

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.15492 of 2018
and WMP.No.18381 of 2018

Indian Suvisesha Thirusabai

...Petitioner

Vs.

1.The Revenue Divisional Officer,
Ponneri, Tiruvallur District.

2.The Tahsildar,
Ponneri Taluk,
Tiruvallur District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the 2nd respondent or his subordinate officials from interfering with the construction of the Church in the extent of 30 cents comprised in S.No.410/2, Kilmudalambedu Village, Gummidipoondi Taluk, Tiruvallur District.

For Petitioner : Mr.S.Udhaya Kumar

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal.

2. The petitioner states that religious structure in the form of Church was in existence for more than 60 years in S.No.410/2, Kilmudalambedu Village, Gummidipoondi Taluk, Tiruvallur District admeasuring to an extent of 50 cents. According to the petitioner, classification of the said land is within "Meikkal Poromboke" (gracing ground poromboke) and the total extent of land was 4.18 acres and it is located right adjacent to Chennai – Kolkata National Highways.

3. It is also the submission of the petitioner that there are about 150 members who are regularly offering worship in the said Church. The petitioner would further aver that the existence of Church in S.No.410/2 which has been classified as "Meikkal Poromboke" sought to be alienated by the National Highways Authority of India for six laning of National Highways-5 in Kilmudalambedu-II Village and since there was a structure viz., ECI Church and the structure value was established at Rs.14,95,038/-, the competent authority, vide proceedings dated 11.07.2013, has passed a Supplementary Draft Award awarding a sum of Rs.14,05,336/- after making

deduction of the salvage amount @ 6% is sanctioned and ordered to be paid to the Bishop, ECI church, Kilmudalambedu-II Village, Tiruvallur District.

4. The learned counsel appearing for the petitioner would submit that in the light of the fact that the religious structure has been taken over for widening the National Highways, the petitioner has submitted a representation dated 18.05.2018 praying for the allotment of the land in S.No.410/2, for putting up the new religious structure/Church and it was acknowledged on 18.05.2018 and since no response is forth coming, they are sent another notice dated 22.05.2018 and though it was received and acknowledged on 22.05.2018, no action has been taken to remove the encroachments and therefore he has been constrained to approach this Court by filing this writ petition.

5. *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that admittedly, the petitioner is a E.C.I.Church represented by Indian Suvisesha Thirusabai and has been paid with compensation and if the petitioner is really interested in constructing religious structure, he should have purchased the land and put up superstructure after obtaining necessary approval and

since he put up the structure in the land which has been classified as "Meikkal Poromboke", the same is impermissible under law and prays for dismissal of the writ petition.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. It is relevant to extract Rule 25 of the Tamil Nadu Panchayats Building Rules, 1997 as well as Rule 6 (4) of Tamil Nadu District Municipalities (Building Rules), 1972:

"25. Multi-storeyed and public buildings.- Every person intending to construct, reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public Building Rules, 1973 issued under Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920):

Provided that the Executive Authority shall not grant approval for construction, reconstruction, addition or alteration of any such building without consulting the concerned Joint Director or Deputy Directory of Town and Country Planning".

Rule 6 (4) of Tamil Nadu District Municipalities (Building Rules), 1972:

"No site be used for the construction of a building intended for public worship or religious purposes, without the prior

approval of the Collector of the district who may refuse such approval, if in his opinion, the use, purpose of the site and building is likely to endanger public peace and order:

Provided that an appeal shall lie against the Collector's decision to the Government who may issue such orders as they deem fit."

As per the Rule 25 of Tamil Nadu Building Rules, 1977 'Every person intending to construct, reconstruct, add to or alter any public building other than Government building shall follow the provisions of the Multi-Storeyed and Public Building Rules, 1973 issued under Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920).'

8. In the light of the said rules, It is obligatory on the part of the petitioner to obtain planning permission to put up a religious structure and admittedly the petitioner is yet to obtain a planning permission to put up any religious superstructure. It is pertinent to point out at this juncture that the petitioner, as a matter of right, claims that they want to put up a religious structure on a piece of land classified as "Meikkal Poromboke", which has to be allotted to him.

9. In the considered opinion of this Court, the claim made by the petitioner lacks merits and substance for the reason that the land has been classified as "Meikkal Poromboke" and it cannot be parted with for the purpose of putting up a religious structure and even assuming it can be done, still it is obligatory on the part of the petitioner to obtain necessary permission / approval to put up a religious structure and admittedly, it has not been done and that apart, the petitioner has been paid with compensation of Rs.14,05,336/- by the National Highways Authority of India for demolishing the religious structure for the purpose of six laning of National Highways-5 in Kilmudalambedu-II Village, after making deduction of the salvage amount at 6% and if the petitioner really wants to propagate the religion in which he belongs, he should have taken necessary steps to purchase the land and thereafter put up religious structure, after obtaining necessary permission and approval, but it has not been done by the petitioner so far. It also appears that the petitioner wants to put up religious structure without any planning permission on a public land which is classified as "Meikkal Poromboke" and Mandamus to consider the representation submitted in that regard cannot be issued for the reason that there is no statutory obligation cast upon the authorities to consider such a kind of representation.

10. In the result, the writ petition stands dismissed. No costs.
Consequently connected miscellaneous petition is closed.

