son viz., Mr.M.J.David, purchased a landed property admeasuring to an extent of 1680 sq.ft., of land along with a thatched house in TS.No.1, Block No.6, Plot No.15, Alandur Road, Chennai-32 and he has also started a Trust, viz., "Church of Lamb Ministries" and also put up a superstructure and it is used as a Prayer Hall. The grievance expressed by the petitioner is that to his shock

and surprise, the 4th respondent has initially issued a notice dated 09.02.2018 under section 7 of the Tamil Nadu Land Encroachment Act, 1905, for which the petitioner has submitted a detailed response and without considering the same, the 3rd respondent has issued the notice dated 28.03.2018 u/s.6 of the said Act and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 Mr.S.Silambanan, learned Senior Counsel assisted by Mr.A.Damodaran, learned counsel appearing for the petitioner would submit that originally the land was owned by one Parvathy and others who conveyed the same through an unregistered Sale Deed dated 20.08.2002 and the son of the petitioner has started the Church of Lamb Ministries and had put up a superstructure and it is used as a Prayer Hall and the 4th respondent has no jurisdiction to issue the notice u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, and though a proper response has been given through the representation, without even considering the same, the 3rd respondent has issued the notice dated 28.03.2018 u/s.6 of the said Act and hence, prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4 would submit that admittedly, the son of the petitioner is said to have purchased the land in question through an unregistered Sale Deed dated 20.08.2002 and the same has not conveyed any right, title or possession in favour of the petitioner's son or in favour of the petitioner's Church and would further aver that admittedly, the superstructure has been put up on the said land without planning permission or authorisation whatsoever, and that apart, the permission from the Collector of Chennai District, has also not been obtained to put up the religious structure and as such, action has been taken rightly in accordance with law.

5 This Court has carefully considered the rival submissions and also perused the materials placed on record.

6 Rule 2[5] of the Special Rules for Multi-Storeyed and Public Buildings, 1974, defines public building and it means "a building used or intended to be used or ordinarily or occasionally as a Church, Temple, Chappal, Mosque or any place of public worship, Choultry, College, School, Library, Theatre, Cinema, Public Concert Room, Public Hall, Kalyana Manadapam, public bath, Hospital, Nursing Home, Hotel, Restaurant, lodging, Lecture Room or any other place of public assembly" and as such, the said Church is under obligation to obtain a Planning Permission to put up the superstructure which is being used as a Prayer Hall and that apart, they have to obtain necessary permission from the Collector of Chennai District and admittedly, they have not done so.

7 Section 7 of the Tamil Nadu Land Encroachment Act, 1905, mandates prior notice to the person in occupation and section 6 of the said Act speaks about the liability of the person unauthorisedly occupying of the land, forfeiture etc and for the purpose of taking proceedings, the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government can do so.

8 The learned Special Government Pleader appearing for official respondents is unable to produce any material to show that the 4th respondent has been authorised to issue notice u/s.7 of the Tamil Nadu Land Encroachment Act, 1905 and though subsequently, section 6 notice has been issued by the 3rd respondent. In the considered opinion of this Court, it is in continuance of section 7 notice and admittedly, no material has been placed before this Court to show that the 4th respondent is authorised to do so. Hence, on this sole ground, the impugned notices warrant interference.

9 But, at the same time, this Court is of the considered view that the petitioner-Church has put up an unauthorised structure without obtaining any planning permission or approval and also the permission from the Collector of Chennai District to use the said premises as the religious structure has also not been obtained and hence, the electricity service connection granted to the said premises is to be disconnected till appropriate proceedings take place as to the removal of the alleged encroachment.

10 In the result, the writ petition is partly allowed and the impugned notices dated 09.02.2018 and 28.03.2018 respectively, passed by the respondents 4 and 3 are hereby set aside and the matter is once again remanded back to the 3rd respondent who is at liberty to proceed further in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the said exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order

and till such time, the electricity connection granted to the said premises shall be disconnected and the son of the petitioner, viz., Mr.M.J.David, as well as the petitioner-Church, shall not create any third party rights in respect of the land and superstructure in question and shall not alter the physical features also. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The District Collector
Chennai District, Chennai.
- 2.The Revenue Divisional Officer
Egmore, Chennai 600 031.
- 3.The Tahsildar
Taluk Office, Mambalam-Guindy Taluk,
Chennai 600032.
- 4.The Director
King Institute, Guindy
Chennai 600 032.

Copy to:-

- 1 The Chairman
Tamil Nadu Generation of
Electricity and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai 600 002.
- 2 The Assistant Engineer [O&M]
TANGEDCO, Guindy, Chennai 600 032.

+1cc to Mr.A.Damodaran, Advocate Sr.No.28319
+1cc to Government Pleader Sr.No.28872

sm:8.5.2018

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