

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

CORAM:

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

and

THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P.No.31511 of 2019

S.Ravisankar

... Petitioner

vs.

1. The District Collector,
Chennai District,
No.62, Rajaji Salai,
Fourth Floor, Chennai 600 001.
 2. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600 003.
 3. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai 600 007.
 4. The Chief Engineer (H),
Office of the Divisional Engineer,
Department of Highways,
No.76, Sardar Patel Road,
Little Mount, Guindy,
Chennai 600 025.
 5. The Executive Engineer (O & M),
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
No.75, Paper Mills Road,
Perambur, Chennai 600 011.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of Mandamus, directing the Respondents to demolish and evict the illegally erected Temple and all other encroachments from the road and pavement areas, situated in front of the Petitioner's residential premises at No.39, Paddy Field Road, Perambur, Chennai 600 011.

For Petitioner : Mr.V.B.R.Menon
For Respondents 1, 3 & 4 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For 2nd Respondent : Mr.K.Soundarrajan

O R D E R

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

The grievance of the Petitioner is with respect to the illegal construction made by way of a Temple over a public road.

2. Learned counsel for the Petitioner submitted that, the aforesaid construction is contrary to the decision of the Apex Court rendered in the case of Union of India vs. State of Gujarat vide order dated 31.01.2018 in S.L.P.(C) No.8519 of 2006. Relevant portion of the said decision reads thus:

"Vide order dated 16.2.2010, the following directions have been issued:

In pursuance of the order of this Court dated 29th September, 2009, by which this Court directed that henceforth no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places, the affidavits of all the States and the Union Territories, except the State of Uttarakhand, have been filed. All the States and the Union Territories have taken necessary steps to ensure that no further unauthorized construction shall take place and Court's directions are seriously and meticulously complied with.

The other part of the directions issued on 29th September, 2009, were that in respect of unauthorized construction of religious nature which has already taken place on public streets, public parks or other public places, the State Governments and the Union Territories were directed to review the same on case

to case basis and take appropriate steps as expeditiously as possible. We do not find comprehensive and satisfactory affidavits as far as this direction of the order is concerned. Therefore, it has become imperative to direct all the States and the Union Territories to formulate comprehensive policy regarding the removal/relocation/regularisation of the unauthorized construction within six weeks' from today. The policy should clearly indicate within what period the States and the Union 13 Territories are going to fully comply with its policy to remove/relocate/regularise the unauthorized construction.

We also direct all the States and the Union Territories to identify unauthorized construction of religious nature on public streets, public parks and public places within six weeks' from today.

We direct the Chief Secretary of the State of Uttarakhand to file an affidavit within two weeks from today. In case the affidavit is not filed, the Chief Secretary shall remain present in Court on the next date of hearing.

We also direct all the Chief Secretaries of the States and the Administrators of the Union Territories to file further comprehensive affidavits within six weeks' from today. The special leave petition is adjourned to 6th April, 2010."

To ensure the implementation of directions issued by this Court,

consensus has been arrived at Bar and in our opinion, rightly, that the implementation of the order should be supervised by the concerned High Courts. We, consequently, remit the above matters to the respective High Courts for ensuring implementation of the orders in effective manner.

The concerned records be transmitted to the respective High Courts. The interim orders wherever passed, shall continue, until the matters are considered by the High Court. In case any clarification is required, it would be open to the parties to approach this Court. The High Court will have the jurisdiction to proceed in 14 the Contempt of any of the orders passed by this Court. Pending applications shall also be transmitted to the High Court."

3. Learned counsel appearing for the 2nd Respondent/Corporation furnished a copy of the communication of the Zonal Officer - VI, Chennai, vide proceedings No.Z.O.VI.C.No./A7/5127/2019, dated 26.11.2019, which reads as follows:

"Zone - VI, Unit - 16, Ward - 70, you have encroached road portion measuring an extent of 32 sq. m. and constructed temple.

The above said encroachment is in road, which is belonging to Greater Chennai Corporation and the encroached road is illegal and it is entitled to be removed under Section 220 read with 222 of Chennai City Municipal Corporation Act, 1919. Hence, this notice is issued to you under the above Sections, requesting you to remove the above said encroachment. In the event of failure to comply with this notice, we have no other option except to take appropriate action for the removal of the encroachment in terms of the provisions namely 220 read with 222 of the Chennai City Municipal Corporation Act, 1919.

Hence, we hereby call upon you to remove the above encroachment within 3 days (three days) from the date of

notice failing which, action will be taken for removing the above said encroachment under Section 220 read with 220 of Chennai City Municipal Corporation Act, 1919 without further notice, holding you are liable for all the costs and consequences arising thereof."

4. The aforesaid proceedings has also been issued and served on the Treasurer, Rajayoga Ganapathy Koil, Paddy Field Road, Junction Perambur High Road, Perambur, Chennai 600 011.

5. In view of the above, no further orders are required to be passed, except by directing the Zonal Officer-VI, Greater Chennai Corporation Zonal Office-VI, Chennai-600023, to proceed with the matter and do the needful. Such needful follow-up action will have to be taken within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
Chennai District,
No.62, Rajaji Salai,
Fourth Floor, Chennai 600 001.
2. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600 003.
3. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai 600 007.
4. The Chief Engineer (H),
Office of the Divisional Engineer,
Department of Highways,
No.76, Sardar Patel Road,
Little Mount, Guindy,
Chennai 600 025.

5. The Executive Engineer (O & M),
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
No.75, Paper Mills Road,
Perambur, Chennai 600 011.
6. The Zonal Officer-VI,
Greater Chennai Corporation Zonal Office-VI,
Chennai-600023.

+1cc to Mr.V.B.R.Menon , Advocate SR.No. 98776
+1cc to Mr.K.Soundarrajan , Advocate SR.No. 99378
+1cc to Mr.P.R.Dhilip kumar , Advocate SR.No. 99166
+1 cc to Government Pleader Sr.No. 94448

W.P.No.31511 of 2019

A.SK(09/01/2020)



WEB COPY