



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

**W.P. (MD) Nos. 5060, 5063, 5067, 5071 and 5072 of 2020
and W.M.P. (MD) Nos. 4384, 4386, 4390, 4391, 4394, 4395, 4401,
4403, 4404, 4405 of 2020**

W.P. (MD) No. 5060/2020

T. Balu

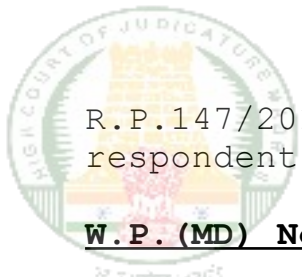
: Petitioner

Vs.

1. The Government of Tamil nadu
rep. by its Principal Secretary,
Tourism Culture and Charitable Department
Fort st. George, Chennai-9
2. The Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department
Uthamar Gandhi salai
Nungambakkam, Chennai
3. The Joint Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
4. The Assistant Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
5. The Assistant Commissioner/
Executive Officer
Arulmighu Koodalazhagar Temple
Madurai
6. S. Palani
Shop No.2-a Theppam South Old Building
Perumal Theppakulam South Circle
Town Hall Road
Madurai

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the 1st respondent dated 21.2.2020 vide proceedings in C.O. (MD) No. 5060/2020 confirming the order passed by the 2nd respondent



R.P.147/2017 D2 dated 8.7.2017 and the order passed by the 3rd respondent in M.P.No.12/2016 dated 22.12.2016 and quash the same.

W.P. (MD) No.5063/2020

S.Rajamani

: Petitioner

Vs.

- 1.The Government of Tamil Nadu
rep. by its Principal Secretary,
Tourism Culture and Charitable Department
Fort st. George, Chennai-9
- 2.The Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department
Uthamar Gandhi salai
Nungambakkam, Chennai
3. The Joint Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
- 4.The Assistant Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
- 5.The Assistant Commissioner/
Executive Officer
Arulmighu Koodalazhagar Temple
Madurai

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the 1st respondent dated 21.2.2020 vide proceedings in G.O.(Ms) No.64 dated 21.2.2020 confirming the order passed by the 2nd respondent in R.P.150/2017 D2 dated 8.7.2017 and the order passed by the 3rd respondent in M.P.Na.Ka.No.2303/2016/E1 dated 27.12.2016 quash the same.

W.P. (MD) No.5067/2020

Sellavel

: Petitioner

Vs.

- 1.The Government of Tamil Nadu
rep. by its Principal Secretary,
Tourism Culture and Charitable Department
Fort st. George, Chennai-9



2. The Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Uthamar Gandhi salai
Nungambakkam, Chennai
3. The Joint Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
4. The Assistant Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
5. The Assistant Commissioner/
Executive Officer
Arulmighu Koodalazhagar Temple
Madurai

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the 1st respondent in G.O.(Ms) No. 66 dated 24.2.2020 confirming the order passed by the 2nd respondent in R.P.143/2017 D2 dated 8.7.2017 and the order passed by the 3rd respondent in M.P.Na.Ka.No.962/2016/E1 dated 05/01/2017 quash the same.

W.P. (MD) No. 5071/2020

S. Mahalakshmi : Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by its Principal Secretary,
Tourism Culture and Charitable Department
Fort st. George, Chennai-9
2. The Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Uthamar Gandhi salai
Nungambakkam, Chennai
3. The Joint Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
4. The Assistant Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai



5.The Assistant Commissioner/
Executive Officer
Arulmighu Koodalazhagar Temple
Madurai

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the 1st respondent in G.O.(Ms) No. 55 dated 19.2.2020 confirming the order passed by the 2nd respondent in R.P.149/2017 D2 dated 8.7.2017 and the order passed by the 3rd respondent in M.P.Na.Ka.No.43/2016/E1 dated 27/12/2016 quash the same.

W.P. (MD) No.5072/2020

N.R.Omprakash

: Petitioner

Vs.

- 1.The Government of Tamil Nadu
rep. by its Principal Secretary,
Tourism Culture and Charitable Department
Fort st. George, Chennai-9
- 2.The Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Uthamar Gandhi salai
Nungambakkam, Chennai
3. The Joint Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
- 4.The Assistant Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai
- 5.The Assistant Commissioner/
Executive Officer
Arulmighu Koodalazhagar Temple
Madurai

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the 1st in G.O.(Ms) No. 67 dated 24.2.2020 confirming the order passed by the 2nd respondent in R.P.158/2017 D2 dated 8.7.2017 and the order passed by the 3rd respondent in M.P.Na.Ka.No.953/2016/E1 dated 05.1.2017 quash the same.



For Petitioners : Ms.J.Anandhavalli
For Respondents : Mr.VR.Shanmuganathan
(for R1 to R5) Special Government Pleader

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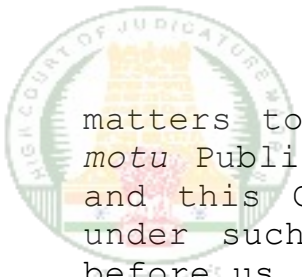
COMMON ORDER

(Order of the Court was made by P.N.PRAKASH, J.)

The dispute in this case relates to the encroachments around the Theppakulam of Koodal Alagar Swamy Temple. A Division Bench of this Court took cognizance of the encroachments around the Temple and registered a Public Interest Litigation in W.P.(MD) No.1451/2011 and has been issuing continuing mandamus to the authorities for removing the encroachments and for protecting the Theppakulam.

