

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26-06-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.40723 of 2015

And

M.P.No.1 of 2015 and W.M.P.No.334 of 2017

Divine Educational and Charitable Trust,
A Registered Trust,
Represented by its Managing Trustee,
S.Sathya Anand,
Having its Registered Office at
1/64, Bharathi Nagar,
First Street, Perungulathur,
Chennai-600 063. .. Petitioner

Versus

1.The District Collector,
Kanchipuram District.
2.The Tahsildar,
Sriperambudur. .. Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property situate at Survey No.242, Varadharajapuram, Sriperambudur Taluk, Kancheepuram District.

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.M.Elumalai,
Government Advocate.

ORDER

The relief sought for in this writ petition is for a direction to forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property situated at Survey No.242, Varadharajapuram, Sriperambudur Taluk, Kancheepuram District.

2. The learned counsel, appearing on behalf of the writ petitioner, made a submission that the writ petitioner is a

Charitable Trust. The writ petitioner claims that they are in possession and enjoyment of the land situated at Survey No.242, Varadharajapuram, Sriperambudur Taluk, Kancheepuram District, comprising of a total extent of 16.5 cents. Even in the affidavit filed in support of the writ petition, the writ petitioner has stated that "the land situated at Survey No.242, Varadharajapuram, Sriperambudur Taluk, Kancheepuram District, comprising of a total extent of 16.5 cents has been in the possession and enjoyment of the writ petitioner over two decades. The State has recognised the peaceful occupation of the writ petitioner and has issued Possession Certificate in favour of the writ petitioner. The State has also collected the requisite fee from the writ petitioner and has regularly issued B Memo's".

3. Nowhere in the affidavit, the writ petitioner has stated that they are the absolute owner of the property nor possessing the title in respect of the property under the possession of the writ petitioner.

4. May that it be, this Court is of an opinion that adjudication of the title, ownership or possession can never be entertained in a writ proceedings under Article 226 of the Constitution of India. The aggrieved parties are at liberty to approach the competent Civil Court of Law by producing documents and by adducing evidences. However, this Court, in a writ petition, cannot take a decision nor issue any direction forbearing the respondents from interfering with the peaceful possession and enjoyment of the property.

5. The learned Government Advocate, appearing on behalf of the respondents, opposed the said contention of the learned counsel appearing for the petitioner, by stating that the land in question is "Odai Poramboke" and the writ petitioner is in unlawful possession and enjoyment of the Government property. Further, it is contended that the writ petitioner is not the owner of the property and therefore, the respondents have every authority to interfere with the peaceful possession and enjoyment of the property under the possession of the writ petitioner.

6. The property rights of the respective parties are to be protected as per law. Undoubtedly, the property belongs to the individuals also to be protected. However, it is always subject to the acquisition laws in force. So also the public lands are to be protected by the Officials concerned. There cannot be any violation or negligence or dereliction of duty in respect of protecting the public lands by the District Administration as well as by the authorities competent concerned. In the event of an act of negligence or dereliction of duty by these Revenue

Officials or any other Officials, the competent Disciplinary Authority has to initiate disciplinary proceedings against such Officials for such misconducts for not protecting the public properties in an appropriate manner.

7. Thus, the authorities concerned are to be vigilant in respect of protecting the public properties in the interest of public. The encroachments, unlawful occupations or otherwise are to be reviewed periodically by the District Administration/District Collector and suitable actions are to be initiated without any further delay. In this connection, instructions are to be issued to the Officials concerned for appropriate action. Failure should result in initiation of prosecution and disciplinary proceedings against the officials concerned. This being the actions to be initiated in respect of the public properties, the authorities competent are bound to act in accordance with law and without any leniency or delay.

8. In respect of the present writ petition on hand, the relief, as such, sought for to forbear the respondents from interfering with the peaceful possession and enjoyment of the writ petitioner in the land, cannot be granted at all. However, the writ petitioner is at liberty to approach the competent Civil Court in the manner known to law.

9. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Svn
To

1.The District Collector,
Kanchipuram District.

2.The Tahsildar,
Sriperambudur.

+lcc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 40571
+lcc to the Government Pleader, S.R.No. 40888

W.P.No.40723 of 2015

SJ(CO)
TR(06/07/2018)