

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.10557 of 2020 and  
W.M.P.Nos.12814, 12818, 12820 & 12822 of 2020

1.K.Balakrishnan  
2.R.Shanmugasundaram  
3.A.M.Shanmugam

... Petitioners

Vs.

1. The Commissioner of Land Administration,  
Chepauk, Chennai 5.
2. The Collector,  
Namakkal District, Namakkal.
3. The Revenue Divisional Officer,  
Tiruchengode, Namakkal District.
4. The Tahsildar,  
Komarapalayam Taluk, Komarapalayam,  
Namakkal District.
5. The Assistant Commissioner,  
Hindu Religious & Charitable Endowments Department,  
Namakkal.
6. The Executive Officer,  
Arulmigu Kalyana Venkataramana Perumal Kovil,  
Avathipalayam,  
Kaliyanur Village, Agraharam Post,  
Komarapalayam Taluk, Namakkal.
7. The Superintendent of Police,  
Namakkal District,  
Namakkal.
8. The Inspector of Police,  
Pallipalayam Police Station,  
Namakkal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, to call for the records relating to the order passed in the appeal in

Proc.No.K4/24246/2017 dated 09.07.2020 on the file of the first respondent confirming the order passed by the second respondent in Na.Ka.19164/2017/L2 dated 09.10.2017 quash the same and forbear the respondents from interfering with the right of the petitioners to be in possession and enjoyment of the property in S.Nos.24, 25 and 124 of Kaliyanur Village, Komarapalayam Taluk, Namakkal District and pass orders.

For Petitioner : Mr.V.Elangovan

For Respondents: Mr.Vijay Narayan,  
Advocate General assisted by  
Mr.S.N.Parthasarathi,  
Government Advocate for R1,R3,R4,R7& R8  
Mrs.Narmatha Sampath,  
Additional Advocate General assisted by  
Mr.E.Balamurugan,  
Special Government Pleader for R2  
Mr.A.K.Sriram for R6  
Mr.R.Venkatesh,  
Special Government Pleader (HR&CE) for R5

#### O R D E R

The present writ petition has been filed challenging the order passed by the first respondent dated 09.07.2020 confirming the order passed by the second respondent in the proceedings dated 09.10.2017 and for a consequential direction to forbear the respondents from interfering with the possession and enjoyment of the petitioners in the subject properties situated at S.Nos.24, 25, & 124 of Kaliyanur Village, Namakkal District.

2.The case of the petitioners is that the subject properties belongs to the sixth respondent Temple and the Revenue Records also stood in the name of the Temple. There was a threat of eviction for the petitioners from the sixth respondent Temple and therefore, a suit came to be filed by the petitioners in O.S.No.601 of 1987 against the Temple and HR & CE officials, for a permanent injunction and the suit was decreed ex-parte vide Judgment and Decree dated 26.04.1989.

3.The further case of the petitioners is that the respondents 3 and 4 wanted to evict the petitioners from the subject properties and they were called upon to vacate the premises within a period of 15 days. The petitioners filed W.P.No.19160 of 2017 and this Court passed the following order on 26.07.2017:

Mr.S.N.Parthasarathi, learned Government Advocate takes notice for the respondents 1 to 4 and Mr.M.Maharaja, learned Special Government Pleader, takes notice for the respondents 5 to 7. By consent,

the main writ petition is taken up for disposal at the admission stage itself.

2.The petitioners have filed the above writ petition to issue a writ of mandamus forbearing the respondents from evicting them the lands situated in S.Nos.24, 25 and 124 of Kaliyanur Village, Komarapalayam Taluk, Namakkal District without due process of law.

3.The learned counsel appearing for the petitioners submitted that the petitioners have given a representation dated 27.06.2017 to the respondents narrating the entire facts of the case. However, the respondents have not considered the same yet.

4.Mr.S.N.Parthasarathi, learned Government Advocate, appearing for the respondents 1 to 4 and Mr.M.Maharaja, learned Special Government Pleader appearing for the respondents 5 to 7 submitted that the 5<sup>th</sup> respondent may be directed to consider and pass orders on the petitioner's representation in accordance with law.

