



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 08.02.2018
CORAM

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.1054 of 2018
and
W.M.P. (MD) .No.1091 of 2018

A.Radhakrishnan

... Petitioner

Vs.

- 1.The Secretary to Government,
Home Department, Secretariat,
Chennai-600 009.
- 2.The Secretary to Government,
Tourism Culture and Endowments Department,
Secretariat, Chennai-600 009.
- 3.The Commissioner,
Hindu Religious and Charitable Endowments,
No.119, Nungambakkam High Road,
Chennai-600 034.
- 4.The Director General of Police,
Dr.Radhakrishnan Road,
Chennai-600 034.
- 5.The District Magistrate Cum District Collector,
Theni District, Theni.
- 6.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Madurai, Madurai District.
- 7.The Special Executive Magistrate cum Special Tahsildar,
Cable T.V.Wing,
Taluk Office Campus,
Cumbum, Theni District.
- 8.The Superintendent of Police,
Theni District, Theni.
- 9.The Municipality Commissioner,
Cumbum Municipality,
Theni District.



10.The District Registrar,
Registration Department,
Periyakulam,
Theni District.

11.The Fit Person,
Arulmighu Kambaraya Perumal & Kasi Viswanathar &
Sri Gowmariyamman Temples,
Cumbam,
Theni District.

12.The Executive Officer,
Arulmigu kambaraya Perumal & Kasi Viswanathar &
Sri Gowmariyamman Temples,
Cumbum,
Theni District.

13.Thiru S.T.T.Elangovan,
President,
Arulmighu Kambaraya Perumal & Kasi Viswanathar
Ther Thiruvizha Committee,
Cumbum, Theni District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents No.5 to 12 to remove the encroachment in T.S.No.1 to 22B, Block No.10, Ward No.D Situated at Cumbum Town, Theni District to an total extent of 4.7164.0 Hectares and also give necessary protection of the Kambaraya Perumal Temple Car in and around area of the Temple Car parking at Cumbum.

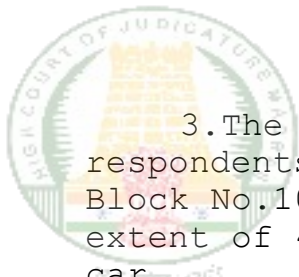
For Petitioner	: Mr.A.Radhakrishnan Party-in-person
For R1 to R8 & R10	: Mr.V.R.Shanmuganathan Spl. Government Pleader
For R13	: Mr.G.Prabhu Rajadurai for Jameel Arasu

O R D E R

[Order of the Court was delivered by **N.KIRUBAKARAN , J.**]

By consent, the writ petition itself is taken up for final disposal, at the stage of admission.

2.Heard, Mr.A.Radhakrishnan, party-in-person appearing for the petitioner and Mr..V.R.Shanmuganathan, learned Special Government Pleader, who takes notice on behalf of the respondents 1 to 8 & 10 and Mr.G.Prabhu Rajadurai, learned counsel appearing for the 13th respondent.



3.The writ petition has been filed seeking a direction to the respondents 5 to 12 to remove the encroachments in T.S.No.1 to 22B, Block No.10, Ward No.D situated at Cumbum Town, Theni District to an extent of 4.7164.0 hectares and give police protection to the temple car.

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4.According to the petitioner, Arulmighu Kambaraya Perumal, Kasi Viswanathar and Sri Gowmariyamman Temples are, aged about 1000 years and it has got number of assets including lands and properties. The temple is having a property in Ward No.D, Block No.10, T.S.No.1 to 22B to an extent of 4.7164.0 hectares in Cumbum Town. The said lands have been encroached upon by the various persons and they have not paid any rents to the temple. In this regard, the petitioner gave representation to the 12th respondent to remove the encroachment and collect the rental arrears. The temple authority also sought help from the sixth respondent, District Magistrate cum District Collector for removing the encroachment on 10.07.2017 and an order was passed by him. The Sub-Divisional Executive Magistrate, Uthamapalayam has passed the order appointing a Executive Magistrate to maintain law and order for the purpose of removing the encroachment.

5.Field inspection was conducted by the 7th respondent on 15.07.2017. At that time, the persons, who had illegally encroached the temple property created law and order problem. Therefore, the fifth respondent gave direction to the concerned department to take appropriate action and other proceedings. The sixth respondent, the Joint Commissioner HR&CE, Madurai submitted a report before the fifth respondent the District Magistrate cum District Collector, Theni for taking action for recovery of the amounts due to the temple.

6.When action is being taken to remove the encroachment near the temple and in the parking area and the entire area has been fenced by the respondents, some of the intruders damaged the fence. In this regard, a complaint has been given to 12th respondent the Executive Officer, Theni to protect the temple's property and the temple car. Thereafter, the Executive Officer also gave a police complaint before the South Police Station Cumbum to take action against the intruders.

7.According to the petitioner, the 13th respondent has encroached upon the temple property and using the property. According to their evidence, though initially the 13th respondent handed over the key to the respondent concerned, again, by force, got back the key of the building which has been constructed by the 13th respondent encroaching the temple property. Though a police complaint has been given, no action has been taken and the respondents 5 to 12 have not taken any action to remove the encroachment. Therefore, the petitioner has come before this Court.

8.Though many issues were raised by Mr.Prabhuraja Durai, learned counsel appearing for the 13th respondent as well as Mr.Govindarajan, learned counsel appearing for the petitioner, it is evident from the arguments that for removing the encroachment



allegedly made by the 13th respondent, proceedings under section 78 of the Hindu Religious & Charitable Endowments Act, have been initiated. Therefore, the prayer sought for by the petitioner is almost complied with. The issue has to be adjudicated before the authorities contemplated under HR&CE Act. It is represented that action has already been initiated and the same is being defended by the 13th respondent.

9.As far as the Police complaints are concerned, an FIR has been registered based on the complaint of the Executive Officer for threatening him for taking action. Another complaint has been given by the executive officer regarding the damage of fence and the same has been registered in a Crime No.59 of 2018 for offence under Sections 295 and 427 IPC. Both the cases have to be investigated by an officer not less than rank of Deputy Superintendent of Police to be monitored by Superintendent of Police. Since the issue relates to the temple and also its property, which is allegedly encroached by third parties, the investigation has to be done and final report has to be filed within a period of three months from the date of receipt of a copy of this order.

10.The learned counsel appearing for the third respondent would submit that a complaint has been given on behalf of the third respondent. Therefore, the concerned police is directed to conduct an enquiry as per the dictum laid down in the case of Lalita Kumari -Vs-Government of U.P and others reported in 2013 4 MLJ (Cr1) 579 SC.

11.Without going into the merits of the case, this Court directs the HR&CE Department to initiate appropriate proceedings against the persons who are said to be in illegal occupation by way of encroachment.

12.The writ petition is disposed of, with the above directions. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Home Department,
Secretariat,
Chennai-600 009.

2.The Secretary to Government,
Tourism Culture and Endowments Department,
Secretariat,
Chennai-600 009.



- 3.The Commissioner,
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Cumbum Municipality,
Theni District.
- 10.The District Registrar,
Registration Department,
Periyakulam, Theni District.

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.47795
+1CC TO M/S.B.JAMEEL ARASU, ADVOCATE, SR NO.47361

W.P.(MD).No.1054 of 2018
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MS/RSK/SAR-4/21.03.2018/5P.13C