

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.333 of 2020

and CMP Nos.5616 and 5618 of 2020

ALANGUDI VILLAGE PANCHAYAT
REP.BY ITS PRESIDENT MR.A.M.MOHAN
ALANGUDI VILLAGE (GURUSTHALAM)
VALANGAIMAN TK
THIRUVARUR DISTRICT ... Appellant

Vs

- 1 THE SECRETARY TO GOVT. OF TAMIL NADU
DEPARTMENT OF HR AND CE ST.GEORGE
FORT CHENNAI-600009
- 2 THE COMMISSIONER
DEPARTMENT OF HR AND CE NUNGAMBAKKAM
CHENNAI-34
- 3 THE JOINT COMMISSIONER
DEPARTMENT OF HR AND CE
THANJAVUR TOWN AND TK
THANJAVUR DISTRICT
- 4 THE ASSISTANT COMMISSIONER/EXECUTIVE OFFICER
ABATH SAGAYEESWARAR TEMPLE
(GURUSTHALAM) AND ABHAYA VARADHARAJA PERUMAL TEMPLE
ALANGUDI VILLAGE VALAGAIMAN TK THIRUVARUR DISTRICT
- 5 THE SUPERINTENDENT OF POLICE
THIRUVARUR THANJAVUR DISTRICT
- 6 THE INSPECTOR OF POLICE
VLANGAIMAN POLICE STATION
VALANGAIMAN TOWNAND TK THIRUVARUR DISTRICT
- 7 C.R.SRINIVASA RAMANAN
... Respondents

Appeal filed under Clause 15 of Letters of Patent to set aside the order passed by this Court in W.P.No.5029 of 2020 dated 27.02.2020.

Prayer in WP NO.5029 of 2020 :Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the 5th and 6th respondents to forbear from interfering with the peaceful running of vehicle parking comprised in the Punja lands in Survey No. 45/2A measuring Hectares 0.09.71 and in Survey No. 45/2B measuring Hectares 0.03.19 in Alangudi Village Valangaiman Taluk Thiruvarur District by the petitioner except under due process of law

For Appellant : Mr.S. Sathiaselvan
For R.1 to R.4 : Mr.E. Manoharan
Spl.Govt. Pleader
For R.5 & R.6 : Mr.Kamalesh Kannan
Govt. Advocate
For R.7 : Mr.Rajendra Raghavan

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant, learned counsel for the respondents.

2. A Writ Petition came to be filed by the appellant A.M.Mohan, praying for a Mandamus or any other appropriate Writ for a direction the respondents 5 and 6 viz.,The Superintendent of Police, Thiruvarur and the Inspector of Police, Valangaiman Police Station, Thiruvarur District to forbear from interfering with the peaceful running of a vehicle parking place comprised in the punja land in Survey No.45/2A and in Survey No.45/2B over a certain area, as disclosed in the petition, in Alangudi village, Valangaiman Taluk, Thiruvarur District.

3. The said writ petition was disposed of observing that the petitioner has taken authority in his own hands without having any right, title or interest encroaching upon the vacant land and converting it into a car parking area to facilitate the public visiting the temple festival that was on going between 27.02.2020 and 12.03.2020.

4. The learned Single Judge found that the appellant/petitioner cannot claim any right, title or ownership over the land and accordingly, if there was any dispute of title that was between the temple authorities and the seventh respondent herein.

5. The Court allowed the using of the land as parking place for car during the period of temple festival that was on, and further called upon the writ petitioner to file an affidavit that the panchayat does not have any further interest in the said land.

6. It was further observed that if such an affidavit is not filed then it shall be open to the police to take appropriate action against the petitioner/appellant.

7. When the matter had been heard by the Bench earlier, the following order was passed on 12.03.2020:-

" After the matter was heard, the learned senior counsel on instructions has stated that an affidavit will be filed to the effect of handing over the entire land and its management with regard to the parking of vehicles including realization of fee to the Assistant Commissioner / Executive Officer, fourth respondent herein.

2. In view of the aforesaid statement made by the learned senior counsel and subject to the affidavit being filed by 16.03.2020, we direct that the appellant shall not be compelled to file the affidavit as directed by the learned Single Judge.

3. Let the affidavit be filed, as prayed on 16.03.2020."

8. An affidavit came to be filed before this Court by the appellant which is dated 13.03.2020. The contents thereof is extracted herein under:-

"AFFIDAVIT OF THE APPELLANT/PETITIONER

I, A.M. Mohan, Son of G. Meenakshi Sundaram, Hindu, aged about 58 years the President, Alangudi Village Panchayat,

(Gurusthalam), Valangaiman Taluk, Thiruvavarur District, having and temporarily come down to Chennai do hereby solemnly affirmed and sincerely state as follows:

1. I am the appellant in the Writ Appeal filing this affidavit of undertaking given by the Appellant on 12.03.2020, when the above Writ Appeal came up for admission before this Hon'ble Court.

