

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.15672 of 2017

&

W.M.P.Nos.16963 & 16964 of 2017

D.Meshack Peter

...Petitioner

vs

1. The District Collector,
Office of the District Collector,
Villupuram District.
2. The President,
Nagandoor Panchayat,
Vallam Union, Gingee Taluk,
Villupuram District.
3. Rt. Rev. A Rajavelu,
Bishop, C.S.I. Diocese of Vellore,
Vellore.
4. The Tahsildar,
Gingee Taluk,
Villupuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in Sey. Mu. Aa. No.Aa5/13729/2014 dt 26.7.2016 and quash the same and consequently direct the 1st respondent to demolish the illegal construction of CSI Church by the 3rd respondent in S. No. 58/3 which is Government Poromboke Land.

For Petitioner : Mr.M.Jaikumar

For RR1 & 4 : Mr.V.Shanmugasundar
Special Government Pleader

For R2 : Mr.R.S.Selvam
Government Advocate

ORDER

This writ petition is heard through Video-Conferencing, on account of the COVID-19 pandemic situation.

2. The writ petition has been filed to call for the records pertaining to the order passed by the 1st respondent in Se. Mu. Aa. No.Aa5/13729/2014 dated 26.07.2016, quash the same and consequently direct the 1st respondent to demolish the illegal construction of C.S.I. Church by the 3rd respondent in S.No.58/3, which is Government Poramboke Land.

3. The petitioner states that his wife Jothi Mary's father constructed a house in patta land in S.No.58/4 at No.2 Meignanapuram, Nagandoor Village & Post, Gingee Taluk and has been residing there with his family members.

4. While so, in the year 2009, one RT.Rev.Dr.Y.Williams, who was a Bishop, C.S.I. Diocese of Vellore was constructing a church in the neighbouring survey number, namely, S.No.58/3 Nagandoor Village, which is the Government Poramboke Land. While constructing the church, it had encroached into S.No.58/4 to an extent of 350 sq.feet, which belongs to the petitioner's wife's father. The petitioner immediately gave a representation dated 30.10.2009 to the President, Nagandoor Panchayat, who is the second respondent herein. As there was no action taken on the representation, the petitioner filed a writ petition in W.P.No.22483 of 2009 for a mandamus directing the respondents to consider the representation dated 12.10.2009.

5. Thereafter, the second respondent had addressed a letter to the Bishop asking him to construct only within his boundaries and not to encroach on the patta land of the petitioner. The petitioner had once again filed W.P.No.26870 of 2009 seeking a mandamus directing the first and second respondents to demolish illegal construction of the C.S.I. Church constructed in S.No.58/3 and part of S.No.58/4. This Court had directed the first respondent to conduct an enquiry into the matter after calling for the records and then pass appropriate orders. Based on the said direction, the present order impugned, was passed.

6. The impugned order specifically states that S.No.58/3 is classified as Government Poramboke land, in which, 0.015 extent of land utilised for constructing the Madha Church. However, the portico and the steps leading to the church is constructed on the land belonging to the joint pattadhars, including the petitioner, which falls in S.No.58/4.

7. Admittedly, in S.No.58/4, 0.16.5 ares land are there, which is surrounding S.No.58/3. In the said patta land, the Madha church has encroached an extent of 00036 sq.meters. The first respondent has also found that the portico and steps of the church in an extent of 00036 sq. meters of land is constructed on the land belonging to the petitioner. Having given the said finding, the first respondent had directed the petitioner to approach the Civil Court to seek appropriate

remedy. As admittedly, the church is also constructed by private people and the petitioner's land had encroached by them, it is a dispute between the two private parties.

8. The fourth respondent/Tahsildar, Gingee, has filed his counter-affidavit, wherein, he has specifically stated that the Church has been constructed by encroaching upon the petitioner's land. The said construction has blocked the access to the petitioner's house. An extent of 0.16.5 Ares of land belonging to the petitioner is said to be encroached by the Church and the construction is made without obtaining building permit from the concerned authority and therefore, it has to be demolished. It is further stated in the counter that an extent of 00036 square meters in S.No.58/4 belonging to the petitioner is encroached.

9. Heard the learned counsel appearing on both sides and perused the materials available on record.

10. From the above facts, it is evident that the petitioner is well aware of the fact that the said Madha church has obtained building permit, planning permission, etc for the construction of church. Admittedly, he has been living in the neighbouring plot. It was open to him to have moved to the Civil Court even at the time when the said church started encroaching the land. Having acquiesced to the act of the church and allowed it to construct the portico and the steps into his land, the petitioner has come to this Court for removal of the encroachment through the official respondents. As the above relief requires evidence, the first respondent had rightly directed the petitioner to move the Civil Court in this regard and take appropriate action for demolishing the encroached portions. Therefore, it is open to the petitioner to approach the Civil Court to seek appropriate remedy, as he may be advised for the removal of encroachments.

11. In the light of the above, there is no infirmity in the order passed by the first respondent and does not warrant any interference by this court. Therefore, the writ petition is dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Villupuram District.

2. The President,
Nagandoor Panchayat,
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3. The Tahsildar,
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+1cc to the Government Pleader in SR.NO..30078

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KS (CO)
RV (20/10/2020)