

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.11470 of 2014, 43745 & 43792 of 2016 and 1658 of 2017,
M.P.Nos.1 and 2 of 2014 and W.M.P.Nos.4313 of 2016 &
1628 of 2017

W.P.No.11470 of 2014

1.S.Ravi

2.R.Subbulakshmi ... Petitioners

-vs-

1.The Executive Officer,
Hindu Religious and Charitable Endowment
Board, A/m Peeliamman @ Ellamman Koil,
Kottur, Chennai-600 085.

2.The Chairman,
Tamil Nadu Slum Clearance Board,
Chennai.

... Respondents

W.P.No.43745 of 2016

1.S.Ravi

2.R.Subbulakshmi

Both are represented by their Power Agent
Mr.C.Babuji

... Petitioners

-vs-

1.The Assistant Executive Engineer,
TANGEDGO, SS Complex,
IIT Compound, Chennai-600 113.

2.The Assistant Engineer,
TANGEDGO, Eri Karai Street,
Kottur, Chennai-600 095.

3.The Executive Officer,
Arulmigu Peeliamman and Ellamman Koil,
Kottur, Chennai-600 085.

4.The Inspector of Police,
J-4 Kotturpuram Police Station,
Kotturpuram, Chennai-600 085.

5.Govindasamy
6.Umaiya
7.Arivazhagan
8.Vasu
9.Narasimman
10.Peeli (alias) Nagaraj
11.Selvam

... Respondents

W.P.No.43792 of 2016

1.S.Ravi

2.R.Subbulakshmi

Both are represented by their Power Agent

Mr.C.Babuji

... Petitioners

-vs-

1.The Area Engineer,
Chennai Metropolitan Water Supply and Sewerage
Board, Zone-13, Indira Nagar, First Main Road,
Indira Nagar, Chennai-600 020.

2.The Assistant Engineer,
Chennai Metropolitan Water Supply and Sewerage
Board, Kottur Garden, Kottur,
Chennai-600 095.

3.The Executive Officer,
Arulmigu Peeliyamm and Ellamm Koil,
Kottur, Chennai-600 085.

4.The Inspector of Police,
J-4 Kotturpuram Police Station,
Kotturpuram, Chennai-600 085.

5.Govindasamy

6.Umaiya

7.Arivazhagan

8.Vasu

9.Narasimman

10.Peeli (alias) Nagaraj

11.Selvam

... Respondents

W.P.No.1658 of 2017

1.S.Ravi

2.R.Subbulakshmi

... Petitioners

-vs-

1.The Commissioner,
Greater Corporation of Chennai,
Chennai.

2. The Executive Engineer,
Zone-13, Greater Corporation of Chennai,
No.115, Dr.Muthulakshmi Salai, Adayar,
Chennai-600 020.

... Respondents

PRAYER: Writ Petition in W.P.No.11470 of 2014 is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to restore the street as per layout "Peeliamman Koil Street Slum Kottur".

Writ Petition in W.P.No.43745 of 2016 is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 and 2 to provide electricity service connection to the petitioner's residential building situated at Block No.16, Peeliamman Koil Street, Kottur, Chennai-600 085 within a reasonable time as may be fixed by this Court.

Writ Petition in W.P.No.43792 of 2016 is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 and 2 to provide metro water and drainage connection to the petitioner's residential building situated at Block No.16, Peeliamman Koil Street, Kottur, Chennai-600 085 within a reasonable time as may be fixed by this Court.

Writ Petition in W.P.No.1658 of 2017 is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the letter No.Ma.Aa.13 Na.Ka.No.Na.Bi/PPA/3403/2014 dated 28.12.2016 of the 2nd respondent and quash the same.

For Petitioners in : Mr.Mukund R. Pandiyan
W.P.No.11470 of 2014

For Petitioners in : Mr.A.E.Ravichandran
W.P.Nos.43745 &
43792 of 2016 and
W.P.No.1658/2017

For respondents : Mr.S.K.Rameshwar for R1 & R2
in W.P.43745/2016 Mr.D.R.Sivakumar for
Mr.S.D.Ramalingam for R3
No appearance for R4
Ms.E.Angayarkanni for R5 to R11

For respondents : No Appearance for R1 & R2
in W.P.43792/2016 Mr.D.R.Sivakumar for
Mr.S.D.Ramalingam for R3
No appearance for R4

Ms.E.Angayarkanni for R5 to R11

For Respondents : Mr.G.Anantharangan S.C., for
in W.P.No.1658/2017 R1 & R2

For Respondents
in W.P.11470/2014 : Mr.D.R. Sivakumar for
Mr.S.D. Ramalingam for R1
Mr.B. Kesavan for R2.