5.Having regard to the submissions made by the learned counsel on either side, without expressing any opinion with regard to the merits of the case, I direct the respondents 1 and 5 to consider the petitioners' representation dated 27.06.2017 and pass orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after giving notice to all the interested parties.

With this observation, the Writ Petition is disposed of. No costs. Connected miscellaneous petition is closed.

4.The second respondent thereafter passed an order on 09.10.2017 to the effect that the subject properties belongs to the Revenue Department and the ex-parte decree, does not in any way, bind the Revenue Department since they were not a party to the suit and the subject properties do not belong to the sixth respondent Temple in its entirety. The second respondent found that the sixth respondent Temple is the owner of the properties in Survey.No.115/7 to an extent of 0.16.0 hectares and in Survey.No.127/1 to an extent of 0.79.5 hectares. The second respondent directed the concerned authority to conduct the survey and submit a report. It is seen from the records that a representation has been made by the Assistant Commissioner of HR & CE Department to the first respondent by communication dated 12.01.2018. That apart, an appeal has also been filed challenging the entries made in the Revenue Records with regard to S.Nos.24 and 25 as porambockku lands.

5.The first respondent also filed an appeal against the order passed by the second respondent on 24.10.2017 and this Court also passed an order in W.P.No.9601 of 2018, dated 18.04.2018, directing the first respondent to pass appropriate orders within a period of eight weeks. The first respondent ultimately passed an order dated 09.07.2017, rejecting the appeal and confirming the order passed by the second respondent. Aggrieved by the same, the present writ petition has been filed before this Court.

6.The petitioners are claiming their rights through the sixth respondent Temple. There are no other documents to show the right, title and interest of the petitioners, except some entries made in the A-register and Adangal.

7.The learned counsel for the petitioners submitted that the first respondent has passed an order without affording an opportunity of hearing to the petitioners. It was further submitted that even if the petitioners are taken to be encroachers, necessary notice must be issued under the Land Encroachment Act and the petitioners cannot be evicted unless and otherwise following the due process of law.

8.The learned Advocate General appearing on behalf of the first respondent submitted that the petitioners have approached this Court with unclean hands. The learned Advocate General wants this writ petition to be dismissed on this ground alone. The learned Advocate General brought to the notice of this Court the suit filed by the second and third petitioners before the Sub Court, Thiruchengode in O.S.No.303 of 2019. The learned Advocate General by pointing out to the plaint filed in the said suit, submitted that the second and third petitioners have sought for the relief of declaration to declare the sixth respondent Temple as the owner of the property and for a consequential injunction not to interfere with the possession and enjoyment of the property. It was submitted that the petitioners have not even mentioned about the filing of the suit anywhere in the affidavit and this amounts to concealing of material facts. The learned Advocate General submitted that the petitioners having failed to get any interim order before the Civil Court, by suppressing the same, are parallelly filing one writ petition or the other before this Court and have obtained orders.

9.The learned Advocate General further submitted that the first petitioner has already dealt with the property by executing a Sale Deed on 19.05.1995 and this Sale Deed was registered at Kerala. By pointing out the said the sale deed, the learned Advocate General submitted that the petitioners have absolutely no interest in the welfare of the Temple and just to continue squatting on the property, the petitioners are now

pleading a case on behalf of the sixth respondent Temple. The learned Advocate General submitted that there are absolutely no merits in the present writ petition and the same is liable to be dismissed.

10.Mrs.Narmatha Sampath, learned Additional Advocate General appearing on behalf of the second respondent adopted the submissions made by the learned Advocate General. The learned Additional Advocate General also brought to the notice of this Court the order passed by the second respondent on 09.10.2017 and submitted that the District Collector had taken into consideration the fact that the Sale Deed came to be executed in the year 1995 and it was also registered in Kerala. The learned Additional Advocate General further submitted that the Collector had clearly identified the portions that belonged to the Revenue Department and the portions that belonged to the sixth respondent Temple. On such identification, the District Collector had directed the District Revenue Officer to conduct the survey and submit a report within a period of sixty days. The learned Additional Advocate General concluded her submissions by stating that the petitioners should not be allowed to continue with the illegal possession of the property by acting as a mouth piece for the sixth respondent Temple and the very conduct of the petitioners dis-entitle them from getting any relief before this Court and the writ petition is liable to be dismissed.