2.During the pendency of this proceedings, a group of persons including the petitioners in these writ petitions filed writ petitions before a single Judge of this Court and submitted that they are in occupation of shops on the southern side of the Theppakulam and that they are tenants under the Hindu Religious and Charitable Endowments Department (in short 'HR&CE Department') and further they are willing to pay the fair rent. The learned single Judge recorded the submissions and permitted them to make the payments to the HR&CE Department. While that being so, the HR&CE Department started taking enumeration and found that the petitioners in the writ petitions were not the actual lessees and the actual lessees had handed over possession of the shops to these petitioners on subletting basis and had left. This came to the notice of the HR&CE Department only when they started issuing fair rent proceedings notice to the actual lessees. However, the fair rents were fixed for the actual lessees, despite which, the actual lessees did not make any payment obviously because they had sublet the shops to the petitioners. While the situation went so, the petitioners moved the Commissioner of HR&CE Department by filing applications challenging the fair rent proceedings and also praying against their eviction.

3. The Commissioner, HR&CE Department, by detailed orders dated 08.07.2017 rejected the claim of the petitioners, aggrieved by which, the petitioners approached the Government on appeal. The Government has considered the appeal of each of the petitioners and by separate orders dated 19.02.2020, 21.02.2020 and 24.02.2020 respectively has dismissed the claims and has directed the authorities to remove the encroachments on or before 13.03.2020. Challenging the order passed by the State Government, the present writ petitions have been filed. These writ petitions were filed before a learned single Judge, who directed the



matters to be listed before this Division Bench, since the *suo-motu* Public Interest Litigation in W.P.(MD) No.1451/2011 is alive and this Court is monitoring the removal of encroachments. Only under such circumstances, these writ petitions have been posted before us.

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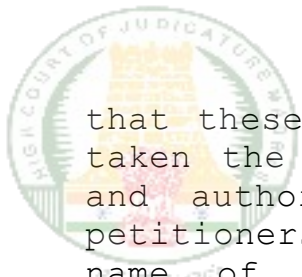
4. Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

5. Ms.J.Anandhavalli, learned counsel for the petitioners, submitted that W.P.(MD) No.1451/2011 relates only to removal of encroachments upon the bund, whereas, there are rank encroachers upon the bund on the eastern, northern and western side, against whom, no action has been taken by the Government, but action is being taken only against these petitioners, who are not on the bund, but are a little away from the bund. She further submitted that the petitioners are tenants under the HR&CE Department. They have paid the fair rent and hence, their categorisation as encroachers is illegal.

6. Per contra, the learned Special Government Pleader refuted the contentions. He submitted that the department had not received any rent as contended by the learned counsel for the petitioners, but they had received the amount as damages for use and occupation in the name of the original lessees and not in the name of the petitioners. However, no receipts were placed before this Court.

7. This Court gave its anxious consideration to the rival submissions.

8. There cannot be a claim of parity under Article 14 of the Constitution of India qua an illegality committed by others. Just because, the authorities have not removed the encroachments upon the bund in the eastern, western and northern side, the petitioners cannot, as a matter of right, claim that they cannot be removed. The next question is, 'Are these petitioners tenants under the Department'? In this connection, strong reliance was placed on the order dated 02.09.2014 that was passed by the learned single Judge in W.P.(MD) No.13573/2012 etc. batch. This Court perused the said order. About 15 petitioners including the five petitioners herein filed writ petitions asserting that they are tenants under the HR&CE Department and that they are ready to pay the fair rent. The learned counsel for the HR&CE Department should have taken care to verify the claim of those persons before conceding to accept the rents. Without that process, the counsel for the HR&CE Department, agreed to accept the rents, pursuant to which, the petitioners have paid the rents. However, as stated above, subsequent verification conducted by the Department showed



that these petitioners were not the actual tenants, but they had taken the shops from the original tenants without the knowledge and authorisation of the HR&CE Department. Superadded, the petitioners had paid the amounts to the HR&CE Department in the name of the original lessees towards damages for use and occupation and not towards rent as asserted by Ms.J.Anandhavalli. Under such circumstances, the Commissioner of HR&CE Department has rightly categorized these petitioners also as encroachers irrespective of the fact whether they have their shops upon the bund or a little away from the bund. In such view of the matter, this Court does not find any infirmity in the order passed by the authorities warranting interference.

9. Accordingly, these writ petitions fail and the same are dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR

To

- 1.The Principal Secretary,
Government of Tamil nadu
Tourism Culture and Charitable Department
Fort st. George, Chennai-9
- 2.The Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department
Uthamar Gandhi salai
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- 4.The Assistant Commissioner
Hindu Religious and Charitable Endowments
(Admn.) Department, Madurai



5. The Assistant Commissioner/
Executive Officer
Arulmighu Koodalazhagar Temple
Madurai

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+5 CC to M/s. J. ANANDAVALLI, Advocate
(SR-11708 to 11710, 11712 & 11713)

Order made in
W.P. (MD) Nos. 5060, 5063, 5067, 5071 and 5072 of 2020
and W.M.P. (MD) Nos. 4384, 4386, 4390, 4391, 4394,
4395, 4401, 4403, 4404, 4405 of 2020
13.03.2020

KM(CO)
TR(15.05.2020) 8P 11C