

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.18569 of 2004

K.Pushkaran

... Petitioner

vs.

1. The District Collector,
Kanyakumari District,
at Nagercoil.
 2. The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay.
 3. The Tahsildar,
Vilavancode Taluk
at Kuzhithurai,
Kanyakumari District.
- ... Respondents

Writ Petition 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 construction of the Shop by the Petitioner, who is the Manager and managing the property affairs of Temple 'Sree Krishnasamy Koil' Temple, as per the Planning Permission.

For Petitioner : No appearance

For Respondents : Mr.S.N.Parthasarathi,
Government Advocate

O R D E R

The Petitioner has come up with the present Writ Petition seeking to forbear the Respondents from interfering with the construction of the Shop by him, which is being carried out as per the Planning Permission.

2. According to the Petitioner, he is managing the property affairs of Sree Krishnaswamy Temple and that the said Temple does not come under the control of H.R. & C.E. Department. About 26 cents of agricultural land in R.S.No.329/21 in Ezhudesam Village was originally assigned to one Rajamma and the land reached several hands and finally, one

J.S.Kumar sold the property through his Power of Attorney to the Temple in question on 13.10.2003.

3. It is the case of the Petitioner that to derive more income from the Temple property, it has been decided to construct five shops with the extent of 350 sq. ft. However, the 3rd Respondent/The Tahsildar, Vilavancode Taluk at Kuzhithurai, Kanyakumari District, orally instructed the Petitioner not to effect any construction. Hence, the Petitioner made a representation to the authorities on 28.01.2004 seeking permission to effect construction. But, the same has been refused by the Authorities vide proceedings dated 14.02.2004. According to the Petitioner, the 3rd Respondent has no jurisdiction to prohibit construction of shops in the Temple land and it is only for the authority, who is empowered to grant Planning Permission to decide about the advisability of permitting construction.

4. The 3rd Respondent, in his counter, has stated that the land comprised in R.S.No.329/14 of Ezhudesam Village, to an extent of 6.27.0 hectares is a poramboke land, totally classified as "Harijan Kudiyiruppu" and duly sub-divided into many parts and house-site pattas were issued for the purpose of constructing houses for dwelling purpose with a condition that dwelling houses have to be constructed within one year from the date of issuance of Patta. Out of 6.27.0 hectares of land comprised in R.S.No.329/14 of Ezhudesam Village, by sub-dividing it as 329/14-21, an extent of 0.10.5 hectares was assigned to one Rajamma in H.S.P.148/73 as per the proceedings of the Revenue Divisional Officer, Padmanabhapuram, dated 26.12.1975. According to the 3rd Respondent, the house site patta holder has not constructed any dwelling house in the above land and the land was unauthorisedly encroached by some persons. So, action has been taken to evict the encroachments. However, the land assigned by the Government was sold out on 13.12.1978 violating the condition of construction of a dwelling house therein. Hence, the Patta issued for the land got cancelled automatically and the land was resumed to the Government.

5. It is further stated in the counter that the Temple is situated within the Harijan Kudiyiruppu lands in R.S.No.329/14-44 having an extent of 0.34.5 Hectares of Ezhudesam Village and there is no connection between the Temple and the suit property. Since the Petitioner is attempting to acquire possession of the property in the guise of Temple property, which is a Government poramboke land, he was obstructed from doing so. It is also stated that the Petitioner has filed a Civil Suit in O.S.No.175 of 2003 before the Sub-Court, Kuzhithurai, praying for title and possession of the above land in dispute and the same is pending.

6. Today, when the matter is taken up for hearing, there is no representation for the Petitioner. Heard the Learned Government Advocate appearing for the Respondents.

7. Admittedly, the land in question is a Government Poramboke land, duly sub-divided into many parts and house site pattas were issued to many houseless persons. Originally, the land in question was assigned to one Rajamma. As the house site patta holder did not construct any dwelling house in the said land, the land has been unauthorisedly encroached by some persons. Even going by the averments of the Petitioner, he is only managing the affairs of the Temple property and he has no right to make any construction in the land in question. Moreover, there is no evidence produced by the Petitioner to show that the Temple is the owner of the property in question. Mere payment of property tax and having electricity connection cannot be a ground for continuing to dwell in a Poramboke property. Also, it is seen that the Petitioner has initiated a Civil Suit before the Court below in respect of the title of the land in question and the same is pending. Be that as it may, the Petitioner's grievance before this Court is that the Respondents are interfering with the construction of Shops in the Temple land in question.

8. This Court is of the view that when the Temple in question is situated in a Government Poramboke land, the Petitioner, even in the capacity of a Manager of the Temple affairs, has no locus to construct the Shops in question and the Respondents are justified in interfering with the construction of the same. As such, the Petitioner is not entitled to the relief sought by him. Hence, the Writ Petition stands dismissed, as devoid of merits. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

(aeb)

To :

1. The District Collector,
Kanyakumari District,
at Nagercoil.

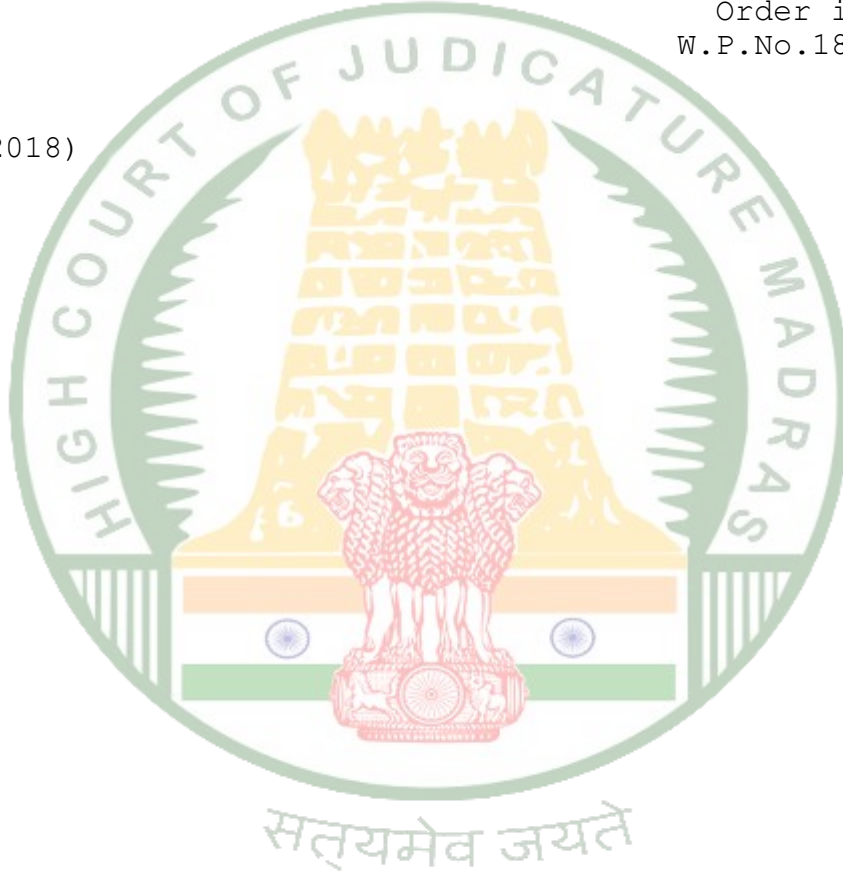
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3. The Tahsildar,
Vilavancode Taluk
at Kuzhithurai,
Kanyakumari District.

+1cc to the Government Pleader, S.R.No. 5833

Order in
W.P.No.18569 of 2004

GJ ii(CO)
TR(05/04/2018)



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