COMMON ORDER

As the issues involved in all the writ petitions are overlapping and touching upon the title, the legal right, nature, existence and usage of a land, which according to the petitioners, a road, all the writ petitions have been taken up together and disposed of by way of a common order.

2.The petitioners filed writ petition seeking the planning permission and obtained it subsequently. It was specified in one of the writ petitions in W.P.No.11470 of 2014, in which, an interim order was obtained on 22.04.2014, permitting the petitioners to use the disputed land for his access by treating it as a road. This was an ex-parte order obtained against the respondent-temple. There was also another writ petition in W.P.No.30669 of 2014 filed before the Division Bench of this Court making some allegation against the petitioners by one of the private respondents before this Court, which was dismissed on 03.12.2014 on the premise that construction has been made in the land belonging to the petitioners as per the approved plan. We are not concerned with the aforesaid issue.

3. On the complaints made by several persons, the approval was cancelled with a finding that there was no approach road and the nature of the property used as a road itself is in question.

4. The learned counsel appearing for the petitioners would submit that it is a case of unilateral cancellation. It is not preceded by a notice. The petitioners have put up entire construction. They have been using the road for quite some time. Similarly placed persons are having electricity, water and sewerage connection. The objection from the temple is a motivated one. Therefore, the orders impugned will have to be set aside especially, lack of bonafides and that too, in the light of the order passed by the Division Bench of this Court.

5. The learned counsel appearing for the Temple would submit that it is a case of suppression of material facts. Based upon an ex-parte order obtained, which is also a qualified one, the petitioners without placing it on record, obtained a

planning permission. There is no pathway in existence. The property belongs to the temple. Even otherwise, it cannot be termed as a approach road. As per the master plan, there is no indication of the road. Disputed questions of fact cannot be adjudicated before this Court.

6. The learned counsel appearing for the Corporation would submit that the petitioners were given an opportunity. Thereafter, the order impugned was passed. The concerned officer, who granted the planning permission, has also been placed under suspension. When once it is proved that the planning permission was obtained suppressing the fact, the consequence will have to follow.

7. The learned counsel appearing for the Electricity Board would submit that the service connection has been given temporarily, which is in existence.

8. The learned counsel appearing for the Chennai Metropolitan Water Supply and Sewerage Board would submit that connections cannot be given due to the objection raised by the temple and the public. There are 84 numbers of the connections available in Peeliamman Koil Street.

9. A narration of the above would clearly indicate that there are serious disputed questions of fact available. A perusal of the documents filed on behalf of the Corporation of Chennai would show that even according to the petitioners, they have been using the property as a pathway for quite number of years. Prima facie it appears that the petitioners did not have the title. Secondly, the planning permission has been made after obtaining the interim order. Even this interim order was an ex-parte one. The filing of the writ petition and obtaining an interim order would show that there was serious objection from the temple. As submitted by the learned counsel appearing for the temple, the disputed questions of fact not only involved the title but also the nature of the land and its usage. Therefore, this court cannot go into these aspects in these proceedings. The petitioners seek a declaration that the disputed property is a pathway, which cannot be done under Article 226 of the Constitution of India. Hence, the only remedy open to the petitioners is to approach the jurisdictional Civil Court.

10. Having given the aforesaid finding, the incidental relief sought for cannot be looked into. The learned counsel for the petitioners would submit that when there exists an electricity service connection, others have been given water and sewerage connection also. It is also submitted that the cancellation of the permission being unilateral will have to be kept in abeyance.

11. A further submission has been made by the learned counsel appearing for the petitioners that the petitioners have to be permitted to use the disputed land as a pathway.

12. On the service connection already provided by the Tamil Nadu Electricity Board, this Court is of the view that as the said exercise has already been undertaken need not be disturbed and the same will continue till the petitioners obtain appropriate orders before the Civil Court. The same reasoning would apply to the further action to be taken by the Corporation of Chennai. Thus, status quo will have to be maintained till the petitioners obtain appropriate orders from the Civil Court. It is to be noted that the order passed by the Corporation, from the record produced by the learned counsel, was after putting the petitioner on notice.

