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Cont.P.No.2115/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Cont.P.No.2115/2019

1. V. Balachandran

2. T. L. Srinivasan

.. Petitioners

Versus

1. Mr. Atulya Misra, IAS
Secretary, Land Administration
Department, Fort St George
Chennai 600 009.

2. The Secretary
The Evangelical Church of India
No. 1, 2nd Street, Ormes Road,
Kilpauk, Chennai 600 010.

.. Respondents

**R2 suo motu impleaded as 2nd respondent as per
the order of the Court dated 12.12.2019 in
Cont.P.No.2115/2019

PRAYER:- Contempt Petition filed under section 11 of the
Contempt of Courts Act, to punish the respondents for
having committed willful disobedience of the order of this
Court dated 19.06.2019 in WP.No.18168/2018.

For Petitioner :	Mr. M. Sriram
For R1 :	Mr. A. N. Thambidurai, Spl. GP
For R2 :	Mr. Thangasivan



ORDER

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[Order of the Court was made by M.SATHYANARAYANAN, J.,]

(1) The present contempt petition is filed by the petitioner in WP.No.18168/2018, alleging willful disobedience and non-compliance of the order dated 19.06.2019 passed in the said writ petition.

(2) It is relevant to extract the prayer in the said writ petition as well as the operative portion of the order dated 19.06.2019 made in the said writ petition:-

Prayer in WP.No.13168/2018:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 5 to evict the 6th respondent encroacher from the Government land in S.Nos.401 and 402, Pachai Malai [Green Hills], TNHB Quarters, Phase-V, Tambaram Sanatorium, Chennai 600 047, previously Alandur Taluk, now Pallavaram Taluk, Kancheepuram District by implementing the order passed by the 2nd respondent in his proceedings Na.Ka.No.40759/10/N-I dated 06.09.2012 confirming the order of the 3rd respondent dated 14.11.2012.

Operative Portion of the order dated 19.06.2019:-

5. In view of the submission made by the learned counsel on either side, we direct



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the Revisional Authority to dispose of the revision filed by the 6th respondent challenging the order dated 14.11.2012 passed by the 2nd respondent, confirming the order dated 03.11.2010 passed by the 3rd respondent, on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. After the disposal of the revision, the authorities shall proceed further in accordance with law.

6. With these observations, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.'

(3) Mr. M. Sriram, learned counsel for the petitioner would submit that the 6th respondent in the writ petition - 2nd respondent herein, viz., the Evangelical Church of India, had illegally encroached upon the Government Hill Poramboke land and constructed a religious structure also illegally and in this regard, a representation dated 15.06.2002 was also submitted to the District Collector of Kancheepuram, who in turn, issued a direction to the Tahsildar, Tambaram Taluk to evict the 2nd respondent herein and report within 48 hours. It is the further submission of the learned counsel for the petitioner that despite the fact that the 2nd respondent herein had illegally encroached upon the land classified as Hill



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Poramboke and that apart, put up a religious structure without any authorisation whatsoever, still the electricity service connection was provided and therefore, the petitioner made a request to the Tamil Nadu Electricity Board to disconnect the electricity service connection and since there was no response to the said representation, the petitioner filed WP.No.14241/2009 before this Court, praying for issuance of a writ of mandamus, directing the Tamil Nadu Electricity Board [now Tamil Nadu Generation and Distribution Corporation Limited [TANGEDCO]] to dispose of the representations dated 28.03.2009 and 15.06.2009 respectively to disconnect the electricity service connection in SC.No.255-681-282 granted to the 2nd respondent herein - 6th respondent in the writ petition [encroacher] and the said writ petition was disposed of on 24.07.2009 by directing the Executive Engineer, TNEB, to consider and dispose of the said representation dated 15.06.2009 submitted by the petitioner, on merits and in accordance with law within the stipulated time period and accordingly, the said official passed an order on 26.02.2010, stating among other things that the 2nd respondent herein had encroached upon the Government Poramboke land and as and when the encroacher is evicted from the Survey Nos.401 and 402 of Pachaimalai, the electricity service connection would be



disconnected immediately.

