



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.12200 of 2017

and

W.M.P. (MD)Nos.9393 & 9394 of 2017

Thokkalavar Community Development Association,
Rep. by its President,
Mr.R.Veeraperumal,
S/o.Ramar,
Nayakkar Street,
Aanaimalaiyanpatti village,
Uthamapalayam Taluk,
Theni District.

... Petitioner

Vs.

1.The District Collector,
O/o. District Collector,
Theni District, Theni.

2.The Special Officer,
Aanaimalaiyanpatti Panchayat/
Block Development Officer (Village Panchayat),
Uthamapalayam,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent herein in Na.Ka.No.744/2017/B3 dated 12.06.2017 and quash the impugned notice as illegal and consequently forbearing the respondents from interfering with the peaceful possession and enjoyment of property in survey No.429/1 situated at Aanaimalaiyanpatti Panchayat.

For Petitioner

: Mr.M.Vallinayagam,
Senior Counsel
for M/s.J.Anandkumar

For Respondents

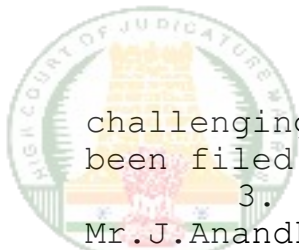
: Mr.Aayiram K.Selvakumar,
Additional Government Pleader
for R1
Mr.VR.Shanmuganathan,
Special Government Pleader,
for R2

**ORDER**

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

Mr.A.Chandradoss has filed W.P.(MD).No.24479 of 2016 against the first respondent as well as the Tahsildar, Uthamapalayam Taluk, The Village President, Aanaimalaiyanpatti village Panchayat, Theni District, The President, Thokkalavar Community, the petitioner herein R.Veeraperumal, The Block Development Officer (Village Panchayat) and Special Officer, Aanaimalaiyanpatti village Panchayat, Uthamapalayam Taluk, Theni District, praying for a Writ of Mandamus directing the respondents to remove the encroachment made in Government Poramboke land in survey No.429/1 at Malingapuram, Aanaimalaiyanpatti village Panchayat, Theni District.

2. A Division Bench of this Court vide order dated 20.02.2017 had found that as per the Revenue records, lands in survey No.429/1 has been classified as street and therefore, taking into consideration the contention put forth on behalf of the writ petitioner has allowed the writ petition directing the second respondent herein to remove the encroachments, which are in existence in survey No.429/1, by following due process of law and by fixing an outer time limit of two months. Accordingly, the second respondent issued a notice dated 24.03.2017, by referring to the order dated 20.02.2017 in W.P.(MD).No.24479 of 2016 and directed the deponent of the affidavit, representing in his capacity as the President of Thokkalavar Community Association, to remove the encroachments, failing which the encroachment will be removed at the cost and consequences. The second respondent vide communication dated 19.04.2017 in Na.Ka.No.744/2017/B3 also addressed the Deputy Superintendent of Police, Uthamapalayam and sought for police aid. The petitioner herein challenging the legality of the notice dated 24.03.2017, issued by the Special Officer and Block Development Officer of Aanaimalaiyanpatti village Panchayat, had filed W.P.(MD).No.7909 of 2017. The said writ petition came up for hearing before the Division Bench of this Court and while dealing with the same, the earlier order dated 20.02.2017 passed in W.P.(MD).No.24479 of 2016, was also taken into consideration and the writ petition was dismissed. At the time of the dismissal of the writ petition, a request was made on behalf of the writ petitioner for shifting the temple and the community hall to some other place and taking into consideration the same, this Court has granted time till 10.04.2017 and with the further indication that after the said date, the authorities shall remove the encroachments. The petitioner aggrieved by the dismissal of the writ petition filed S.L.P.(C).No.14956 of 2017 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 09.05.2017, having found no ground dismissed the Special Leave Petition. Thereafter, the second respondent has issued the impugned notice as to the removal of the encroachments and



challenging the legality of the same, the present writ petition has been filed.

