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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.01.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.1821 of 2018

Arulmigu Sri Varasithi Vinayagar Committee
Trust through its Chairman R.Balasubramani,

.. Petitioner

Vs.

1.The Chief Engineer,
Public Works Department/W.R.O.,
Madurai Region, Thallakulam,
Madurai.

2.The Assistant Engineer,
Public Works Department/W.R.O.,
Periyar Main Canal Section,
Sub Division No.1, Madurai.

3.The District Collector,
Madurai District, Madurai.

4.The Tahsildar,
Madurai East Taluk,
Madurai District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to leave the temple by name Arulmigu Sri Varasithi Vinayagar Thirukkivil, situated in S.No.43/1, Vandiyur I pit Village, Madurai East Taluk, Madurai District for the welfare of the people at large in and around the locality by considering the existence of the temple for more than 100 years.

For Petitioner : Mr.T.Villavan Kothai

For Respondents : Mr.A.K.Baskarapandian,
Special Government Pleader.

ORDER

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

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



2.Mr.A.K.Baskarapandian, learned Special Government Pleader, accepts notice on behalf of the respondents.

3.One Mr.P.Suntharaj, on an earlier occasion, filed W.P(MD) No.5211 of 2017, against the second respondent herein, praying for the issuance of a Writ of Certiorari, to quash the impugned notice for removal of encroachment in Form III, dated 27.02.2017, issued by the second respondent. This Court, vide final order, dated 19.07.2017, having found that the impugned notice is in violation of principles of natural justice, has quashed the same, with a further direction, directing the second respondent herein, to conduct survey through the designated authority, after issuing notice to the writ petitioner and thereafter, directed the second respondent to pass fresh orders, in accordance with law. The petitioner is a third party to the said writ petition, came forward to make a challenge to the said order, by contending that the temple, namely, Arulmigu Sri Varasithi Vinayagar Temple, is in existence for more than hundred years and in view of the same, requesting the concerned officials, not to proceed with the eviction.

4.The learned counsel appearing for the petitioner would submit that the temple is located far away from the water body and as such, it cannot be termed as an encroachment and prays for appropriate orders.

5.Per contra, the learned Special Government Pleader appearing for the respondents would submit that the second respondent has issued the notice, in compliance of the earlier order, dated 19.07.2017, made in W.P(MD)No.5211 of 2017 and hence, it cannot be faulted.

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

7.This Court, while allowing the said writ petition filed by Mr.P.Suntharaj, has directed the second respondent herein, to conduct survey through the designated authority, after issuing notice to the writ petitioner. The second respondent having found that the petitioner temple is also an interested person along with nine others, had issued notices to all of them, calling upon them, to be present on 30.12.2017, at 10.00 a.m., while the Taluk Surveyor is conducting the measurement. In the considered opinion of this Court, the said procedure adopted by the second respondent, cannot be faulted with as merely, it directs the aggrieved person to be present at the time of conducting survey and inspection.

8.The petitioner, depending upon the result of the same, is also entitled to submit his objections, in the form of written representation, to the second respondent, who may take into consideration of the same and proceed further in accordance with law, within a stipulated time frame.



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9. In the result, the writ petition is dismissed, subject to above observations. No costs.

Sd/-

Assistant Registrar(Protocol)

/True Copy/

Sub-Assistant Registrar

To

1. The Chief Engineer,
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Madurai Region, Thallakulam,
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Madurai District.

+One cc to The Special Government Pleader, SR.no.45570

smn/cp

RL/6C/3P/SKN/RSK/SAR4/19/2/2018

ORDER MADE IN

W.P (MD) No.1821 of 2018