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(4) The petitioner, once again filed WP.No.6919/2010 by making a challenge to the order dated 26.02.2010 passed by the Executive Engineer, TNEB with a consequential direction, directing the other official respondents to remove the encroachment caused by the 2nd respondent herein in the said survey numbers. Originally, the said writ petition was listed before a Division Bench and it was directed to be listed before a learned Single Judge, with a direction, directing the petitioner to serve notice upon the 2nd respondent - encroacher. The learned Single Judge, has taken note of the submissions and passed an order dated 17.06.2010, by directing the 2nd respondent therein, viz., the Tahsildar, Tambaram Taluk, Kancheepuram District to proceed for eviction proceedings by affording adequate opportunity to the encroachers as well as to the petitioner herein and other objectors if any and to complete the proceedings within a reasonable time of not more than twelve weeks from the date of receipt of a copy of the order and disposed of the writ petition accordingly.

(5) The 2nd respondent herein, aggrieved by the said order, filed a writ appeal in WA.No.202/2011 and having noted that the order of eviction passed by the Tahsildar, is the



subject matter of appeal before the Collector of Kancheepuram District, has set aside the order passed by the learned Single Judge. It is the further submission of the learned counsel for the petitioner that the appeal preferred by the 2nd respondent herein before the District Collector, Kancheepuram, was also came to be dismissed on 06.09.2012 and vide proceedings dated 14.11.2012, the stay petition filed by the 2nd respondent herein, seeking stay of all further proceedings pursuant to the order of eviction on the ground that he has filed a revision petition, also came to be dismissed.

(6) It appears that the 2nd respondent, in stead of filing a revision before the Government, has filed an appeal before the Commissioner of Land Administration, Chepauk, Chennai and it was disposed of on 27.10.2016, in No.T1/26137/2012, observing among other things that the appellant - 2nd respondent herein, had encroached upon the Government Poramboke land by constructing a Church in the name and style of ''Evangelical Church of India''. The Tahsildar, has taken initiative as per the orders of this Court and also rejected the objection filed by the 2nd respondent and also, the District Collector of Kancheepuram, has also rejected the appeal as well as the application filed by the 2nd respondent herein for issuance of a patta in respect of the land in question and having noted that



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since the order of the Collector of Kancheepuram District, is in respect of the Notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the Commissioner of Land Administration, has no jurisdiction to entertain the appeal filed by the 2nd respondent and accordingly, the appeal came to be dismissed.

(7) Thereafter, the petitioner herein filed WP.No.18168/2018, praying for issuance of a writ of mandamus to evict the 6th respondent therein / 2nd respondent herein from the Government Land in S.Nos.401 and 402, Pachai Malai [Green Hills], TNHB Quarters, Phase-V, Tambaram, Sanatorium, Chennai 600 047, in compliance of the order passed by the District Collector, Kancheepuram, dated 09.09.2012 and as already noted, the Division Bench of this Court has directed the Government / Revisional Authority to dispose of the appeal within the stipulated time and alleging violation of the said order, has filed the present contempt petition.

(8) The Contempt Petition was listed for hearing on 09.12.2019 and this Court directed the Registry to print the name of Mr.Thangasivan, learned counsel who appeared for the 2nd respondent herein, in the earlier proceedings and accordingly, his name is printed in the Cause List.

(9) The Contempt Petition was listed on 12.12.2019 and this Court, after hearing the submissions of the learned



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counsel for the petitioner and the learned Special Government Pleader appearing for the 1st respondent / contemnor and Mr.Thangasivan, learned counsel for the 2nd respondent - encroacher, *prima facie* found that the religious structure put up by the 2nd respondent, is not only of encroachment ; but also unauthorised and therefore, directed the jurisdictional Assistant Engineer [Operation and Maintenance], TANGEDCO, to disconnect the electricity supply granted to the said religious structure of the 2nd respondent and the Local Body, viz., Pallavaram Municipality, was also directed to disconnect the water and sewerage supply, if already given, within a period of one week from the date of receipt of a copy of the order and also made it clear that till the disposal of the Contempt Petition, the unauthorised religious structure shall not be demolished and directed the listing of the matter on 07.01.2020. Accordingly, the matter is listed today.

