

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.2139 and 5341 of 2019 and

W.M.P.Nos.2391 and 6068 of 2019

Arulmigu Ranganatha Perumal Thirukoil
Rep. by its Executive Officer
Thiruneermalai
Chennai 132

.. Petitioner in W.P.No.2139/2019

Sundara Moorthy

.. Petitioner in W.P.No.5341/2019

v.

1 Superintending Archaeologist
Archaeological Survey of India
Chennai Circle, Fort St.George
Chennai - 600 009

2 The District Collector
Kancheepuram District
Kancheepuram

3 The Tahsildar
Pallavaram
Chennai - 600 043

4 Sundaramoorthy

5 Sundaram

... Respondents in W.P.No.2139/2019

6 Senior Conservation Assistant
Chennai Sub Circle
O/o.Senior Conservation
Assistant Archaeological Survey of India
Fort. St.George
Chennai - 600 009

.. Respondent in W.P.No.5341 /2019

W.P.No.2139 /2019 : Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing respondents 1 to 3 to remove the encroachments caused by the respondents 4 and 5 on lands in

S.No.137/1 bearing Door No.13, East Mada Street, Thiruneermalai, Chennai 600 132 and Door No.12, North Mada Street, Thiruneermalai, Chennai 600 132.

W.P.No.5341 /2019 : Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records on the file of the respondents made in No.NOC.56/18-19, dated 08.02.2019 and quash the same and consequently to forbear the respondent from in an anyway interfering with my peaceful living, possession and enjoyment of the subject property bearing Door No.130, Thiruneermalai Village, Saidapet Taluk situated in R.S.No.137/1, Paimash Number 1149, which is an extent of 2100 sq.ft. within the registration district of Madras South bounded on the North by Shanmugam House, South by Poongavanam house, east by Mada Street and west by Govindammal house.

For Petitioners : Mr.A.K.Sriram (in W.P.No.2139/2019)
for M/s.A.S.Kailasam and Associates

Ms.Selvi George (in W.P.No.5341/2019)

For Respondents : Mr.G.Karthikeyan
Addl. Solicitor General -
for R1(in both WPs)

Mr.Kamalesh Kannan (W.P.No.2139/2019)
Govt. Advocate - for R2, & R3
Ms.Selvi George -
for R4 (W.P.No.2139/2019)
Ms.P.Ilayarani -
for R5 (W.P.No.2139/2019)

COMMON ORDER

(Order of the Court made by M.DURAISWAMY,J.)

W.P.No.2139 of 2019 has been filed by Arulmigu Ranganatha Perumal Thirukoil to issue a Writ of Mandamus, directing the respondents 1 to 3 to remove the encroachments caused by the respondent No. 4 (petitioner in W.P.No.5341/2019) and respondent No.5 on lands in S.No.137/1, bearing Door No.13, East Mada Street, Thiruneermalai, Chennai 600 132 and Door No.12, North Mada Street, Thiruneermalai, Chennai 600 132.

2. W.P.No.5341 of 2019 has been filed by the petitioner, viz., Sundara Moorthy, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondents dated 08.02.2019, to quash the same and consequently to forbear the respondent from in an anyway interfering with his peaceful

possession and enjoyment of the subject property bearing Door No.130, Thiruneermalai Village, Saidapet Taluk situated in R.S.No.137/1, Paimash Number 1149, measuring an extent of 2100 sq.ft.

3. Since the issues involved in both the Writ Petitions are common, the Writ Petitions are disposed of by this common order.

4. The petitioner in W.P.No.5341 of 2019 has challenged the notice dated 08.02.2019, whereby, the Senior Conservation Assistant, Archaeological Survey of India, finding that the petitioner, Sundara Moorthy, has put up construction within the protected area of centrally protected monument, namely, Megalithic Cist and Cairus, Thiruneermalai, called upon the petitioner to remove the unauthorized building/construction within 7 days, failing which, the Central Government shall in exercise of its power under section 19(2) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 cause the unauthorized building/construction removed at his cost and expenses.

