

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.19424 of 2017

Sree Varasidhi Vinayagar Thirukoil Vazhipattu Mandram,
rep. by its President, P.Palanisamy,
Kurichi Housing Unit Phase-I Extension,
SIDCO Industrial Estate,
Coimbatore - 641 021.

... Appellant

vs.

1. The District Collector,
Office of the District Collector,
Coimbatore.
2. The Commissioner,
Coimbatore Corporation
Coimbatore.
3. The Chairman,
High Level Committee,
Tamil Nadu Housing Board,
Coimbatore (Camp).
4. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai.
5. The Assistant Secretary (Allotment),
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai.
6. The Executive Engineer-cum-Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Tatabad,
Coimbatore - 641 012.

7. The Executive Engineer,
Special Division - 2,
Tamil Nadu Housing Board,
R.S.Puram, Tatabad,
Coimbatore - 2.

8. The Executive Officer,
Kurichi Town Panchayat,
Podanur.

9. D.Rajadurai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus directing the Respondents calling for the records relating to the impugned Communication Letter vide No.A2/1473/17, dated 13.07.2017 passed by the 6th Respondent and consequently direct the Respondent Nos.3 to 6 to execute the Sale Deed in favour of the Temple by name, Sree Varasidhi Vinayagar Thirukoil Vazhipattu Madram, Kurichi Housing Unit Phase I Extension, SIDCO Industrial Estate, Coimbatore - 641 021, by strictly following the Communication Letters (i) vide No.Ni.2/7729/95, dated 12.12.1995 and (ii) vide Lr.No.A4/2442/06, dated 31.05.2006 on payment of price fixed at the time of acquisition of the land by the Tamil Nadu Housing Board.

For Petitioner : Mr.Prakash Adiapadam

For Respondents 1,2 & 8 : Mr.A.N.Thambidurai,
Special Govt. Pleader

For Respondents 3 to 7 : Mr.V.Anandamoorthy

For 9th Respondent : Mr.M.Purushothaman

* * * * *

O R D E R
(Order of the Court made by S.VAIDYANATHAN, J.)

The Petitioner/Mandram has come up with this Writ Petition challenging the impugned Communication Letter vide No.A2/1473/17, dated 13.07.2017 passed by the 6th Respondent herein and for a consequential direction to Respondent Nos.3 to 6 to execute the Sale Deed in favour of the Temple viz. Sree Varasidhi Vinayagar Thirukoil Vazhipattu Madram at Kurichi Housing Unit Phase I Extension, SIDCO Industrial Estate, Coimbatore-641 021, by strictly following the Communication

Letters (i) vide No.Ni.2/7729/95, dated 12.12.1995 and (ii) vide Lr.No.A4/2442/06, dated 31.05.2006, on payment of price fixed by the Tamil Nadu Housing Board at the time of acquisition of the land.

2. According to the Petitioner/Mandram, 'Sree Varasidhi Vinayagar Thirukoil Vazhipattu Madram' is in existence for more than 200 years. Originally, the Temple was a Forest area viz. 'Sundarapuram' Forest, where many Siddhars, Munis and Yogis lived and they established a Temple for Lord Shiva and Lord Vinayagar. Later, gradually, many people migrated to the place surrounded by the Temple and hundreds of people are visiting the Temple daily and thousands of people are gathering during festival days and that so far, the Temple has celebrated three 'Kumbabishekams'.

3. It is the case of the Petitioner/Mandram that in the year 1960, the Government of Tamil Nadu sold the entire lands in question to a Private Industrial Estate and in the year 1980, the Tamil Nadu Housing Board (in short 'the Board') repurchased the entire land from the said Private Industrial Estate. Later, out of the entire land, the Board has utilized only 45.50 acres for putting Layout for Housing Scheme in the name and style of 'Kurichi Neighbourhood Scheme, Phase-I Extension and Phase-II Extension' by dividing into different size of plots for different category of people such as Higher Income Group-I, Higher Income Group-II, Higher Income Group-III, Middle Income Group-I, Middle Income Group-II and Middle Income Group-III. While converting the said 45.50 acres of land into Plots for the said Housing Scheme, the said Board has allocated major portion of the land for public purpose, such as Commercial Shops, High Schools, Fire Service, Police Station, Community Hall, Weekly Market, Nursery School, Park, Road, etc. However, the Board has not allotted any separate space for the Petitioner Temple by taking into account its very long existence.