(10)Mr.Thangasivan, learned counsel for the 2nd respondent herein, filed typed set of documents dated 12.12.2019 and in page No.1 of the typed set of papers, pointed out the following structures, which according to him, are unauthorised:-

- 1.Mosque
- 2.Chelliamman Nagar Hindu Temple - Pucca Tar road
- 3.Sithargal Vazhum Sivamalai Hindu Temple



4.Navajothi Sevasamithi School Building

5.Three Christian Church

6.Vinayagar Temple with pucca structure

7.180 houses of Chelliamman Nagar in the same survey number

8.Provision shops, rice shops photostudio, tea shops, machine shops, vegetable market.

9.Overhead water tank built and maintained by panchayat Union.

10.Vehicle Stand.

11.Open ground for celebrating festivals.

12.Ration Shops.

(11)The learned counsel for the petitioner would submit that in the light of the fact that the findings rendered by the Authorities below are concurrent in nature and admittedly, the 2nd respondent is a rank encroacher and that apart, also put up a wholly unauthorised religious structure, cannot plead for mercy and prays for appropriate orders for immediate demolition of the said religious structure.

(12)Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st respondent / 1st contemnor would submit that the Revisional Authority, viz., the Revenue Disaster Management Department of the Government of Tamil Nadu, Land Disposal Wing, LD 6[2] Section, has passed an order in G.O.Ms.No.30, dated 08.01.2020 and that the Revisional Authority, having noted the facts and circumstances and various orders passed by this Court and



also giving an opportunity of personal hearing to the Secretary, Evangelical Church of India [2nd respondent herein], found that the 2nd respondent herein had encroached upon the Government land in S.Nos.401 and 402 of Thiruneermalai Village, Pallavaram Taluk, Kancheepuram District, by way of a religious structure, viz., the Church and that apart, the revision petition came to be filed with a delay of 21 months and the 2nd respondent herein - revision petitioner, had failed to submit any new or valid points against the findings of the Appellate Authority, viz., the Collector of Kancheepuram District, in his proceedings dated 14.11.2012 and the Revisional Authority, having noted the facts and circumstances, thought fit to reject the revision petition.

(13) Mr. A. N. Thambidurai, learned Special Government Pleader would further submit that even as per the own admission of the 2nd respondent, he has encroached upon the Government land and not stopping with it, also put up a wholly unauthorised religious structure and all his endeavour to get it regularised, had ended in failure and the authorities below, after providing adequate and sufficient opportunity to the 2nd respondent herein including personal hearing, came to the conclusion that the grounds raised by the 2nd respondent challenging the order of eviction, are wholly untenable and the findings rendered



by them are concurrent in nature and therefore, prays for appropriate orders.

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(14) Mr. Thangasivan, learned counsel for the 2nd respondent, in response to the said submission, has invited the attention of this Court to the typed set of documents dated 12.12.2019 and would submit that though the 2nd respondent is termed as an encroacher and that the structure put up by him, is also termed as an unauthorised one, the fact remains that there are very many religious structures exist in the said area apart from the other structures and whereas, the official respondents in the writ petition as well as in this contempt petition, are selectively targeting the 2nd respondent herein and prays for time to challenge the order of the Revisional Authority dated 08.01.2020 made in G.O.Ms.No.30.

(15) This Court paid its best attention to the rival submissions and also perused the materials placed before it.

(16) A perusal of the proceedings of the Collector of Kancheepuram District, Commissioner of Land Administration, Chepauk, Chennai, as well as the above cited order of the Revisional Authority dated 08.01.2020 would disclose that the 2nd respondent, with absolute impunity, had encroached upon the land belonging to the



Government in S.Nos.401 and 402 and not stopping with that, has also put up a wholly unauthorised structure in the form of a religious structure.

