

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM :

The Hon'ble Mr.JUSTICE M.SATHYANARAYANAN
and
The Hon'ble Mrs.JUSTICE R.HEMALATHA

W.P.No.12634 of 2020
and W.M.P.No.15609 of 2020

M/s.Ammapettai Kiruthikai Pirathosa
Vazhipattu Paktharkal Trust, Rep. by its
Secretary, S.Sridhar. ..Petitioner

-vs-

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Coimbatore Region, Coimbatore-641 018.
2. The Executive Officer,
M/s.Arulmighu Chokanathar Swamy
Thirukovil, Ammapettai Post,
Andiyur Taluk, Erode District-638 311.
3. The District Collector,
Office of The District Collector,
Collectorate Complex, Erode District.
4. Thasildar,
Andiyur Taluk Office,
Andiyur, Erode District.
5. The Executive Officer,
Ammapettai Town Panchayat,
Ammapettai Town Panchayat Office,
Ammapettai, Erode District-638 311.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare the act of 5th respondent laying Road in land belonging to M/s.Arulmigu Chokanathar Swamy Thirukovil (Shiva Temple) measuring around 1.75 acres situated at S.No.534, Ammapettai Village, Andiyur Taluk, Erode District, as illegal and arbitrary.

For Petitioner : Mr.Adinarayana Rao
for Mr.K.Shankar

For Respondents : Mr.Rajesh Vivekananda
for RR 1 and 2
: Mr.V.Jayaprakash Narayanan,
State Government Pleader
for RR 3 to 5

* * * * *

O R D E R

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

This writ petition is filed as a Public Interest Litigation by the Petitioner Trust and in the affidavit filed in support of this writ petition, it is averred among other things that M/s.Arulmigu Chokanathar Swamy Thirukovil is in existence from time memorial and it is situated at S.No.534, Ammapettai Village on a land ad-measuring to an extent of 1.75 acres, wherein Temple, Marriage Hall and Nandavanam (Garden) are also located and that apart, there is also a Goshala and a number of fully grown coconut trees are also existing.

2.It is further averred in the affidavit that the third respondent/Executive Officer had leased out the usufructs of the coconut trees for the purpose of generating income for the said temple. It is the specific case of the petitioner that a housing lay out is being developed behind the temple known as Siva Sakthi Nagar and due to pressure exerted by certain influential people, the fifth respondent sought to lay out a road by obliterating the Nandavanam/Garden attached to the said temple in the form of a road and in that process also, unauthorisedly cut and removed two fully grown coconut trees.

3.It is further averred that the obliteration of the Nandavanam/Garden and the unauthorised removal of trees also created uproar and there was also a law and order problem and the jurisdictional Tahsildar has also called for a Peace Committee Meeting. The petitioner would further aver that a detailed representation dated 25.07.2020 sent to the Hon'ble Chief Minister's grievance Cell and copies being marked to other official respondents, did not evoke any kind of response despite lapse of nearly four months and hence, prays for appropriate orders.

4.When the matter was listed for admission on 05.10.2020, Mr.V.Jayaprakash Narayanan, learned State Government Pleader, accepted notice on behalf of respondents 3 to 5 and sought time to get instructions.

5.The fifth respondent has filed the counter-affidavit dated 22.09.2020 and a perusal of the same would disclose that the land in S.No.534, though claimed that it belongs to the temple wherein Nandavanam/Garden is located, actually it is classified as "Government River Poramboke" and the fifth respondent took a decision to lay a road only to an extent of 33 meters without disturbing the trees and they removed the bushes in order to lay down the road and it has been completed to an extent of 80%. It is also the stand of the fifth respondent that the laying of the said road helps to ease out the traffic and also to enable the pilgrims / devotees to reach the temple hassle free.

6.In so far as the allegation as to the unauthorised removal of coconut trees is concerned, in paragraph 9 of the counter-affidavit, the fifth respondent took a stand that one tree had fallen down accidentally while laying the road and the contractor has also been mulcted with appropriate proceedings on account of the said negligence.

