

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

WP.NO.30790/2019 & WMP.NOS.30877 & 30878/2019

Arulmighu Sri Varasithi Vinayagar
Temple Trust rep.by its Secretary
Mr.N.Karthikeyan, Phase-3, Mount View
Apartment, Sathuvachari, Vellore 632009.

.. Petitioner

Versus

1. Tamil Nadu Housing Board
rep.by its Executive Engineer cum
Administrative Officer, Vellore Division,
Vellore 632 009.

2. The President
Mount View Apartment Association
Mount View Apartment, Part 3
Sathuvachari, Vellore 632009.

.. Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records pertaining to the impugned order dated 01.08.2019 and 11.10.2019 bearing Letter No.Plan/972/2013 of the 1st respondent and quash the same.

For Petitioner : Mr.K.Elango

For R1 : Mr.R.Bharath Kumar

ORDER

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

(1)By consent, the writ petition is taken up for final disposal.
Mr.R.Bharath Kumar, learned Standing counsel accepts notice on behalf of the 1st respondent.

(2)The petitioner is the Secretary of Arulmighu Sri Varasithi

Vinayagar Temple Trust, Sathuvachari, Vellore-9, and according to him, Arulmighu Sri Varasithi Vinayagar temple and Sri Varasithi Saibaba Temple is located in the Mount View Apartment, Part-3, Sathuvachari, Vellor-9, and it consist of 72 ownership tenements which was constructed by the 1st respondent in the year 1987. The 2nd respondent Association had approached the 1st respondent to put up a small temple in an unobjectionable place in the said Apartment Complex and the said request was favourably considered and accordingly, a small temple admeasuring to an extent of 245 sq.ft., was constructed in the year 1991 in an unobjectionable area of 2697 sq.ft., and the remaining portion of the area is used as a garden for the temple and the consecration was done on 13.07.1992 and very recently on 11.07.2019.

- (3) The learned counsel for the petitioner has invited the attention of this Court to page No.18 of the typed set of documents which is a sketch issued by the 1st respondent wherein 'A' portion marked in the sketch is shown as 'Arulmighu Sri Varasithi Vinayagar Aalayam' and it was signed on 28.07.2007 and despite the fact that the temple is in existence for quite long time, all of a sudden, the petitioner Trust has been issued with the impugned notices dated 01.08.2019 and 11.10.2019 stating among other things that the said temple is located on a place reserved for commercial purposes.
- (4) In sum and substance, it is the submission of the learned counsel for the petitioner that since the temple is in existence for quite long time, in an unobjectionable place, it is not open to the 1st respondent, all of a sudden, to cause removal of the alleged encroachment stating that it is located on the place reserved for commercial purpose and hence, prays for interference.
- (5) Mr. R. Bharath Kumar, learned Standing Counsel appearing for the 1st respondent/TNHB, on instructions, would submit that even as per the case of the petitioner, it was an oral permission and in the absence of any documents to show that such a permission was given to put up a construction, especially on a plot reserved for commercial purposes, the stand taken by the petitioner in the writ petition is wholly untenable and therefore, due process of law is being followed to cause removal of the encroachment.
- (6) This Court has considered the rival submissions and also perused the materials placed before it.
- (7) It is relevant to extract Section 84 of the Tamil Nadu Housing Board Act, 1961:-

84:-Power to evict certain persons from Board premises:- If the competent authority is satisfied-

(a) that the person authorised to occupy any Board premises has-

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months ; or ;

(ii) sub-let, without the permission of the Board, the whole or any part of such premises ; or

(iii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises ; or

(b) that any person is in unauthorized occupation of any Board premises, the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by registered post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that the person authorised to occupy as well as any other person who may be in occupation of the whole or my part of the premises shall vacate them within one month of the date of the service of the notice.

(2) Before an order under sub-section (1) is made against any person, the competent authority shall inform the person, by notice in writing and served in the manner provided for service of notice under sub-section [1], of the grounds for which the proposed order is to be made and give him a reasonable opportunity for tendering an explanation and producing evidence, if any, and to show cause why such order should not be made within a period to be specified in such notice.

(3) The competent authority may, on application, grant extension of the period specified in such notice on such terms as to payment and recovery of the amount claimed in the notice as he deems fit.

