



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD)Nos.11168 of 2010 and 8310 of 2013

and

M.P. (MD)Nos.2 of 2010 and 1 & 3 of 2013

Rev.Fr.Parish Priest,
R.C.Church (Sts Peter and Paul Church),
Sendamaram-627 857,
Sankarankovil Taluk,
Tirunelveli District.

..Petitioner in W.P.(MD)No.11168 / 2010

Rev.Fr.C.Antony Viagappan,
Parish Priest,
St.Peter and Paul Church,
Sendamaram,
Sankarankovil Taluk,
Tirunelveli District.

..Petitioner in W.P.(MD)No.8310 / 2013

Vs.

- 1.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.
- 2.The District Collector,
Tirunelveli District,
Tirunelveli.
- 3.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.
- 4.The Tahsildar,
Sankarankovil-Taluk,
Sankarankovil,
Tirunelveli District.
- 5.The Commissioner,
Melaneelithanallur Panchayat Union,
Sankarankovil,
Tirunelveli District.



6.S.Arumugam ..Respondents in W.P.(MD)No.11168 / 2010
(R6 is impleaded as per order dated 14.07.2014)

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.

3.The Revenue Divisional Officer,
Tirunelveli,
Tirunelveli District.

4.The Tahsildar,
Sankarankovil Taluk,
Tirunelveli District.

5.The President,
Sernthamadam Village Panchayat,
Melaneelithanallur Panchayat Union,
Tirunelveli District.

6.Sernthamaram Samooga Sevai Sangam,
Reg.No.42/2013, rep. by its Secretary,
S.Senthil Kumar S/o. Soundarapandiyan,
No.142, Near Government Hospital, Senthamaram,
Sankarankovil Taluk, Tirunelveli.

.. Respondents in W.P.(MD)No.8310 / 2013

(R6 impleaded as per order dated 14.08.2013)

PRAYER in W.P.(MD)No.11168 of 2010: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the entire records, pertaining to the impugned order passed by the first respondent by his proceedings R.Dis.K1/RP12/2000, dated 21.10.2005 and quash the same as illegal.

PRAYER in W.P.(MD)No.8310 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice issued by the fourth respondent in his proceedings in Na.Ka.No.A11/5499/2013 dated 22.04.2013 and quash the same and consequently direct the respondents to permit the petitioner church to put up construction in the western portion of the demolished old school building situated in Old Survey No.420 / 8, Sernthamaram Village, Sankarankovil Taluk, Tirunelveli District.



For Petitioner : Mr.F.X.Eugenu

For R1 to R5 : Mr.A.K.Baskara Pandian
Special Government Pleader

For R6 : No Appearance
(in W.P.(MD)No.11168 of 2010)

For Petitioner : Mr.K.Mahendran

For R1 to R4 : Mr.A.K.Baskara Pandian
Special Government Pleader
(in W.P.(MD)No.8310 of 2013)

COMMON ORDER

[Order of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.F.X.Eugen, learned counsel and Mr.K.Mahendran learned counsel for the respective petitioners, Mr.A.K.Baskara Pandian, learned Special Government Pleader for the official respondents.

2. The writ petition in W.P.(MD)No.11168 of 2010 is the substantive writ petition, wherein the Parish Priest of R.C.Church, Sendamaram, Sankarankovil Taluk, has challenged the order passed by the Special Commissioner and Commissioner of land Administration, Chepauk, Chennai. By the impugned order, the Commissioner has confirmed the order passed by the Settlement Officer, Thanjavur vide R.P. No.1 of 1997, dated 30.04.1998 and set aside the orders of the Assistant Settlement Officer, Madurai in his S.No.11(a) 2 SKL/82, dated 15.12.1982. Further directions has been issued to restore the land to its original classification as 'Village Natham Road' in the village accounts.

3. The petitioner has mainly questioned the correctness of the order passed by the Special Commissioner of Land Administration on the ground that it is a violation of principles of natural justice and that he has acted as civil Court and granted the relief as if the public have performed their easementary right. Further, it is contented that the order passed by the Commissioner of Land Administration is beyond the purview of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. Further, it is contended that the Commissioner of Land Administration on assumption and presumption has passed the impugned order. The contesting respondent seeks to sustain the order passed by the Commissioner of Land Administration.



4. One other person, who is also part of the same Association as that of the petitioner in W.P. (MD) No. 11168 of 20016, has filed other writ petition in W.P. (MD) No. 8310 of 2018, wherein he has sought for setting aside the order passed by the Tahsildar, Sankarankovil stating that the School has encroached into the public property.

5. Mr. F.X. Eugene, learned counsel for the petitioner in W.P. (MD) No. 11168 of 2016 would submit that there is no conflict of interest between both the petitioners and they seek to sustain their stand that the land belongs to the Church and it is not a public property or road as ordered by the Commissioner of Land Administration. In our considered view, the Commissioner of Land Administration has restored the revenue entry as if Natham road by setting aside the order of the Settlement Officer and Director of Survey and Settlement.

6. The enquiry has been conducted based on the document before it and it is undoubtedly in the nature of a summary enquiry and not that of trial conducted by the civil Court. Therefore, in our considered view, if the petitioner seeks to sustain their stand that the suit land is not a road but their property, then their remedy lies before the Civil Court and not by way of this writ petition. Even assuming that the Court accepts with the contention of the petitioners and there was a violation of principles of natural justice in the manner, in which the Commissioner of Land Administration conducted proceedings and passed the impugned order, at best the matter should be remanded to the authority for fresh consideration. In any event, the Commissioner of Land Administration cannot declare the title of the private property. Such power vests only with the civil Court. Therefore, if the petitioners seek to sustain their stand that the land in question is not the road and their private property, then they have to necessarily approach the civil Court.

7. The learned counsel for the petitioners submitted that a comprehensive suit seeking to declare the title has been filed and the same is now pending before the Principal District Munsif Court, Sankarankovil.

8. The learned Special Government Pleader submitted that as of now small pillars, which were located in the village on the other side of the road to prevent the public from using the same, has been removed and this position will continue and shall abide by the decree passed in the pending civil suit.

9. Further more, the civil Court shall decide the suit based on the oral and documentary evidence placed before it by the plaintiff and the defendant and shall not in any manner be influenced by the observations made by the Commissioner in the



order, dated 21.10.2005. Accordingly, these Writ Petitions are disposed of giving liberty to the petitioners to raise all contentions in the pending civil suit and till the decision is arrived at by the Civil Court, the property in question shall be maintained as if Natham and there shall be no obstruction to the public to use the same. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.
- 2.The District Collector,
Tirunelveli District,
Tirunelveli.
- 3.The District Revenue Officer,
Tirunelveli District,
Tirunelveli.
- 4.The Tahsildar,
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Sankarankovil,
Tirunelveli District.
- 5.The Commissioner,
Melaneelithanallur Panchayat Union,
Sankarankovil,
Tirunelveli District.
- 6.The Revenue Divisional Officer,
Tirunelveli,
Tirunelveli District.



7. The President,
Sernthamadam Village Panchayat,
Melaneelithanallur Panchayat Union,
Tirunelveli District.

+2CC TO MR.F.X.EUGENE, Advocate Sr. No.91830 & 91831

ORDER MADE IN
W.P. (PD) (MD) Nos. 11168 of 2010 and 8310 of 2013
14.10.2019

KG (CO)
TR (24.10.2019) 6P 10C