(17) The Tamil Nadu Combined Development and Building Rules, 2019, now holds the field and it is relevant to extract Rules 2[11], 2[15], 2[37] and 2[58]:-

Section 2[11] - '**Assembly Building**' means any building or part of a building, where 50 persons or more congregate or gather for amusement, recreation, social, religious, patriotic, civil, travel or other purposes and includes theatres, motion picture houses, assembly halls, Kalayana Mandapams, convention centers, auditoria, exhibition halls, museums, skating rinks, large gymnasiums, places of worship, dance halls, club rooms, passenger stations, stadia and terminals of air, surface and marine, public transportation services.

Section 2[15] - '**Building**' means any structure for whatsoever purpose and of whatsoever materials constructed and every part thereof whether used as human habitation or not and includes foundation, plinth, walls, floors, roofs, chimneys, plumbing and building services, fixed platforms, verandah, balcony, cornice or projection, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures. Tents, shamianahs, pandals, tarpaulin shelters and the like erected for temporary and ceremonial occasions shall not be considered as building.

Section 2[37] - '**Encroachment**' which means an act to enter into the possession or rights either of permanent or temporary nature on a land or built up property of local body or State or Central Government.



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Section 2[58] - **'High Rise Building'**
means a building exceeding 18.30m height.

(18) If any person wants to put up a building as per the existing Rules, he is also under obligation under Rule 6[2] to file an application for planning permission and building permit. Even prior to the Rules in respect of the areas in question, the Tamil Nadu District Municipalities Act, 1920, was occupying the field and even as per the provisions of the Tamil Nadu District Municipalities Building Rules, 1972, the 2nd respondent was under obligation to obtain necessary planning permission and in all probability, he could not have obtained permission for the reason that he is not in ownership of the land in question in the light of the findings rendered vide above cited authorities.

(19) **Rule 42** of the Tamil Nadu Combined Development and Building Rules, also provides for **minimum width of Corridor or verandah** in respect of the Assembly buildings such as Auditoriums, Kalyanamandapams, cinema theatres, religious buildings, temples, mosques or churches and other buildings of public assembly. **Rule 74** speaks about **Repeal and Savings** and sub-rule [1] says that *'all existing rules, regulations, bye-laws, orders, that are in conflict, and inconsistent with these rules, shall stand repealed or modified to the extent of the*



provisions of these rules'' , which means that the said rules which are not inconsistent with the Tamil Nadu Combined Development and Building Rules, 2019, would continue to be in operation. Admittedly, the 2nd respondent had encroached upon the land belonging to the Government and put up a wholly unauthorised religious structure and he cannot plead any leniency for the reason that it is a religious structure.

(20) It is also to be pointed out at this juncture that because of the callousness and inaptitude exhibited by the concerned officials, there is mushrooming growth of buildings and this Court can also take judicial notice of the fact that there are very many unauthorised structures exist than the authorised structures and therefore, it is high time that these kind of violations should be dealt with seriously.

(21) The 2nd respondent in his typed set of documents dated 12.12.2019, has also annexed photographs pertaining to the buildings, which according to him, are all unauthorised in the said area in question. It is relevant to extract the same:-