4. In the year 1993, the Temple Administration decided to get electricity service connection for the Temple and in that regard, it made an application to the Assistant Executive Engineer, Tamil Nadu Electricity Board, Kurichi, Coimbatore, seeking electricity service connection to the Temple, but the same was returned for want of 'No Objection Certificate' from Kurichi Town Panchayat, Podanur. Only after obtaining of 'No Objection Certificate' from Kurichi Town Panchayat on 08.03.1993, electricity service connection was effected in the name of the Temple.

5. While so, the 7th Respondent/Executive Engineer, Tamil Nadu Housing Board, R.S.Puram, Coimbatore, vide his Letter dated 12.12.1995 to the then Temple Administration informed that "the

Board has decided to allot and sell the land to the Temple itself, as the Temple has been constructed in the Land that belongs to the Board, which was allotted to 'Nursery School', on payment of sale consideration by the Temple Authority". In response to the said Communication, the then Temple Administration duly submitted a representation to the 7th Respondent informing that they will take steps to get the Sale Deed executed in favour of the Temple, after consulting the Committee members of the Temple.

6. Thereafter, the then Temple Administration approached the Respondents and requested them to execute the Sale Deed in favour of the Temple at a lesser price, but, the Respondents delayed the matter, without executing the Sale Deed. Pursuant thereto, the then Temple Administration also approached the Minister for Tamil Nadu Housing Board and submitted their representation dated 29.12.2005. In response to the said representation forwarded by the Minister, the Board decided to execute the Sale Deed in favour of the Temple for the land measuring an extent of 3988 sq. ft. against the total extent of the land measuring an extent of 18,566 sq. ft. allotted to 'Nursery School', on payment of minimum price, as the Board empowers to do so.

7. As the Board demanded the Temple Authority to pay higher price, having no other option, the Petitioner submitted another representation on 03.07.2007 to the Chairman of the Tamil Nadu Housing Board, Coimbatore (Camp) and requested him to look into the matter for execution of Sale Deed in favour of the Temple at the price originally fixed at the time of acquisition. As the same was kept pending, the petitioner submitted another representation to the District Collector on 28.04.2008 and made further representation to the Managing Director, Tamil Nadu Housing Board, on 06.05.2008.

8. While things stood thus, one Rajadurai, the 9th Respondent herein, submitted a representation to the 6th Respondent that the Temple has been constructed by encroaching the land allotted to the 'Nursery School' by the Board. Thereafter, the 6th Respondent issued a Letter dated 24.01.2017 to the Temple Administration, informing them that the Temple has been constructed without permission/approval from the Board and therefore, directed the Temple Administration not to proceed with the renovation work till the Board grants permission for construction work. In January 2017, the Board initiated steps for bringing the entire land allotted for 'Nursery School' including the land, where the Temple is situated, for Public Auction. Hence, the Temple Administration once again made a representation to the Board to execute the Sale Deed in favour of the Temple to the extent of 3988 sq. ft., on payment of sale price as fixed earlier.

9. All of a sudden, in April 2017, the 9th Respondent filed a Writ Petition in W.P.No.10516 of 2017 without impleading the Petitioner as a party to the proceedings, seeking to demolish the alleged unauthorized constructions in the areas reserved for the purpose of nursery school, parking area, parks, playgrounds and public spaces in Phase II in Kurichi Housing Unit, SIDCO, Coimbatore - 641 021. The said Writ Petition was disposed of by this Court, by an order dated 26.04.2017, directing the 4th Respondent therein to cause an inspection of the site within a fortnight from the date of receipt of a copy of the order, with an observation that if the constructions are found to be in violation of the sanctioned Plan or if it is unauthorized in any other manner, the Respondents shall take action in accordance with law, after giving notice to all concerned, and conclude the proceedings within a period of two months thereafter.

10. In view of the said order of this Court, the 6th Respondent herein issued a Letter dated 01.06.2017 to the Temple Administration, to stop all further construction work forthwith, until the Board grants permission to proceed with the same. Hence, the Temple Administration, made a detailed representation dated 21.06.2017 to the 6th Respondent and made a further representation dated 04.07.2017 to the 4th Respondent herein, that the Temple Administration is willing to purchase the Land in question. While so, without considering their representations, the 6th Respondent, issued the impugned Communication dated 13.07.2017, that the Land where the Temple is situated is the land allotted to Nursery School by the Board and that the land will be sold only by public auction. Aggrieved by the same, the Petitioner/Mandram is before this Court by way of the present Writ Petition.

