



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.03.2019
CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No. 5206 of 2019 and
WMP(MD).No.4158 of 2019

WEB COPY

A. Venkatesh : Petitioner

Vs.

1.The District Collector,
Tirunelveli,
Tirunelveli District.

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

3.The Superintendent of Police,
Tirunelveli,
Tirunelveli District.

4.The Inspector Police,
Tenkasi Police Station,
Tirunelvlei District.

5.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Tirunelveli District.

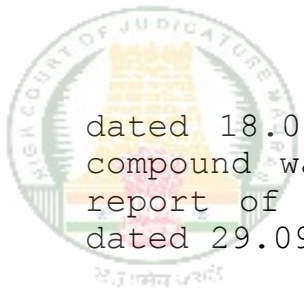
6.The Tenkasi Municipality,
rep. by its Commissioner,
Tenkasi,
Tirunelveli District.

7. Arulmigu Sri Vinnagara Perumal Temple,
rep. by its Trustee,
Keezhapalayam, Tenkasi,
Thirunelveli District.

8.The Inspector,
Hindu Religious and Charitable and Endowments
Deparment, Tenkasi,
Tirunelvlei District.

9.E.Elavarasi .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 7 to take action on the petitioner's representation
<https://hcservices.ecourts.gov.in/hcservices/>



dated 18.02.2019 seeking to prevent the construction abutting the compound wall of the Arulmigu Vinnagara Perumal Temple as per the report of the 8th respondent vide proceedings in Na.Ka.NO.107/2018 dated 29.09.2018.

WEB COPY

For Petitioner : Mr.R.J. Karthick
For R1 to R4 : Mr.K.Mu. Muthu
Additional Government Pleader
For R7 : Mr. G. Prabhu Rajadurai
For R9 : Mr. T.S.R. Venkatramana

O R D E R

The 9th respondent herein and others filed O.S.No.442 of 2013, on the file of District Munsif, Tenkasi, seeking the reliefs of declaration and permanent injunction and other reliefs. The petitioner was having a building in the suit site. It was illegally demolished by the Tenkasi Municipality. The learned Trial Munsif by Judgment and Decree, dated 06.07.2004 partly decreed the suit. The relief with regard to declaration of their title was negatived. However, the defendant Municipality was directed to restore the position that originally obtained. Aggrieved by the decree passed by the Trial Court, Tenkasi Municipality filed A.S.No.118 of 2004 before the Principal Subordinate Court, Tenkasi. The first appeal was dismissed on 24.06.2005. Challenging the same, S.A.No.393 of 2006 was filed before this Court. In the Second Appeal, the plaintiffs filed Cross Objection (MD)No.1 of 2007. By Judgment and Decree, dated 11.08.2016, the Second Appeal filed by the Municipality was dismissed, while the Cross Objection was allowed. The suit itself was decreed in toto.

2. Contending that without filing Cross Objection in the First Appeal, the Cross Objection could not have been filed in the Second Appal, the Tenkasi Municipality has filed Review Application. There was a delay in filing the Review Application. The delay was condoned by order dated 26.10.2018. The Review application is yet to be numbered and disposed of. In the meanwhile, the plaintiffs filed E.P.No.201 of 2005, on the file of the Principal District Munsif, Tenkasi for executing the Decree passed in their favour. As per the decree, the defendant Municipality was directed to put up construction and restore the original status. Since the Municipality did not comply with the said directives the plaintiffs sought leave of the Executing Court to put up construction and get the cost of construction reimbursed later. By order dated 20.02.2018, the executing Court permitted the plaintiffs to put up construction on their own and thereafter, get the value reimbursed. Pursuant to the order of the Executing Court, the plaintiffs started to put up construction. At this stage, this Writ Petition came to be filed.

3. The petitioner claims to be a devotee of temple, whose wall is adjacent to the suit site. The Writ Petitioner wants this Court to direct the District Administration as well as the local



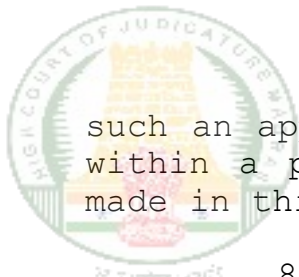
Municipality to prevent the construction that is being put up by the 9th respondent.

4. Heard the learned counsel appearing on either side.

5. The learned counsel appearing for the 9th respondent pointed out that the 9th respondent is merely acting in terms of the decree passed in her favour. He pointed out that so long as the order dated 20.02.2018, passed by the executing court has not been challenged or set aside in the manner known to law, the 9th respondent cannot be prevented from putting up the construction in question. He also drew my attention to the fact that the 9th respondent already filed CrI.O.P(MD).No.16446 of 2018 for directing the Police to give adequate protection. The said Criminal Original Petition was allowed on 18.09.2018. Thereafter, applications were filed for recall of the said order, at the instance of a person claiming to be the Trustee of the adjacent temple. By order dated 15.02.2019 this Court declined to the recall order earlier passed.

6. I am of the view that so long as the decree passed in favour of the 9th respondent is holding good, the 9th respondent is entitled to put up construction. As already pointed out, the order dated 20.02.2018 was passed in favour of the 9th respondent, because the Tenkasi Municipality declined to comply with the decreetal direction. But, then, the question arises to what is the ambit and scope of the decree. As rightly pointed out by the learned counsel for the temple as well as the Writ Petitioner, the decree only permits restoration of the construction on the foundation that was originally laid.

7. When this Court posed a specific question to the learned counsel for the 9th respondent as to the depth to which the foundation has been dug up, the learned counsel replied that they are using modern pile foundation technology and that the foundation is only to the extent of putting up a single floor (ground floor). But, then, the decree passed in favour of the plaintiffs does not permit replacing the old foundation by digging and laying a new foundation. The learned counsel appearing for the 9th respondent stated that the decree was passed way back in July 2004, and that it is simply impossible to put up a new construction on the old foundation. He further stated that the foundation has already been completed. If that is so, the plaintiffs ought to have filed an application before the Executing Court for laying a new foundation. In this case, the 9th respondent has not done so. Therefore, even though I hold that the 9th respondent is very much entitled to enjoy the fruits of the decree by having status quo ante restored, the 9th respondent cannot travel beyond the terms of the decree. In this case, the 9th respondent has travelled beyond the terms of the decree. Therefore, the 9th respondent is directed to cease further construction activity and file an application before the Executing Court and only after getting permission from the executing Court proceed further in the matter. As and when the 9th respondent files



such an application, the same will be considered entirely on merits within a period of four weeks uninfluenced by the observations made in this Writ Petition.

8. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Tirunelveli,
Tirunelveli District.

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

3.The Superintendent of Police,
Tirunelveli,
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4.The Inspector Police,
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5.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Tirunelveli District.

6.The Commissioner,
Tenkasi Municipality,
Tenkasi, Tirunelveli District.

7.The Inspector,
HR&CE,
Tenkasi,
Tirunelveli District.

+1cc to M/s.M.Shema Daniel, Advocate, SR.No.54024

+1cc to Mr.G. Prabhu Rajadurai, Advocate, SR.No.54273

+1cc to Mr.R.J. Karthick, Advocate, SR.No.53925

+1cc to Special Government Pleader, SR.No.54343

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