5. The learned counsel for the petitioner in W.P.No.2139 of 2019 submitted that the 1st respondent-Archaeological Department is taking action against the petitioner only for the reason that the petitioner is constructing a Church near the Arulmigu Ranganatha Perumal Temple and hurting the religious sentiments of the devotees of the Temple. For this purpose, the learned counsel relied upon Paragraph No.4 of the the affidavit filed in W.P.No.2139 of 2019. However, on a perusal of the affidavit filed in support of W.P.No.2139 of 2019, in entirety, it could be seen that in Paragraph No.3, the Temple has stated that the Temple is an ancient temple having its origin around 2000 years ago and the same is situated in Survey No.137/1, Thiruneermalai Village. Further, the Temple has stated that there is a small hillock and there is a Temple called Neervanna Perumal Temple at the base and the petitioner-Temple on the top of hillock. Further, the learned counsel has stated that the said hillock has religious and archaeological importance and the Central Government is the appropriate Authority under the Ancient Monuments Preservation Act, 1904, declared the entire extent as a protected area. As per Gazette of India publication dated 24.11.1945, land bearing Survey No.137/1, measuring an extent of 47.84 acres is reflected as a protected area. After coming into force of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the said protection was extended to the above said land as a protected area.

6. As per section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, no person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government.

7. The learned counsel appearing for the petitioner in W.P.No.5341 of 2019 submitted that the petitioner got approval from Chennai Metropolitan Development Authority as early as on 26.07.1990 and put up the construction in Survey No.137/1.

8. On a reading of Section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, it is clear that construction can be put up in the protected area only with the permission of the Central Government. Therefore, it is only the Central Government, which is the authority, to grant permission to construct any superstructure in the protected area in Survey No.137/1.

9. Admittedly, the petitioner has put up construction in Survey No.137/1, which is a prohibited area, even according to the learned counsel for the petitioner.

10. It is also not in dispute that the Temple is an ancient Temple, which also situate in Survey No.137/1. Since the petitioner has put up construction without the prior permission from the Central Government as contemplated under Section 19 of the Act, the Archaeological Survey of India has passed the impugned order dated 08.02.2019. The planning approval obtained from the Chennai Metropolitan Development Authority is not legally valid for the reason that it was obtained without the prior permission of the Central Government. The order passed by the Archaeological Survey of India is legally valid and proper. In these circumstances, we do not find any ground to interfere with the order passed by the Archaeological Survey of India, dated 08.02.2019.

11. Since we are dismissing the Writ Petition in W.P.No.5341 of 2019, the respondents 1 to 3 in W.P.No.2319 of 2019 shall take appropriate steps to preserve the land in Survey No.137/1, which is a protected area. The official respondents shall take appropriate action for removing the encroachment in the protected area, in accordance with law.

12. For the reasons stated above, Writ Petition in W.P.No.5341 of 2019 is dismissed and Writ Petition in W.P.No.2319 of 2019 is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rj

To

- 1 The Superintending Archaeologist
Archaeological Survey of India
Chennai Circle, Fort St.George
Chennai - 600 009
- 2 The District Collector
Kancheepuram District
Kancheepuram
- 3 The Tahsildar
Pallavaram
Chennai - 600 043
- 4 The Senior Conservation Assistant
Chennai Sub Circle
O/o.Senior Conservation
Assistant Archaeological Survey of India
Fort. St.George
Chennai - 600 009.

+lcc to M/S.A.S.Kailasam & Associates Sr.27754
+lcc to M/S.G.Karthikeyan, Advocate Sr.28159
+lcc to M/S.P.Ilayarani, Advocate Sr.27552

W.P. Nos.2139 and 5341 of 2019 and
W.M.P.Nos.2391 and 6068 of 2019

vsn-II[co]
srg 12/04/2019