11. The sum and substance of the counter filed by the Respondents 4 and 6/Tamil Nadu Housing Board is that the land in question belongs to the Tamil Nadu Housing Board and that the Petitioner/Mandram has no locus to demand registration of the land and that the place is earmarked for primary school in the approved layout. It is stated by the Tamil Nadu Housing Board that the representation received from the Temple has been forwarded to the Board to decide the issue and the Petitioner cannot interfere with the policy decision of the Board and compel to sell the encroached site at the price fixed at the time of acquisition of the land. It is further stated that the Petitioner has not obtained any permission from the Tamil Nadu Housing Board as regards construction of the Temple in the land in question.

12. In this regard, the 6th Respondent/Executive Engineer-cum-Administrative Officer of the Housing Board has issued

notice on 24.01.2017 to the Temple authorities not to proceed with any construction/renovation work until the Board grants permission for construction. Challenging the said notice, the Temple authority filed a Writ Petition in W.P.No.10516 of 2017 and this Court disposed of the same on 26.04.2017.

13. It is further stated by the 6th Respondent that a notice was issued to the Temple authorities to stop the construction work until orders are passed by the Board. Since the Temple authorities did not obey the order of this Court, a notice dated 13.07.2017 was sent to them to stop the work. It is contended by the 6th Respondent that instead of stopping the construction, the Petitioner has challenged the notice and has sought a direction to Respondents 3 to 6 to execute the Sale Deed in favour of the Temple on payment of price fixed at the time of acquisition of land by the Tamil Nadu Housing Board. According to the 6th Respondent, the request of the Petitioner could not be complied with, as the Temple has been constructed in the land approved and earmarked for primary school.

14. Learned counsel for the Petitioner submitted that the Temple Administration is always ready and willing to purchase the land in question, but, without considering the umpteen number of representations made by them, the impugned communication has been passed, which is highly arbitrary and unreasonable.

15. Today, an affidavit has been filed by the 6th Respondent stating that the lands in S.No.175/1 etc. of Kurichi Village, Coimbatore was transferred and purchased from SIDCO (Small Scale Industries and Development Corporation) by the Tamil Nadu Housing Board for Housing Scheme. Thereafter, a layout was prepared and approved by the Town and Country Planning authorities during the year 1981 and at the time of approval, no Temple was in existence in the subject site. He has further stated that the subject site was earmarked and approved as Nursery School, but, it was later encroached and the Temple in question was constructed illegally and that there is no alternative site or any other vacant plot suitable for Nursery School in the approved Plan of Kurichi Neighbourhood Scheme, Coimbatore.

16. Heard the learned counsel for the parties and perused the material documents available on record.

17. Though, according to the Petitioner, the Temple in question is in existence for more than 200 years, admittedly, the Petitioner/Mandram is not the owner of the land in question and it is vested with the Tamil Nadu Housing Board for Housing Scheme. Also, the site in question is earmarked for construction of a Primary School. The Apex Court, in a catena

of decisions, has held that when a land has been acquired for public purpose, more particularly for a School, no one, much less a Temple can seek an order that the Temple should be in existence in the encroached place and that the School shall be constructed in a different place. When the Petitioner/Mandram has not obtained permission from the Tamil Nadu Housing Board to construct a Temple in the site in question, they have no legal right to seek execution of Sale Deed in favour of the Temple.

18. God has never demanded a place. In fact, God has given a place to human beings on lease. When a place is required for a Temple/School, undoubtedly, School has to be given priority over Temple. When this Court expressed its displeasure and dissatisfaction with regard to the construction of the Temple to an extent of 3988 sq. ft. in the land earmarked for Primary School, learned Counsel for the Petitioner drew the attention of this Court to the representation made by the Petitioner/Mandram to the Administrative Officer, Kurichi Panchayat Office, Pothanur, seeking to grant 'No Objection Certificate' for providing electricity service connection, wherein, it is stated that the Temple is constructed in the land meant for general public to an extent of 100 sq. ft. (10' x 10'). According to the Learned Counsel, originally, the Temple has been constructed to an extent of 100 sq. ft. and he pleaded that the said extent of land, as such, may not be disturbed by the authorities.

