

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7846 of 2019

T.S.Shankar

.. Petitioner

Vs.

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Chennai.
2. The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Thiruvanamalai District.
3. The Tahsildar,
Kizpennathur Taluk Office,
Thiruvanamalai District.
4. S.Kamalakannan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the 2nd and 3rd respondents to remove the illegal construction put up by the 4th respondent in the temple land situated at Neivanatham Village, Kizpennathur Taluk, Thiruvannamalai District comprised in S.F.No.74/4B to an extent of 0.0048 sq.meter.

For Petitioner : Mr.M.Sridhar

For Respondents : Mr.M.Maharaja,
Special Government Pleader (HR&CE)
for R1 and R2

Mr.E.Manoharan,
Additional Government Pleader
for R3

O R D E R

(Order of this Court was made by SUBRAMONIUM PRASAD, J.)

Claiming himself to be a public interest litigant, a practicing Advocate in Thiruvannamalai District has filed this instant writ petition for a writ of mandamus directing the Assistant Commissioner, HR&CE, Thiruvannamalai and Tahsildar, Kizhpennathur Taluk, respondents 2 and 3 respectively, to remove the illegal construction put by 4th respondent on the temple land situated at Neivanatham Village.

2. The petitioner states that he has sought for an information under the Right to Information Act, 2005 and the information is answered as hereunder.

1.The Survey Number, the extent & the nature of the land of Bajani Koil at Neivanatham Village	New Survey No.74/4B, (Old Survey No.74/4) 0005/00048 sq.meters Natham Bajanai Koil
2. Its bounds East of Kamalakannan House	In the village Accounts it is in the name of Perumal. Survey No.74/4A 0056 sq. Meters
South of the road	Survey No.90/1 2770 Sq. Meters (Big Street)
West of the road leading to cemetery	
North of overhead water tank	

3. The records further shows that proceedings were initiated before the Revenue Divisional Officer, Thiruvannamalai, for grant of patta, regarding the property, which he claim is a temple property. On an application given by the 4th respondent herein, requesting for change of patta, regarding the property in question, the Revenue Divisional Officer, Thiruvannamalai by an order dated 25.05.2018 in E.P.No.A5/514/2018 directed the Tahsildhar, Kizhpennathur Taluk, to cancel the sub divisions of Village Natham Survey Nos.74/4A and 4B and change the patta of 1200 sq.ft in Survey No.74/4, in the name of 4th respondent. This order has not been challenged.

4. The Right to Information Report says that the property is shown as Natham Bajanai Koil. The petitioner has not submitted any document to show that a Natham Bajanai Koil is a temple property.

5. A perusal of the documents filed would show that there is a dispute regarding possession and also regarding ownership. In the absence of any material to show that the property in question is a temple land, the writ petition cannot be entertained. Title of the property can be established only in a validly instituted suit.

6. A challenge to the patta issued by a Tahsildar is subject to appeal before the Revenue Divisional Officer under Section 12 of the Patta Passbook Act, 1983 and further subject to revision under Section 13 of the said Act before the District Revenue Officer. A writ petition under Article 226 of the Constitution of India, is not maintainable for the relief as claimed for by the petitioner, in the absence of any title and also on the availability of an alternative remedy under Patta Passbook Act, 1983. The writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Chennai.
2. The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Thiruvanamalai District.
3. The Tahsildar,
Kizpennathur Taluk Office,
Thiruvanamalai District.

+1 cc to Spl.Govt. Pleader, Advocate, S.R.No.29362

SKV(CO)
SSM(30/04/2019).

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