7.The second respondent has filed the counter-affidavit with supporting documents, wherein the said official took a stand that the land in R.S.No.534 of Ammapettai Village, Andiyur Taluk, Erode District, is classified as "River Poramboke" and the northern side of the land has been utilised as "Nandavanam", wherein flower plants are grown for the purpose of performance of daily rituals of the Presiding Deities and there are also fully grown coconut trees and on 27.04.1999, the sandalwood trees were also illegally cut for which a complaint has also been lodged. It is the further stand of the second respondent that the said temple is a public temple comes under the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the Executive Officer of Arulmigu Sellaeswarar Temple, Andiyur, is functioning as the Fit person for the said temple, and in the light of the action taken by the fifth respondent for laying the road without any authorisation, prays for appropriate orders. It is also pointed out that on account of the unauthorised obliteration of the Nandavanam/Garden and conversion of a road, a dispute also arose between two groups and a Peace Committee meeting was also conducted by the jurisdictional Tahsildar on 28.08.2020.

8.The learned counsel appearing for the petitioner would submit that in the light of the admission made by the fifth respondent in paragraphs 4 and 5 of the counter-affidavit dated 22.09.2020 and in the absence of authorisation for conversion of land classified as river poramboke, the road cannot be laid and hence, prays for appropriate orders.

9.The learned counsel appearing for the second respondent, apart from making the same plea, would submit that since

Nandavanam has been obliterated, it should be restored to its original condition so that the sentiments of the devotees of the temple would not be affected.

10.Mr.Jayaprakash Narayanan, learned State Government Pleader appearing for the fifth respondent, would submit that only a portion of the land is being converted as road to ease out the traffic and also to enable the devotees to reach the temple and since it is purely for a public purpose, the decision taken in this regard cannot be faulted with and prays for dismissal of the writ petition.

11.This Court paid its attention to the rival submissions and also perused the entire materials placed on record.

12.A Full Bench of this Court in a decision reported in 2015 (6) CTC 369 (T.K.Shanmugam vs. State of Tamil Nadu), has considered the issue relating to assignment of tank bed lands and water course poramboke. In paragraph 36, it has been observed that "Thus, the public trust doctrine requires that natural resources such as lakes, ponds etc., are held by the State as a "trustee" of the public and can be disposed of only in a manner that is consistent with the nature of such a trust".

13.Admittedly, in the case on hand and even as per the own admission of the fifth respondent in his counter-affidavit, the land in question is still classified as "Government River Poramboke" and therefore, it cannot be utilised or converted for any purpose except for the water course. In the considered opinion of the Court, the conversion of portion of the said land as a road and also cutting of two fully grown coconut trees is per se unsustainable.

14.Now coming to the claim of the second respondent, even as per the counter-affidavit of the second respondent, a portion of the land on which the Nandavanam is located is still classified as a river poramboke and the dedication in the form of "Nandavanam" is in existence for time memorial. It is also to be noted at this juncture that the second respondent temple is declared as a public temple and comes under the purview of the Hindu Religious and Charitable Endowments Act, 1959 and as such, the limited use of the said land for Nandavanam, in the present circumstances, cannot be faulted with.

In the result, the writ petition is disposed of and the fifth respondent is directed to restore the land in S.No.534 into its original position in consultation with the second respondent and also handover the same to the second respondent, subject to further action being taken in accordance with law.

The said exercise will be carried out within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.No.15609 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Coimbatore Region, Coimbatore-641 018.
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Ammappettai Town Panchayat,
Ammappettai Town Panchayat Office,
Ammappettai, Erode District-638 311.

+1cc to Mr.R.Rajesh Vivekananthan, Advocate, S.R.No.37315
+1cc to M/s.Adinarayana Rao, Advocate, S.R.No.37294
+1cc to M/s.V.Jayaprakash Narayanan, Advocate, S.R.No.37585
+1cc to the Government Pleader, S.R.No.37364

W.P.No.12634 of 2020

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