19. On a perusal of the representation of the Petitioner/Mandram to the Administrative Officer, Kurichi Panchayat Office, Pothanur (furnished in page 1 of the typed set of papers) seeking to grant 'No Objection Certificate' for providing electricity service connection, it is clear that the Temple in question has originally been constructed in the land in question only to an extent of 100 sq. ft. and in the course of time, the land to an extent of 3988 sq. ft. has been usurped by the Temple authorities.

20. However, taking note of the said submissions of the learned counsel for the Petitioner that three Kumbabishekams have been performed in the Temple in question and that the Petitioner has pleaded retention of only 100 sq. ft. of land, where the main deity is placed, this Court is of the view that it is open to the Official Respondents to consider the request of the Petitioner/Mandram only to the extent of 100 sq. ft. of the land in question and not beyond the said extent of land. It is made clear that if, for any reason, the Petitioner/Mandram is going to demand as a matter of right that they shall not be disturbed from the construction that has been made to an extent of 3988 sq. ft., or approach any Court in that regard till the issue relating to 100 sq. ft. of land is decided, the Petitioner would not be entitled to any relief muchless to an extent of 100

sq. ft.

With the above direction and observation, this Writ Petition stands disposed of. No costs. Consequently, connected W.M.P.Nos.20947 and 20948 of 2017 are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

(aeb)

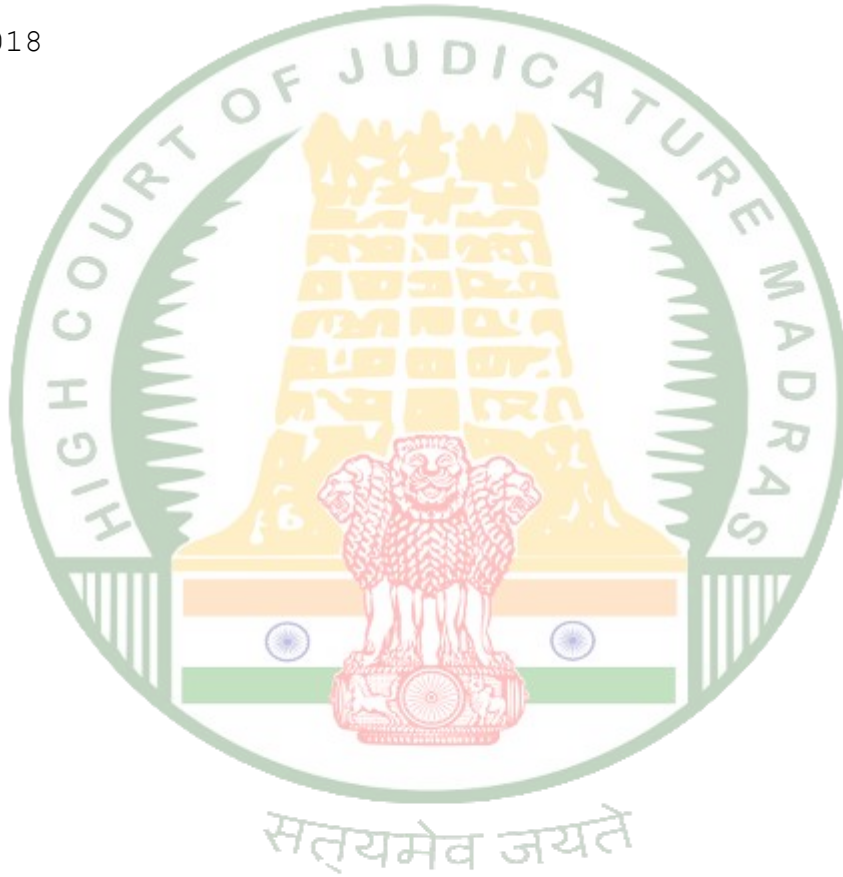
To:

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Office of the District Collector, Coimbatore.
2. The Commissioner,
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3. The Chairman,
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6. The Executive Engineer-cum-Administrative Officer,
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8. The Executive Officer,
Kurichi Town Panchayat, Podanur.

+1 cc to M/s.V.Anandamoorthy Advocate sr 9123
+2 ccs to M/s.M.Purushothaman Advocate sr 9296
+1 cc to M/s.S.Saravanan Advocate sr 9266
+1 cc to prakash Adiapadam Advocates sr 9491
+1 cc to the Govt Pleader sr 9380

Order in
W.P.No.19424 of 2017

aa10/04/2018



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