(4) Any written statement put in by such person and documents produced in pursuance of such notice shall be filed with the records of the case, and such person shall be entitled to appear in the proceeding either in person or by pleader.

(5) If any person refuses or fails to comply with an order made under sub-section [1], the competent authority may evict that person from, and take possession of, the premises and may, for that purpose, use such force as may be necessary.

(6) If a person, who has been ordered to vacate any premises under sub clause [i] or [iii] of clause [a] of sub section [1] within one month of the date of service of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be, the competent authority shall, in lieu of evicting such person under sub-section [5], cancel its order made under sub section [1], and thereupon such person shall hold the premises on the same terms on which he held them immediately before such notice was served on him.''

(8) In the light of sub-section [2] of Section 84 of the Tamil Nadu Housing Board Act, 1961, this Court directs the 1st respondent to treat the impugned notices dated 01.08.2019 and 11.10.2019 as show cause notices and the petitioner is permitted to submit a representation/explanation within a period of two weeks from the date of receipt of a copy of this order along with supporting documents and upon receipt of such representation, the 1st respondent is directed to consider the same in the light of the above cited provision and pass appropriate orders and communicate the decision taken to the petitioner and till such time, shall defer further decision as to the eviction/demolition of the said temple. It is also made clear that till the disposal of the representation to be submitted by the petitioner, by the 1st respondent, the petitioner shall not create any third party rights in respect of the land as well as the superstructure/temple in question.

(9) The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

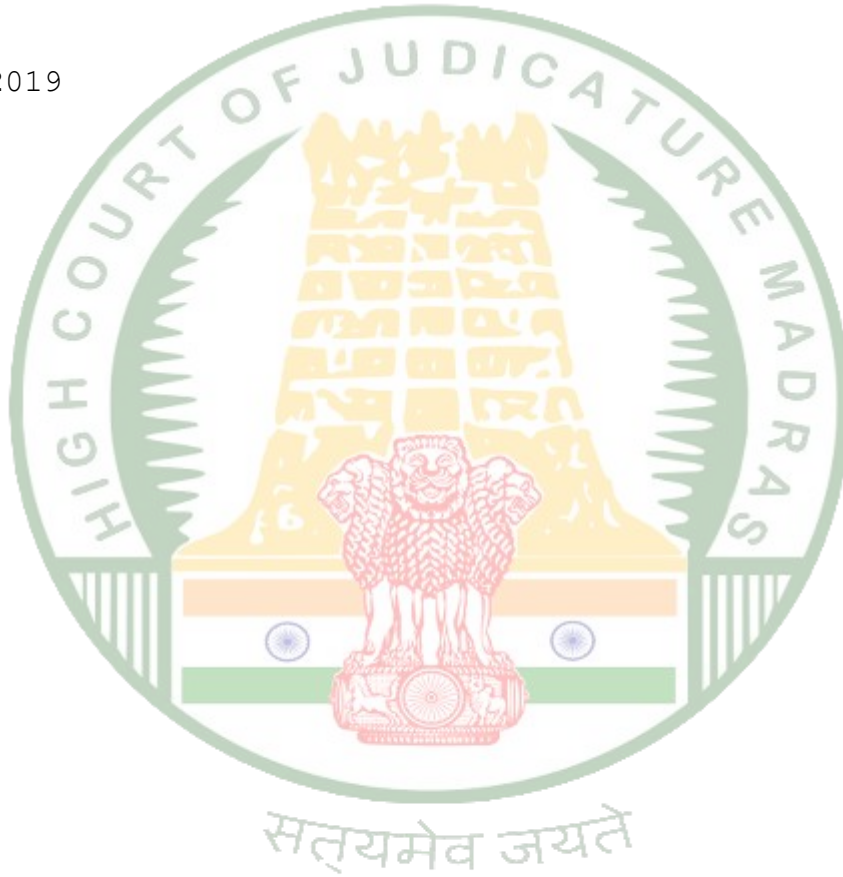
1. The Executive Engineer cum
Administrative Officer,
Tamil Nadu Housing Board
Vellore Division,
Vellore 632 009.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.91223

+1cc to Mr.K.Elango, Advocate, S.R.No.91216

WP.No.30790 OF 2019

KK(CO)
CS/03/12/2019



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