

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21593 of 2007

And

M.P.No.1 of 2007

Alpha College of Engineering
Rep. by its Chairperson
Mrs.Grace George

... Petitioner

Vs.

1.The Executive Officer
Arulmighu Jagannatha Perumal and
Thirumizhisai Alwar Thiru Koil,
Thirumizhisai.

2.The Commissioner
HR & CE Board
Chennai - 34.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in his proceedings dated 7.6.2007 and quash the same and consequently forbear the respondents or their men, agents, or subordinate in any manner interfere with the path way leading the petitioner college across survey No.164/1 used by the petitioner and others for a longer period.

For Petitioner : Mr.Ramesh Kumar Chopra

For Respondents: Mr.P.V.Arul Phazam Nee for R1
Mr.Maharaja for R2
Special Government Pleader (HR & CE)

O R D E R

The petitioner has filed this petition seeking Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent in his proceedings dated 07.06.2007 and to quash the same and to consequently forbear the respondents or their men, agents, or subordinate in any manner interfere with the pathway leading the petitioner College across

survey No.164/1 used by the petitioner and others for a longer period.

2.The case of the petitioner is that the petitioner is an Engineering College run by Alpha Educational Society approved by All India Council for Technical Education and affiliated to Anna University. The petitioner College is approachable by two accessible public roads one cutting across Thiruvallur Street of Udaiyavar Koil Colony and the other pathway cutting across various survey number including the respondent temple survey number to a minor extent of three cents. The said pathway is not only used by the petitioner College but also by

the Government, Flour Mill, Temple, School and adjoining residential inhabitants for more than two decades. Since the Udaiyavar Koil Colony Road is encroached and unapproachable, the petitioner College was accessed by the pathway as shown in the Map among others without any interference or whatsoever.

3.It is the further case of the petitioner that the local Authority and other planning Authorities have shown this place as pathway for the entire stretch including a small stretch of the Temple land to an extent of three cents. However, the first respondent is demanding huge amount from the petitioner in order to permit the petitioner to use that pathway without asking any question from other users. Hence, the petitioner caused letters dated 01.12.2006 and 28.05.2007 to the second respondent from interfering with the use of the pathway without any hindrance as it is used for a bonafide public purpose among several other persons. However, the first respondent without having any power under the HR & CE Act, vide impugned order dated 07.06.2007 demanded a donation of Rs.5 Lakhs and a sum of Rs.5,450/- as monthly rent. Hence, the petitioner has filed this writ petition.

4.Heard the arguments advanced on either side and perused the materials available on record.

5.While entertaining the writ petition on 26.06.2007, though this Court has granted an order of interim stay for a period of four weeks, subsequently, the interim order was not extended and it is also known that the petitioner has not paid any amount as demanded by the first respondent. Admittedly, the land belong to the Temple. Hence, the first respondent has every right to impose any condition. If the petitioner accepts the condition, they can use the land. In the present case, the petitioner did not accept the demand made by the first respondent. Hence, the petitioner do not have any right to use the said pathway which is a Temple land.

6.In the impugned order it is clearly stated that only after the petitioner sends letter consenting for the demand made by the first respondent, permission will be obtained from the Special Commissioner - cum - Commissioner, H.R. & C.E. Department and only thereafter the petitioner will be appointed as tenant.

7.In view of the above, this Court finds no merit in the writ petition. Accordingly, the writ petition is dismissed. This Court makes it clear that the respondents 1 and 2 are entitled to recover the amount from 01.11.2001 to till date, if not already paid. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner
HR & CE Board
Chennai - 34.

+1cc to Mr.P.V.Arul Phazam Nee, Advocate sr.no.46983
+1cc to Mr.Ramesh Kumar Chopra, Advocate sr.no.47273

सत्यमेव जयते

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