



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:17.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) No.11976 of 2020

and

W.M.P. (MD) No.10322 of 2020

N.Baranitharan

...Petitioner

-Vs-

1.The District Collector,
Pudukottai, Pudukottai District.

2.The Divisional Engineer (Highways),
Construction and Maintenance,
Pudukottai.

3.The Assistant Divisional Engineer (Highways),
Construction and Maintenance,
Pudukottai.

4.The Assistant Engineer (Highways),
Construction and Maintenance,
(Office of the Assistant Engineer (Highways),
Kantharvakottai, Pudukottai District.

5.The Tahsildar,
Karambakudi Taluk,
Pudukottai District.

..Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the impugned order passed by the third respondent vide his proceedings in Ka.No.602/2019/Vu.Po./ dated 09.09.2020 and quash the same as unconstitutional.

For Petitioner : Mr.R.Pon Karthikeyan
For Respondents : Mr.K.P.Krishnadoss
Special Government Pleader

ORDER

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

The petitioner claims to be a temple priest in Arulmigu Sri Murugan Temple, Karambakudi, Pudukottai District for the past 22 years. The petitioner would further aver that the said temple came into put in, in the year 1978 and it is in existence for the past 42 years and consecration was also performed in the year 1986 and



construction in the form of hall (Mandapam) was also constructed in the year 1996.

2. The learned counsel for the petitioner would submit that despite the fact that the temple is in existence for the past 42 years, under the pretext of removing the encroachment in a portion of the State Highway, initially the fourth respondent has issued a notice dated 24.02.2020. In response to the same, the petitioner also submitted a representation, dated 27.02.2020 to the first respondent, who in turn vide communication dated 18.06.2020 in O.Mu.4822/2020/E1 had requested the second respondent to do the needful.

3. The primordial grievance expressed by the learned counsel for the writ petitioner is that despite submission of the representation dated 27.02.2020, the same has not been considered, whereas the third respondent has now issued a notice dated 09.09.2020, calling upon the petitioner to cause removal of the encroachment on or before 16.09.2020, failing which, further action will be taken to remove the encroachment and hence, prays for appropriate orders.

4. The learned counsel for the respondents 1 to 5 would submit that due process of law would be followed for removal of encroachment. It is relevant to extract Section 28 of the Tamil Nadu Highways Act, 2001:-

"Prevention of encroachment:-

28(1)The Highways Authority or any person authorized by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorized encroachment and the removal of such encroachment.

(2)The Highways Authority or any persons authorized by it in this behalf, may -

(i)remove, without any notice, any movable temporary structure, enclosure, stall, booth any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii)remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the are vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof;

Provided that any representation received within the

time specified shall be considered by the authority or



officer concerned before passing final orders."

5. This Court has also perused the photographs available at page Nos.12 & 13 of the typed set of documents and also the affidavit filed in support of this writ petition. It prima facie appears that the temple is in existence at the portion of the State Highway and admittedly, in the year 1996 an additional superstructure in the form of "Mandapam" was also put up by the petitioner without any authorization. It further appears that initially the temple was occupying a small place and in the course of the years it got extended. In the affidavit filed in support of this writ petition, except stating that the petitioner is an Archagar, he did not disclose the fact that who is actually administering the affairs of the temple.

6. Be that as it may, the petitioner in response to the earlier notice of the fourth respondent, dated 24.02.2020 in letter Ka.No.24.02.2020/U.Po./ has submitted his response as representation dated 27.02.2020. In the light of the second proviso to Section 28 (2), the third and fourth respondents are jointly directed to consider the said representation of the petitioner, dated 27.02.2020 and give disposal within a period of two weeks from the date of receipt of a copy of this order and communicate the decision taken to the writ petitioner and till such time, the respondents shall defer further decision in terms of the notices dated 24.02.2020 as well as 09.09.2020.

7. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

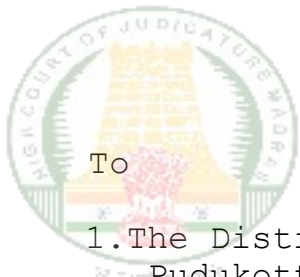
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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

- 1.The District Collector,
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Pudukottai District.

+1 CC to M/s.R. PONKARTHIKEYAN, Advocate (SR-17629[F] dated
21/09/2020)

+1 CC to M/s.SPL GP(SR-17579[F] dated 21/09/2020)

W.P. (MD) No.11976 of 2020
17.09.2020

SJ(CO)
KB(29.09.2020) 4P 8C