

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. No.16059 of 2019

A.Radhakrishnan

... Petitioner

-Vs-

1. The Commissioner of Land Administration,
Chepauk, Chennai - 600 005.
 2. The Inspector General of Registrations,
100, Santhome High road,
Chennai - 600 028.
 3. The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Nungambakkam High Road,
Chennai-34.
 4. The District Collector,
Nammakkal.
 5. The Deputy Inspector General of Police,
Salem.
 6. The Regional Deputy Director,
Survey and Settlement Department,
Coimbatore.
 7. The Municipal Special Officer,
Namakkal.
 8. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Salem - 636 001.
 9. The Thasildar,
Namakkal.
 10. The Assistant Commissioner cum Executive Officer,
Arulmigu Narasimha Swamy Temple,
Namakkal Town.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representations dated 07.09.2018 & 07.06.2019 and thereby conduct survey to the lands belonging to the Tenth Respondent temple for the purpose of securing and safeguarding the properties and restore the same in favour of the Tenth Respondent temple and to redress other reliefs.

For Petitioner : No Appearance

For Respondents : Mr.M.Karthikeyan
for R1,R4,R5,R6,R7&R9
Additional Government Pleader

: Mr.T.M.Pappiah - for R2
Special Government Pleader

: Mr.M.Mohanraja for R3,R8 & R10
Special Government Pleader (HR&CE)

ORDER

There is no representation for the Petitioner when the matter is called.

2. The Writ Petition has been filed for a direction to the Respondents to consider the representations dated 07.09.2018 and 07.06.2019 made by the Petitioner to conduct survey to the lands belonging to the Temple of the Tenth Respondent for the purpose of restoring, securing and safeguarding its properties and other incidental reliefs.

3. The Regional Deputy Director, Survey and Land Records, Coimbatore, who is the Sixth Respondent, had filed an affidavit dated 12.07.2019 stating that the survey of the property of the Temple of the Tenth Respondent had been conducted, but due to non-availability of certain necessary documents, the survey could not be carried out in an effective and complete manner. In such circumstances, this Court by an order dated 12.07.2019 required the Commissioner, Hindu Religious Charitable and Endowment Department, who is the Third Respondent, to conduct necessary enquiry with the Eighth to Tenth Respondents to ascertain the availability of the records relating to the Temple for the action to be taken.

4. In pursuance of the aforesaid order passed by this Court, the Third Respondent has filed a report dated 31.07.2019

stating as follows:-

"5. It is submitted that, the land comprised in S.No.71, classified as Sarkar Poromboke is concerned, the extent on inspection has been identified as 60 cents as per the Field Map. However, it was found by the Revenue Department that, in the 'A' Register, 68 cents have been reflected. Accordingly, in order to find out the actual extent, the Survey Department has decided to verify the preceding records like land survey register from Chennai Archives for Land & Survey.

6. It is submitted that, from the enquiry conducted on 26.07.2019, it is revealed that the Property Register maintained in the temple was available and verified at the time of inspection. It is submitted that, the Respondents 8 to 10 herein have also accepted and acknowledged the availability. Even otherwise, the discrepancy found viz-a-viz the extent has to be ascertained through the Revenue Records maintained by the Revenue and Settlement Department alone.

7. It is submitted that, since it is brought to the knowledge that the land measuring 484 sq. ft. belonging to the subject temple comprised in S.No. 89/1 is under the encroachment of third party, a suitable direction has been given to the Jurisdictional Joint Commissioner, Assistant Commissioner and temple authorities to initiate proceedings u/s.78 of the TN HR&CE Act to recover the above property from the encroachment. The communication to the jurisdictional authorities is enclosed herewith."

After filing that report during the hearing on 02.08.2019, it was informed that action would be taken to initiate proceedings for removal of encroachment and its outcome would be reported in the following hearing.

5. When the matter is taken up for hearing today, Learned Special Government Pleader (HR&CE) appearing for the Third, Eighth to Tenth Respondents has filed a memo dated 29.08.2019 states as follows:

"4. It is submitted that the Commissioner had directed the jurisdiction Joint Commissioner, Assistant Commissioner and the Executive Officer to initiate suitable action to remove the encroachment found in the said Survey number.

5. It is submitted that in pursuance of the above directions, the jurisdiction Assistant Commissioner has taken necessary steps to file an application to

the Joint Commissioner, Salem under Section 78 of the HR & CE Act, 1959 to evict the encroacher by due process of law. On receipt of the application, proceedings will be duly initiated by the Joint Commissioner, Salem against the encroacher and the lands will be duly recovered from the hands of the encroacher.

6. It is submitted that notice was sent to the encroacher namely, Mrs. S. Sarasu on 15.01.2019 calling upon them to appear for enquiry. The said encroacher had not appeared for enquiry and therefore a proposal was forwarded by the Assistant Commissioner to the Joint Commissioner, HR & CE Department, Salem to initiate proceedings under Section 78 of the HR & CE Act, 1959 and thereafter evict them from the property belonging to the temple."

The aforesaid action taken by the concerned Respondents is placed on record.

6. It shall be ensured by the Tenth Respondent that necessary action shall be expeditiously taken under the relevant provisions for removal of the encroachers and that its properties are properly safeguarded and put to effective use by following the prescribed procedure in accordance with law.

7 Accordingly, the Writ Petition is disposed with the aforesaid observations. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registra

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To

1.The Commissioner of Land Administration,
Cheapuk, Chennai-600 005.

2.The Inspector General of Registrations,
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3.The Commissioner,
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 - 10.The Assistant Commissioner cum Executive Officer,
Arulmigu Narasimha Swamy Temple,
Namakkal Town.
- +1 CC to Govt. Pleader sr 76264, 76161 & 75623.
+1 CC to Mr.R. Marudhachalamurthy, Advocate sr 75151.

W.P. No.16059 of 2019

VD(CO)
SP(21/10/2019)