2. I submit that, the subject matter of the land in the Writ Petition in Survey No.45/2A and 45/2B at Alangudi Village, Valangaiman Taluk, Thiruvavarur District, totally to an extent Acre 0.33 Cents now being utilized as "vehicle parking" for the Lord Abath Sagayeeswarar Temple (Gurusthalam) and Lord Abhaya Vardharaja Perumal Temple, Alangudi. Since, as per the documents as also claimed by the counsel for HR & CE that it is the land belongs to Lord Abath Sagayeeswarar Temple, Lord Abhaya Varadharaja Perumal Temple, Alangudi; I hereby undertake to handover the subject matter of land in S.No.45/2A & 45/2B at Alangudi Village, Valangaiman Taluk, Thiruvavarur District, to the 4th respondent namely, The Assistant Commissioner/Executive Officer, Lord Abath Sagayeeswarar Temple and Lord Abhayavaratharaja Perumal Temple at Alangudi Village, Valangaiman Taluk, Thiruvavarur District, forthwith.

3. I further hereby undertake that since the subject matter of land being used as vehicle parking by the general public and the pilgrims visiting Lord Abath Sagayeeswarar Temple and Lord Abhayavaratharaja Perumal Temple, Alangudi, namely, from 09.02.2020 to 12.03.2020, the amounts collected from the pilgrims as vehicle parking charges from the subject matter of land less the commission of 10% paid for collecting agent Rs.10,975/- (Rupees Ten Thousand Nine Hundred and Seventy Five only), the amount spent to clear the bushes and clean

the above said land by employing JCP expenses is Rs.15,250/- (Rupees Fifteen Thousand Two Hundred and Fifty Only) and to make the vehicle parking slot (for the expenses of blue metal, red sand, Road roller, water pouring tractor and labour, etc) expenses is Rs.49,000/- (Rupees Forty Nine Thousand only) and the remaining amount has been duly credited fully into the Alangudi Village Panchayat Account and the remaining amount in the account after deducting the expenses comes to the tune of Rs.33,625/- (Rupees Thirty Three Thousand Six Hundred and Twenty Five only) and for the above sum, the Appellant has taken the DD No.431135 drawn in favour of the 4th respondent, Indian Bank account, Alangudi Branch, on 12.03.2020 and taken for D.D., one day collection i.e., 12.03.2020 of Vehicle parking collection, DD No.431136 drawn in favour of the 4th respondent on 13.03.2020 for the amount Rs.2790/- (Rupees Two thousand Seven Hundred and Ninety Rupees only) itself and handed over the possession and enjoyment of the subject to the 4th evening itself.

Therefore in the above facts and circumstances the Appellant/Petitioner prays this Hon'ble Court to pass appropriate order in the pending Writ Appeal and thus render justice.

President

Alangudi Panchayat

Solemnly affirmed at Chennai, on
this the 13th day of March, 2020
and signed her name in my presence."

9. In the light of the statement given by the learned counsel, we had also observed that the appellant shall not be compelled to file an affidavit as directed by the learned Single Judge, as there was a consequence provided on failure of filing of affidavit viz., a complaint having been lodged by the seventh respondent with the police which may have an impact on the same.

10. It is not disputed between the parties that the appellant has complied the terms and conditions as disclosed in the affidavit extracted herein above.

11. The seventh respondent, however, complains that the appellant under the awe of his authority and his conduct as a President of the Village Panchayat, took upon himself the task of removing certain old constructions which were standing over the land which could not have been done by him or by any person, as the said constructions did belong to the seventh respondent and therefore, this was a clear criminal breach and also an encroachment upon private property without authority in law.

12. It is urged that it is in the said background that a complaint has been lodged with the police and appropriate action is contemplated by the seventh respondent to be taken in this regard. It is also urged that since the appellant was himself instrumental in precipitating the situation resulting in the alleged act of removal of constructions, the seventh respondent is also entitled to compensation as such damages that may be permissible in law without prejudice to the rights of the seventh respondent to take further appropriate action in the matter.

13. We have considered the submissions raised and we find that the seventh respondent is claiming title over the land and from the order of the learned Single Judge, it is also apparent that the appellant / village panchayat does not have any right, title or claim over the land rather whatever claim is being canvassed is allegedly of the Lord Abath Sagayeeswarar Temple, Lord Abhayavaratharaja Perumal Temple at Alangudi Village, Valangaiman Taluk, Thiruvavarur District.

14. Consequently, we find that to that extent, the conclusion drawn by the learned Single Judge does not suffer from any such infirmity for our interference in this appeal.

15. The appellant, it appears only the aggrieved on account of the observation made by the learned Single Judge of the consequence of non filing of the affidavit and which had already been taken care of by us under the interim order dated 12.03.2020 extracted herein above.

16. At present, therefore, no further orders are required in the exercise of jurisdiction under Article 226 of the Constitution of India without prejudice to the rights of the parties to contest their claim before the appropriate form in accordance with law.

17. We therefore dispose of the appeal finally subject to above and in terms of the interim order dated 12.03.2020. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

sr
To

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DEPARTMENT OF HR AND CE ST.GEORGE
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+1cc to Government Pleader SR.No.26236

W.A.No.333 of 2020

BD(CO)
GMY(20/08/2020)