11.Mr.A.K.Sriram, learned counsel appearing on behalf of the sixth respondent submitted that the Temple is not concerned about the claim made by the petitioners and the temple have an independent right, which is parallelly prosecuted by way of an appeal. The learned counsel therefore submitted that even in case where this Court records any finding against the petitioners, the same should not be put against the sixth respondent Temple and the sixth respondent temple will independently workout the remedy in accordance with law.

12.Heard Mr.R.Venkatesh, learned Government Advocate appearing on behalf of the fifth respondent.

13.This Court has carefully considered the submissions made on either side and the materials available on record.

14.This Court has carefully gone through the orders passed by the first and second respondents. A careful reading of the order shows that if at all there is any dispute, it is only as between the sixth respondent Temple and the Revenue Department. The petitioners are attempting to trace their rights through the sixth respondent Temple and claim themselves to be the lessee in the property. Admittedly, the second and third petitioners have

filed a suit in O.S.No.303 of 2019 before the Sub Court, Thiruchengode and this is a material fact which has not been stated anywhere in the affidavit filed in support of the writ petition. The petitioners had sought for a declaration in favour of the sixth respondent Temple but curiously have sought for a permanent injunction in their favour. It is not known how far this prayer is maintainable. The petitioners having failed to get any interim order in the suit, have parallelly prosecuted the appeal before the first respondent and have also approached this Court by filing the writ petition. None of the petitioners revealed the fact that there is a suit pending in O.S.No.303 of 2019. This came to light only after the learned Advocate General drew the attention of this Court by showing the plaint that was filed in the suit.

15.The petitioners are trying to project this case as if they are espousing the interest of the sixth respondent Temple. However, the conduct of the petitioners reveals the fact that they have dealt with the property in the year 1995 itself and a document has been registered in the State of Kerala. If the petitioners are really interested in the welfare of the Temple, it is not known as to how they dealt with the property in the year 1995 and registered it at Kerala. This issue has been taken note of by the second respondent while passing the order on 09.10.2017.

16.The subject property involved in the present writ petition is a vast property where S.No.24 measuring an extent of 3.95.0 hectares and S.No.25 measuring an extent of 4.61.5 hectares have been shown as unassessed waste dry Government Porombokku lands in the Revenue Records. The petitioners are squatting upon such a huge property and are blowing hot and cold with regard to the right over their property. It is unfortunate that the petitioners did not reveal about the filing of the suit in O.S.No.303 of 2019 before the Sub Court, Thiruchengode, before this Court. If the petitioners had mentioned about the filing of the suit before this Court, this Court would have dealt with the case very differently. Therefore, concealing the factum of a pending suit in O.S.No.303 of 2019, tantamounts to concealing of material facts. Once the material facts are concealed, this Court will refuse to exercise its jurisdiction under Article 226 of Constitution of India. The law on this issue is well settled.

17.This Court does not find any merit in the present writ petition and the petitioners are not entitled for the relief claimed by them in this writ petition and this Court does not find any ground to interfere with the orders passed by the second respondent and as confirmed by the first respondent. The orders passed in this writ petition confines itself to the case

of the petitioners alone and it will not stand in the way of the sixth respondent to workout its remedy in accordance with law. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr/rka

To

- 1.The Commissioner of Land Administration,  
Chepauk, Chennai 5.
  - 2.The Collector,  
Namakkal District, Namakkal.
  - 3.The Revenue Divisional Officer,  
Tiruchengode, Namakkal District.
  - 4.The Tahsildar,  
Komarapalayam Taluk, Komarapalayam,  
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  - 7.The Superintendent of Police,  
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Namakkal.
  - 8.The Inspector of Police,  
Pallipalayam Police Station,  
Namakkal District.
  - 9.The Government Pleader,  
High Court, Madras.
- +1 cc to M/s.S.Doraisamy, Advocate Sr.No. 26882  
+1 cc to The Government Pleader, Sr.No. 27034 & 27004

W.P.No.10557 of 2020 and  
W.M.P.Nos.12814, 12818, 12820 & 12822 of 2020

RSV(CO)  
RMP(06/11/2020)