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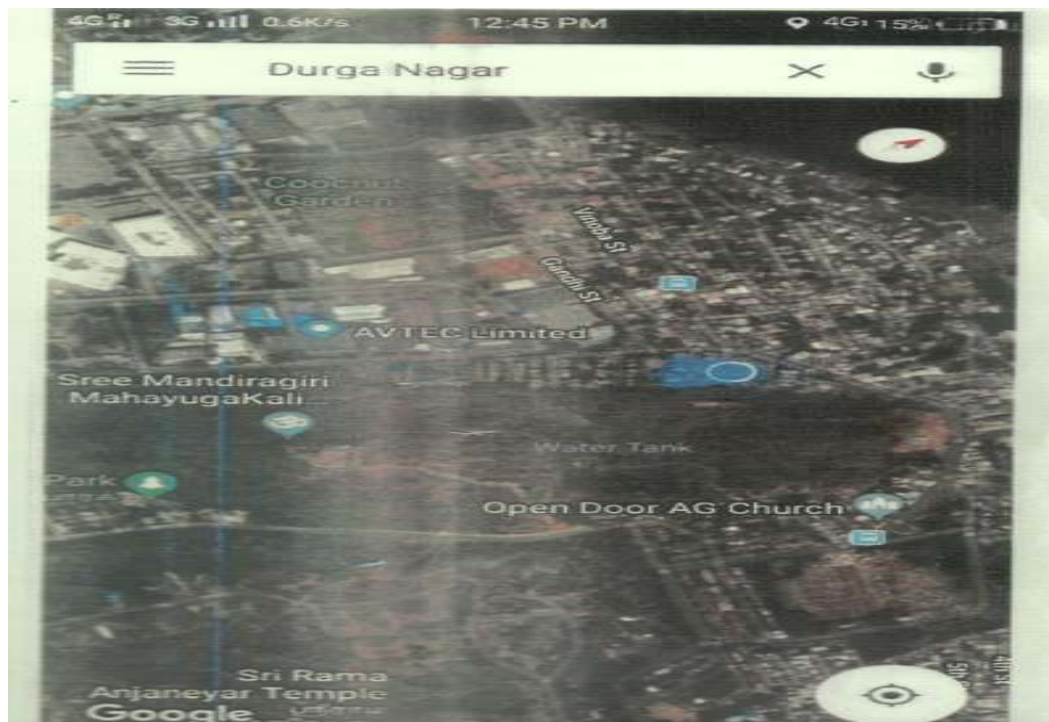
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(22)As regards the prayer of the 2nd respondent as to the demolition of the other illegal structures, photographs of which, are appended above, the order dated 17.06.2010 passed in WP.No.6919/2010 filed by the petitioner against the official respondents as well as the 2nd respondent herein, takes care of the same and it is relevant to extract paragraph No.5 of the said order:-

'5. That being so, it would be suffice to direct the 2nd respondent herein to proceed with the eviction proceedings by affording adequate opportunity to the encroachers as well as the petitioners herein and other objectors if any and to complete the proceedings within the reasonable time not more than 12 weeks from the date of receipt of a copy of this order. This writ petition is accordingly disposed of. Consequently, connected miscellaneous petition is closed. No costs.'

(23)In the light of the above facts and circumstances and reasons assigned, the following directions are issued:-

A) The Tahsildar, Pallavaram, is directed to remove the encroachment caused by the 2nd respondent herein and also demolish the unauthorised structure within a period of eight weeks from the date of receipt of a copy of this order and if the official apprehends any

<https://hcservices.ecourts.gov.in/hcservices> law and order [or] public order problems, [1] the



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Assistant Commissioner, Law and Order, Pallavaram ;

[2] The Commissioner of Police as well as jurisdictional Deputy Commissioner of Police, Greater Chennai City, are directed to provide adequate police protection and security to the Tahsildar, Pallavaram ; and

B) The Tahsildar, Pallavaram, is also directed to caused verification as to the encroachments on the public / Government land in the form of religious structures and other structures and file a Status Report as to the action taken to remove the said encroachments and demolition of the unauthorised structures.

(24) The contempt petition stands disposed of accordingly.

(25) **Call on 06.03.2020 for compliance of this order as well as for filing of the Status Report by the Tahsildar, Pallavaram.**

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

ap

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER (O.S.)

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To

Mr.Atulya Misra, IAS
Secretary, Land Administration
Department, Fort St George
Chennai 600 009.

Copy to:-

- 1)The District Collector
Kancheepuram District.
- 2)The Tahsildar
Pallavaram,
Chennai 600 044.
- 3)The Commissioner of Police
Greater Chennai,
Commissioner office Building
EVK Sampath Road, Vepery
Chennai 600 007.
- 4)The Deputy Commissioner of Police
Butt Road, Nazrethpuram, Gandhi Nagar
St.Thomas Mount, Chennai 600 089.
- 5)The Assistant Commissioner of Police
Law and Order, Pallavaram Range,
Chennai-600 043.
- 6)The Inspector of Police / Station House Officer
S-6, Shankar Nagar Police Station
No.16, 2nd Street, Shankar Nagar
Pammal, Chennai 600 075.