

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.27916 of 2017
and
W.M.P.No.29947 of 2017

Bethesda Baptist Church,
Represented by
Mr.E.S.Babu, Pastor,
1A, East Namachivayapuram,
Raji Gandhi Nagar,
Choolaimedu,
Chennai-600 094.

... Petitioner

Vs.

1. The Secretary,
Public Works Department,
Fort St.George, Chennai-600 009.
 2. The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai.
 3. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai-600 005.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear the Respondents herein from interfering with the peaceful functioning of the Petitioner-Church situated at No.1A, East Namachivayapuram, Rajiv Gandhi Nagar, Choolaimedu, Chennai-600 094.

For Petitioner : Mr.R.Ramesh for M/s.Srinath Sridevan

For Respondents: Mr.J.Pothiraj, Spl.G.P. for R-1
Mr.Arun Mozhi for R-2
Mr.S.Prabhu for R-3

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to forbear the Respondents herein from interfering with the peaceful functioning of the Petitioner-Church situated at No.1A, East Namachivayapuram, Rajiv Gandhi Nagar, Choolaimedu, Chennai-600 094.

2. The Petitioner-Church is set up by the Christian Slum Dwellers in Choolaimedu area in the year 1985 and the same is functioning with its Centre at Choolaimedu for over 30 years. In fact, the Petitioner-Church functions at No.1A, East Namachivayapuram, Rajiv Gandhi Nagar, Choolaimedu, Chennai. The said Rajiv Gandhi Nagar is vested in the Tamil Nadu Slum Clearance Board (TNSCB) for the purpose of providing habitation for the lower income dwellers of the City. Since the TNSCB allotted houses to various occupants of the area, the area on which the Church now stands, is left vacant for common purposes. In the year 1985, the occupants set up the Church as a place of common Worship and this was also recognised in due course by the Third Respondent herein.

3. The stand of the Petitioner is that the Church was not affected by flooding and was not adversely impacted by the historic 2015 floods. Further that, the Petitioner/Church is paying all Municipal Taxes, Property TAX and other Taxes to the Government.

4. When that being the fact situation, on 27.10.2017 at about 7 a.m., the Second Respondent's men came to the Church and attempted to demolish the same and the reason assigned orally was that the Religious Institution is built on a Lake Land. In this connection, the grievance of the Petitioner is that the Respondent Nos.1 and 2 had failed to see that the Church's property was located on the Third Respondent's property and it was far away from any Lake. Strangely, the Respondent Nos.1 and 2 showed undue haste for demolition of the Petitioner-Church. The local residents as well as the congregations protested against the move in question and because of that, the Officials of the Respondent Nos.1 and 2 informed that they would wait until 30.10.2017 and with great difficulty, they were persuaded to leave the place in question.

5. The categorical plea taken on behalf of the Petitioner-Church is that no notice was issued to them, nor did the Respondent Nos.1 and 2 affixed/stick/paste any notice in a conspicuous place in the Church. Even assuming that the Petitioner/Church has Encroached, the basic requirement, as visualised in the ingredients of the Tamil Nadu Land Encroachment Act, 1905, are not adhered to by the Authorities concerned. Furthermore, no opportunity of hearing was provided to the Petitioner/Church to put forward their views and the only

reason assigned on 27.10.2017 was that the Petitioner/Church is in encroachment and is built on a Lake Land, which is a factually incorrect one. Hence, the Petitioner/Church is left with no other alternative but to file the present Writ Petition for the relief stated supra.

6. Earlier, this Court on 31.10.2017, in the present Writ Petition, at paragraph 6, had observed the following:

"6. The jurisdictional Zonal Officials of the 2nd respondent shall cause inspection of the premises in question and file a status report as to the ownership of the land, whether the superstructure has been put up, authorisedly and if so, any deviation is there and whether any permission has been obtained from the concerned authority for using such premises as a place of religious worship. It is made clear that the petitioner's Church, till the disposal of the writ petition, shall not create any third party right in respect of the land/superstructure in question and shall not alter the physical structure also."

7. On behalf of the First Respondent/Secretary, Public Works Department, Chennai-9, a Status Report, dated 07.03.2018 was filed before this Court stating that the River Cooum is maintained by the Public Works Department and presently, the Cooum River Integrated Eco-Restoration Project is going under the Chennai River Restoration Trust. Furthermore, improvement works to the Cooum River are being carried out as a package work by the Line Departments, viz., Public Works Department, Greater Chennai Corporation, Chennai Metro Water Supply and Sewage Board and Tamil Nadu Slum Clearance Board and this Project has been inaugurated by the former Tamil Nadu Chief Minister, vide G.O. (Ms.).No.9, Municipal Administration and Water Supply (MC-1) Department, dated 13.01.2015.

8. The stand of the First Respondent in the Status Report is that the eviction of Encroachment which has been existing on both the sides of the River Course, is being carried out by the Public Works Department with the co-operation of the Greater Chennai Corporation and the Tamil Nadu Slum Clearance Board in a phased manner and part of this programme is in Choolaimedu, East Namachivayapuram and Rajiv Gandhi Nagar Slums, which are situated in the Cooum River Bank, and they were evicted. As a part of the programme and while removing the Encroachment, the Petitioner/Church was provided with ample time to vacate the building of the Church. However, the Petitioner has filed the present Writ Petition.