[M.S.N., J.] [G.K.I., J.]

25.06.2018

Index : No
Internet: Yes
Speaking Order

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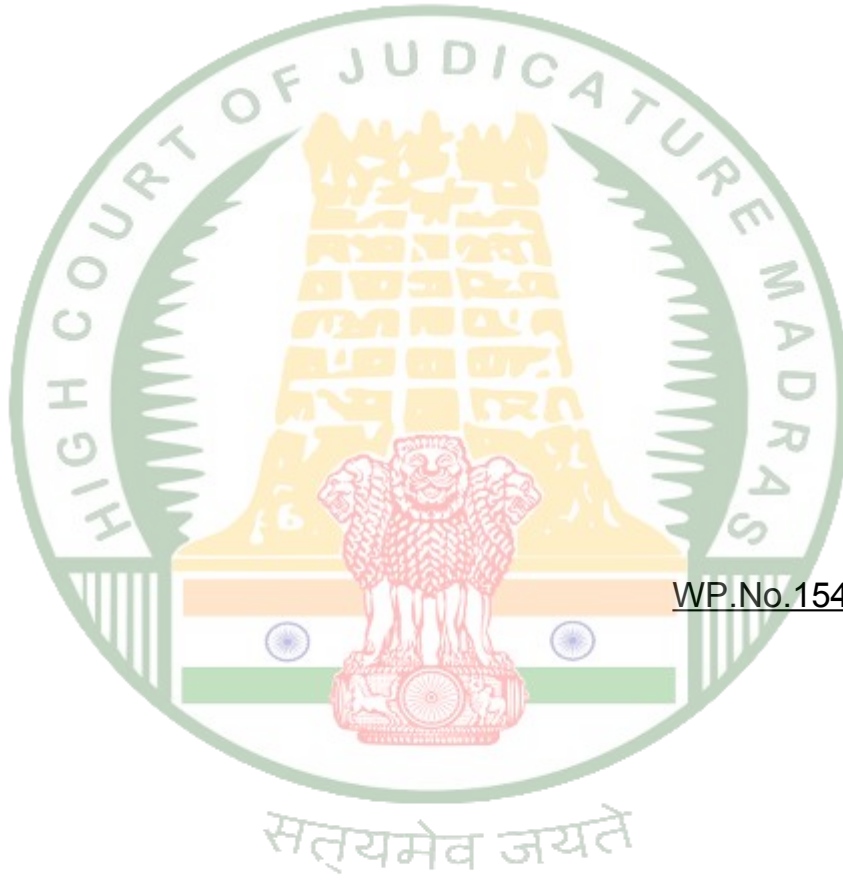
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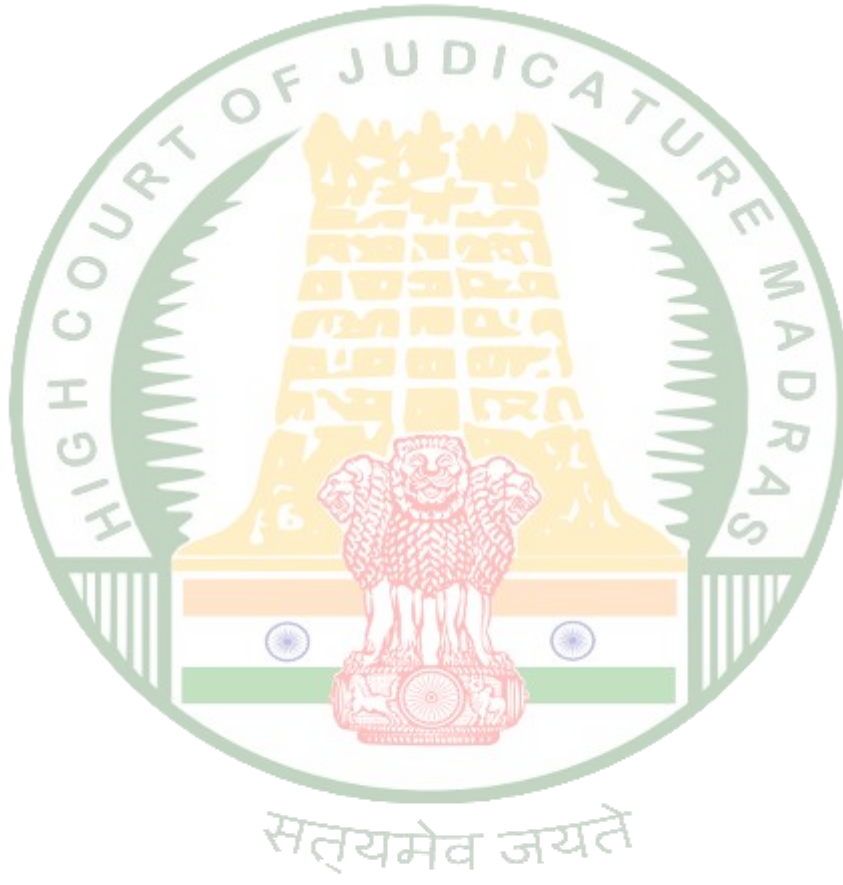
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M.SATHYANARAYANAN, J.
AND
G.K.ILANTHIRAIYAN,J.
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