

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on	:	28.01.2020
Orders pronounced on	:	07.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Writ Petition No.34893 of 2019

Subramani
S/o.Bakthavachalam

... Petitioner

Vs

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi-Irvin Road,
Egmore, Chennai.
- 2.The District Collector,
Thiruvallur District,
Thiruvallur.
- 3.The District Revenue Officer,
Thiruvallur District,
Thiruvallur.
- 4.The Tahsildar,
Avadi Taluk Office,
Thiruvallur District.
- 5.The Commissioner,
Avadi Corporation,
Avadi, Chennai.
- 6.Victory Mohan
S/o.Mari

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing second respondent to remove the Pillayar temple situated in the 20 ft.

passage in 1st Street, Shantipuram, Thirumullaivoyal Village, Avadi, within a stipulated time prescribed by this Court pursuant to the representation dated 17.06.2019 given to second respondent.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.S.Thiruvengadam [R1]

Mr.V.Shanmugasundar

Special Government Pleader [R2 to R4]

Mr.P.Srinivas [R5]

Mr.Veeraraghavan, senior counsel

for M/s.Mamta Pandey [R6]

O R D E R

R.SUBBIAH, J

The present Writ Petition has been filed seeking issuance of a Writ of Mandamus directing second respondent to remove the Pillaiyar temple situated in the 20 ft. passage in 1st Street, Shantipuram, Thirumullaivoyal Village, Avadi, within a stipulated time prescribed by this Court pursuant to the representation dated 17.06.2019 given to second respondent.

2. Heard learned counsel for petitioner, learned Special Government Pleader appearing for respondents 2 to 4 and learned counsel for respondents. Perused the materials on record.

3. Petitioner purchased a vacant house site of an extent of 3700 ft. in Survey No.587/1, Thirumullaivoyal Village, Avadi Taluk, Tiruvallur District, bearing Plot No.B, Shanthipuram 1st Street, Thirumullaivoyal, by a deed of sale bearing Document No.3690/2011 from one Jebasevan. There is a 20 feet road on the eastern side of petitioner's property connecting two major roads viz., Madras Tiruvallur Road and Vaishnavi Nagar, Ambattur. Sixth respondent is having a house opposite to petitioner's vacant plot. Sixth respondent, who is the Ex-Chairman of Avadi Municipality and a political person, insisted the petitioner to sell his property, which was refused by him. In order to cause inconvenience to petitioner and public, sixth respondent constructed a Pillaiyar temple in the middle of 20 feet road. Petitioner and others sent several representations to authorities to remove the temple. Since no action was taken, petitioner filed W.P.No.32690 of 2018 before this Court. Under order dated 07.02.2019, this Court observed that it is open to second respondent, who is the competent authority, to take appropriate action with regard to the construction of the temple without any permission. Thereafter, based on the petitioner's representation dated 17.06.2019, second respondent has directed fifth respondent to take action to remove the Pillaiyar temple,

who, in turn, directed the Surveyor to submit a report. The Surveyor submitted a report informing that the Pillaiyar temple was constructed in the middle of the 20 feet road causing disturbance to public. Based on such report, fifth respondent had taken all steps to remove the pillaiyar temple, but, the sixth respondent, using his power, stopped the same. The further representation of the petitioner has also not yielded any fruitful result. Hence, the present petition has been filed seeking the aforesaid relief.

4. In the counter of fourth respondent, it is stated that the Pillaiyar temple is situated on the 20 ft. road. The road was formed and maintained by the Corporation, Avadi (formerly Avadi Municipality) and the water and drainage facilities are also provided by fifth respondent. It is further stated that fifth respondent was requested to remove the Pillaiyar temple, which was constructed encroaching the 20 ft. road.

5. Respondents 4 and 5 are present before this Court on 28.01.2020. On instructions, fifth respondent submitted that the contention of petitioner that the sixth respondent has constructed the Pillaiyar temple encroaching the 20 feet road, is true.

6. However, learned counsel for sixth respondent denied the said submission by filing a detailed counter affidavit. In short, the submission of learned counsel is that the Pillaiyar temple was constructed in the private property of sixth respondent and hence, there is no encroachment.

7. This Court has considered the rival submissions.

8. On a perusal of photographs produced before this Court, this Court finds that the pillaiyar temple was constructed on the middle of the 20 feet road, which is a clear encroachment. Therefore, the prayer of the petitioner has to be entertained. Accordingly, the second respondent is directed to remove the Pillaiyar temple situated in the 20 ft. passage in 1st Street, Shantipuram, Thirumullaivoyal Village, Avadi, within a period of four weeks from the date of receipt of a copy of this order.

9. The Writ Petition is disposed of with the above direction. No costs.

Post 'for reporting compliance' on 06.03.2020.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi-Irvin Road,
Egmore, Chennai.
- 2.The District Collector,
Thiruvallur District,
Thiruvallur.
- 3.The District Revenue Officer,
Thiruvallur District,
Thiruvallur.
- 4.The Tahsildar,
Avadi Taluk Office,
Thiruvallur District.
- 5.The Commissioner,
Avadi Corporation,
Avadi, Chennai.

+1cc to Mr.T.Muruganantham, Advocate sr.9928
+1cc to Mr.S.Thiruvengadam, Advocate sr.9800
+1cc to M/s.Srinivas, Advocate sr.10240
+3ccs to M/s.Mamta Pandey, Advocate sr.98721
+1cc to Government Pleader SR.NO. 10843

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Order
in
Writ Petition No.34893 of 2019

cp(co)
nr 11/02/2020