9. As a matter of fact, all the Encroachments in the abovesaid location, were cleared and because of the fact that the Church building is still encroached in Cooum River Bank, it hinders and hampers the River Widening and construction of compound wall works.

10. The Second Respondent/Greater Chennai Corporation has filed counter affidavit and takes a stand that the Petitioner-Church is constructed in the building at Door No.1, East Namachivayapuram, Rajiv Gandhi Nagar, Choolaimedu, Chennai of Ground Floor consisting of 598.26 Sq.Ft. (RCC Roof and First Floor 598.26 Sq.Ft) for residential purpose and erected temporary shed in the First Floor. In reality, the building is constructed in the Cooum River Bank, which is an Encroachment on the Public Works Department's land and it is not vested with the Tamil Nadu Slum Clearance Board.

11. Furthermore, the building in question was constructed for residential purpose and later it was converted into Church and this building had been constructed by encroaching upon the Cooum River Bank and the land vested with the Public Works Department. The petitioner had encroached and the Church was constructed in the River Bed, which would endanger the life of human beings during heavy Rain and Flood times.

12. The crystalline stand of the Second Respondent/Greater Chennai Corporation in the counter affidavit is that the Greater Chennai Corporation is only assisting the Public Works Department for removal of Encroachment along the Cooum River with the Cooum River Restoration Trust (CRRT). In the interest of public and with a view to safeguard the life of public from the danger of Flood and Storm, it is necessary to remove the Church from the Cooum River Bank which was constructed unauthorisedly. Further, the demolition work is being carried on by the Public Works Department (PWD) and the Second Respondent is only assisting the PWD for removing the Encroachment from the Cooum River Bank in the area in question.

13. This Court heard the Learned Counsel for the Petitioner and the Learned Counsel appearing for the Respondents and noted their contentions.

14. The strenuous plea of the Petitioner in the present case is that the Church is functioning for over 30 years and it was set up by the Christian Slum Dwellers in Choolaimedu, Chennai in the year 1985. The Church will be put to irreparable loss and inconvenience, besides hardship, in case the act of demolition is permitted to be carried out by the concerned Authority. Furthermore, the ingredients of the Tamil Nadu Land Encroachment Act, 1905 have not been adhered to and not even a prior notice was issued to the Petitioner/Church. Also that the Petitioner/Church claims that the land belongs to the Third Respondent/TNSCB, Chennai, which fact is repudiated/repelled by the Second Respondent/Greater Chennai Corporation, which emphatically points out that the Church building is constructed

on the River Bank of Cooum River by encroaching upon the land of the PWD and it is not vested with the Third Respondent/TNSCB.

15. In view of the fact that the Petitioner's prime plea is that no Show Cause Notice was issued to the Church before initiating any act of demolition of the Church and also claims that the Petitioner/Church is not an encroacher, and that the land in question belongs to the Third Respondent/TNSCB, etc., this Court, at this stage, simpliciter, without expressing any opinion on the merits of the matter, and also not delving deep into the subject matter in issue, directs the Executive Engineer of the First Respondent/PWD / competent Authority as the case may be, to issue notice to the Petitioner/Church by requiring it through its Agent/Authorised Representative to appear on a specified date and time well in advance and the Petitioner/Church is directed to submit all necessary materials/documentary evidence before the Executive Engineer of the First Respondent/PWD, within a period of two weeks from the date of receipt of a copy of this order. The Petitioner/Church shall submit its objections/written representation before the Executive Engineer of the First Respondent/PWD with all supporting documents, if they so desire/if they are so advised and the said materials/documentary evidence can be taken into account by the Executive Engineer of the First Respondent/PWD and to pass final order in the subject matter in issue, of course, after providing adequate opportunity of hearing to the Petitioner/Church and others concerned, within a period of four weeks thereafter. If the Petitioner/Church requires any opportunity of hearing, then the Executive Engineer of the First Respondent/PWD shall grant the same in an humane and sympathetic manner and the Petitioner/Church shall avail of the same in a diligent manner.

16. In the course of enquiry to be conducted by the Executive Engineer of the First Respondent/PWD, the Petitioner/Church is directed to lend its unstinted co-operation and assistance to the First Respondent for passing final order in respect of the building in question, within the time adumbrated above by this Court. It is needless for this Court to make a pertinent mention that the Executive Engineer of the First Respondent/PWD shall pass the final order in the subject matter in question in an unbiased, free, just and in a dispassionate manner, of course, uninfluenced and untrammelled by any of the observations made by this Court in this Writ Petition.

17. It is made clear that till final orders are passed by the Executive Engineer of the First Respondent/PWD, the possession and enjoyment of the subject property by the Petitioner/Church shall not be displaced/disturbed by anyone.

18. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs

To

1. The Secretary,
Public Works Department,
Fort St.George, Chennai-600 009.
2. The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai.
3. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai-600 005.
4. The Executive Engineer,
Public Works Department,
Secretariat, Chennai-9

+1cc to Government Pleader sr.no.85118

सत्यमेव जयते

W.P.No.27916 of 2017

ssi(co)
nr 09/01/2019

WEB COPY