13. Insofar as the usage of the disputed land is concerned, this Court is of the view that this is a relief, which the petitioners can seek against the temple before the Civil Court either temporary or permanent. Giving any liberty would result in giving a finding on the nature of the land. Similarly, giving a direction to the Chennai Metropolitan Water Supply and Sewerage Board to give connection also is not feasible for consideration by this Court for the aforesaid reasons. Accordingly, the writ petitions stand disposed of giving liberty to the petitioners to approach the jurisdictional Civil Court. The petitioners are at liberty to implead all the respondents herein as the party defendants in the suit while seeking the relief both permanent and temporary. This Court is granting only the relief as against Tamil Nadu Electricity Board as indicated above. It is also made clear that the Corporation of Chennai shall not take any consequential action towards demolition of the building till the petitioners obtain appropriate orders before the Civil Court. It is for the reason, the cancellation order itself is a consequential action and on the complaint made by the third parties, including the respondent temple. This order is also passed on the premise that the action taken by the Corporation of Chennai would certainly be subject to the Civil Court's decision. The jurisdictional Civil Court is expected to decide the suit and interlocutory applications on their own merit without being influenced by any of the observations made in these writ petitions.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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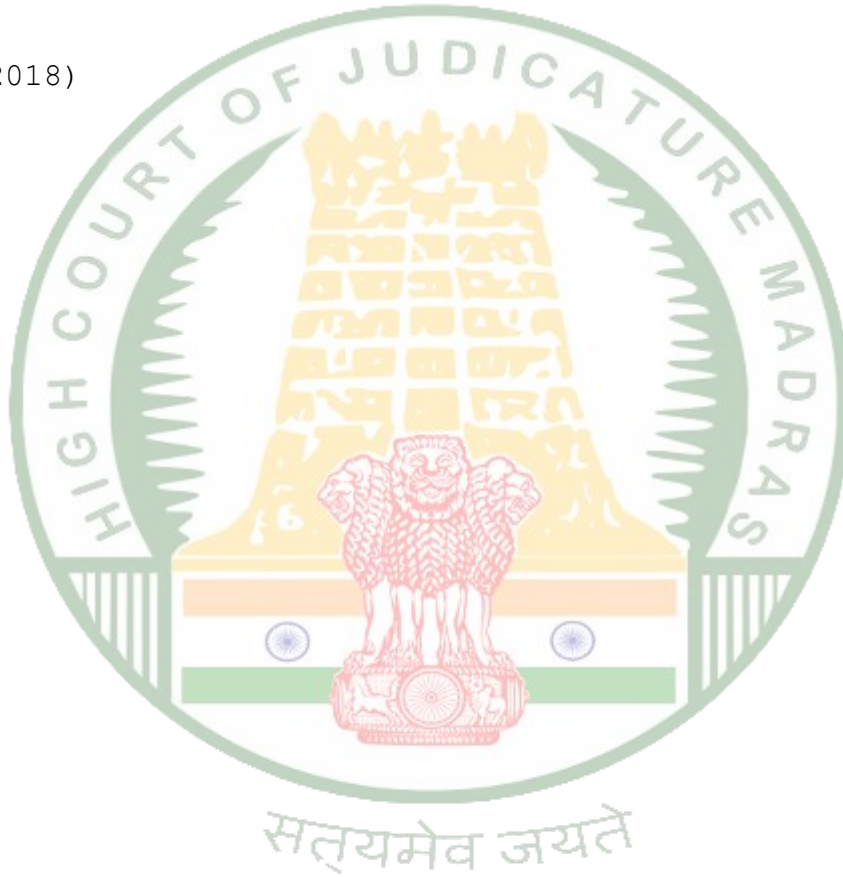
To

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Hindu Religious and Charitable Endowment
Board, A/m Peeliamman @ Ellamman Koil,
Kottur, Chennai-600 085.
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No.115, Dr.Muthulakshmi Salai, Adayar,
Chennai-600 020.

+3 Ccs to M/s. Anand Venkatesh, Advocate sr 3464, 3789.
+1 CC to Mr.B. Kesavan, Advocate sr 3245.
+1 CC to M/s.E. Angayarkanni, Advocate sr 3428.
+1 CC to Mr.S.K. Rameshwar, advocate sr 3537.

W.P.Nos.11470 of 2014, 43745
& 43792 of 2016 and 1658 of 2017

SS (CO)
SP (08/02/2018)



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