3. Mr.M.Vallinayagam, learned Senior Counsel assisted by Mr.J.Anandkumar, learned counsel appearing for the writ petitioner would submit that in the revenue records the land in question has been erroneously classified as a street, whereas it is merely a natham and in respect of natham land, no power to remove the encroachment has been conferred upon any authority and in this regard, one R.Manikandan had filed W.P.(MD)No.13288 of 2017, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the survey carried out in respect of old survey No.59, Malingapuram, Aanaimalaiyanpatti, Uthamapalayam, Theni District and quash the same and consequently, to forbear the respondents therein from carrying out any proceedings for dispossession in old survey No.59/1 and new survey No.429/1.

4. The learned Single Bench of this Court vide order dated 26.07.2017, had disposed of the said writ petition without going into the merits by directing the petitioner therein to give a fresh representation to the fourth respondent/District Revenue Officer, Theni District, by enclosing a copy of that order within a period of two weeks from the date of receipt of a copy of that order and upon receipt of the same, the fourth respondent/District Revenue Officer was directed to consider and dispose of the same purely on merits and in accordance with law, after affording opportunity of hearing to the petitioner and the necessary parties, if any, as expeditiously as possible within an outer time lime of six weeks there from.

5. Mr.M.Vallinayagam, learned Senior Counsel would submit that in compliance of the said order, the District Revenue Officer, Theni district, had concluded the enquiry and on account of the onset of COVID-19 pandemic virus, the services of the Revenue officials are utilized and as such he could not pass orders and the petitioner is more optimistic that a positive order would be passed and prays for adjournment.

6. Per contra, Mr.VR.Shanmuganathan, learned Special Government Pleader, appearing for the first respondent would submit that in the light of the dismissal of W.P.(MD).No.7909 of 2017 as well as the dismissal of Special Leave Petition (C).No.14956 of 2017 by the Hon'ble Supreme Court, the petitioner cannot urge the very same points that were urged at the time of arguing in W.P.(MD).No.7909 of 2017. The learned Special Government Pleader has also drawn the attention of this Court to the photographs and the typed set of documents and would submit that even from the photographs, the full fledged temple came into being and though it is the claim of the petitioner that the temple is situated there for more than 300 years, the fact remains that there are additional constructions put up and that apart, without obtaining any planning permission and



in brazen violation of the Town and Country Planning laws, a community hall has also been put up adjacent to the temple which was also encroached upon the public street or pathway and after affording reasons and in compliance of the order, the only action being taken is in the form of the impugned notice and it cannot be faulted with and prays for dismissal of this Writ Petition.

7. This Court paid it's anxious consideration to the rival submissions and paid best attention to the materials placed before this Court.

8. A perusal of the order dated 26.04.2017, passed in W.P. (MD).No.7909 of 2017 filed by the very same petitioner, in and by which a challenge was made to the proceedings of the second respondent herin / fifth respondent therein, would disclose that by order dated 26.07.2017, a Division Bench of this Court has taken into consideration it's earlier order dated 20.02.2017 in W.P.(MD). No.24479 of 2016 and dismissed the writ petition and also granted reasonable time for shifting the temple and the community hall on the basis of the request made by the petitioner. The challenge made by the petitioner to the said order is also ended in dismissal vide order dated 09.05.2017 in S.L.P.(C).No.14956 of 2017 by the Hon'ble Supreme Court of India. The impugned notice is the subject matter of challenge only pursuant to the directions given in the said writ petition. Though it is the vehement and forcible argument of the learned Senior Counsel appearing for the petitioner that whether the land in question is street or natham land is the subject matter of adjudication before the District Revenue Officer, Theni District, in the considered opinion of the Court passing orders in this writ petition cannot be deferred till the said officer passes orders in the said proceedings.

9. This Court on consideration of the arguments advanced and appreciation of the material placed is of the considered view that there is no infirmity or want of jurisdiction on the part of the second respondent in issuing the impugned notice and finds no merits in this Writ Petition.

10. In the result, Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

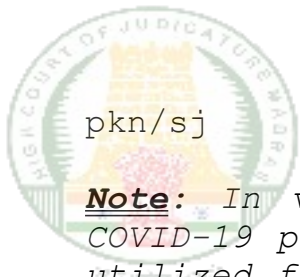
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



pkn/sj

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

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O/o. District Collector,
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VB (22.07.2020) 5P 3C