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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.11707 OF 2013

AND

M.P.NO.1 OF 2013

Mr.M.Murugesan

...Petitioner

Vs

1.The District Collector,
Kancheepuram District,
Office of the District Collectorate,
Kancheepuram.

2.The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram.

3.The Thasildhar,
Sriperumbudur Taluk,
Kancheepuram District.

4.Pastor C.Sathrack

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to maintain land in S.No.83, Pennalur Village, Sriperumbudur Taluk, Kancheepuram District as Mayanam.

For Petitioner : M/s.M.Sneha

For Respondents : Mr.C.Selvaraj
Additional Government Pleader
[For R1 to R3]

Mr.R.Karunagaran
[For R4]

O R D E R

The writ petition is filed to direct the respondents 1 to 3 to maintain land in S.No.83, Pennalur Village, Sriperumbudur Taluk, Kancheepuram District as Mayanam.



2. The petitioner states that he is the resident of Pennalur Village along with his family for several years. In the said Village, S.No.83 belongs to the Government and it is used as Burial Ground for Hindu Religious People. It was classified as "Mayanam" in Village Registers and part of the land in the said Survey number, a balwadi and water tank are constructed. The petitioner states that the said land is being used as Burial ground. The 4th respondent during the year 2004 made an attempt to build a Church in the said Survey Number by encroaching the Pathway leading to the Burial ground. The villagers obstructed the said attempt and submitted representation to the respondents 1 to 3, an enquiry was conducted and report was submitted that Survey No.83 is a Government Poromboke and it is classified as Hindu Burial Ground and therefore, the 4th respondent cannot construct Church. The third respondent directed the fourth respondent to stop construction work till March 2013 and the fourth respondent did not go ahead with the construction activities. While so, all of a sudden during March 2013, the 4th respondent once again attempted to put up construction of the Church and commenced the Foundation work. Immediately, the petitioner gave a representation to the first respondent and based on the representation, inspection was conducted by the respondents on 11.03.2013. The fourth respondent was instructed to stop all construction activities. However, he carried on the construction activities during night hours. The petitioner states that the respondents 1 to 3 had not effectively prevented the illegal construction put up by the fourth respondent and thereby failed in their public duty to maintain peace in that locality. The fourth respondent squatting the land used as pathway for Burial ground, in spite of the fact that the land was classified as Government Poromboke. The Government authorities / respondents 1 to 3 had not effectively prevented such illegal encroachments, despite the fact that the petitioner made a complaint during the relevant point of time.

3. The learned counsel for the 4th respondent made a submission that the Church is functioning for the past 8 years and a small building has been constructed. There is no objection from the village people of that locality and therefore, the 4th respondent may be permitted to continue Church activities.

4. The learned counsel for the petitioner seriously objected the said contention by stating that any religious activity in an illegal manner in the locality will affect the peaceful atmosphere in that locality. The petitioner along with other villagers raised an objection for construction of Church in the Government Poromboke land by way of encroachment by the 4th respondent. In spite of the complaint, no action was taken though inspections were conducted. Thus, the public authorities miserably failed in their duties from preventing such illegal



activities of encroachment of public land and construction of Church building in the Government land.

5. The learned counsel for the petitioner reiterated that under the provisions of the Village Panchayat Act and the relevant Building Rules, the 4th respondent has to get necessary building plan approval and permission to run religious activities. Such permissions must be obtained from the District Collector. This apart, the 4th respondent is an Encroacher of Government land and therefore, no building approval can be granted in respect of such encroachments. Thus, the petitioner is constrained to move the present writ petition to maintain the said land as Burial ground.

6. The learned Additional Government Pleader made a submission that the said land in S.No.83, Pennalur Village is now used as Mayanam / Burial ground and the people are using the other Burial ground situated nearby in S.No.87/4. Thus, the said Survey No.83 has not been utilized as Burial ground and further, there was no serious objection from the village people.

7. The third respondent filed counter affidavit, stating that Survey No.83 is a Government land classified as 'Mayanam' as per the village accounts of Pennalur village, which can be used as Burial ground. The Tahsildar has stated that the Church has been built and functioning for the last 8 years without any objection from the villagers in Survey Number 87/1C2 in Pennalur village, adjoining the above said Survey Number and not in the Survey Number 83, which is a Government land classified as 'Mayanam' as claimed by the petitioner. It is not situated in the pathway leading to the burial ground, which is not in use. The Tahsildar further states that the Church has been built and functioning for the last 8 years without any objection from the villagers in Survey Number 87/1C2 in Pennalur village, adjoining the above said survey number and not in the Survey Number 83, which is a government land classified as 'Mayanam' as claimed by the petitioner.

8. Perusal of the counter affidavit filed by the third respondent/Tahsildar, Sriperumbudur Taluk, this Court is of the considered opinion that the counter affidavit filed explicitly supports the claim of the encroacher / 4th respondent. The public authorities are duty bound to protect the public properties and the public interest. Contrarily, the Tahsildar states that the 4th respondent constructed the building in S.No.87/1C2 in Pennalur village and there was no objection from the people in that locality.

9. This Court is unable to understand in the event of no objection, whether such public authorities can allow



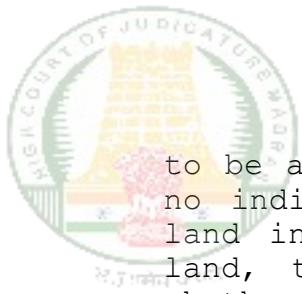
encroachments in respect of the Government land. Objection by the people may not be the criteria to deal with the encroachment of Government lands. Even as per the records furnished, the Survey No.87/1C2 in Pennalur Village is classified as "Meikal Poromboke". Thus, the 4th respondent has encroached upon the "Meikal Poromboke land" and constructed a building without obtaining building plan approval and necessary permission from the District Collector to run the religious institution.

10. Interestingly, none of these factors are stated in the counter filed by the third respondent. Thus, this Court has no hesitation in forming an opinion that the third respondent has failed in his duty to bring all the facts and circumstances, so also the violations done by the 4th respondent by not obtaining building plan approval, necessary permission from the District Collector for the purpose of running the religious institution in a "Government Meikal Poromboke land". Thus, the counter filed by the third respondent is vague in respect of the classification of the land encroached by the 4th respondent and silent about the building plan approval and the permission to be granted by the District Collector under the provisions of the Act and Rules. If the Government officials file counter in an inadequate manner without placing the correct facts, it is to be construed as that they are failing in their public duties and further, misleading the Court in respect placing the correct facts, which can never be tolerated.

11. Public officials are expected to be vigilant, prudent and protect the public properties at any circumstances, wherever the encroachments are made and when it is brought to the notice of such officials, they are bound to initiate immediate actions by following the procedures as contemplated under law. Contrarily, they cannot verify, whether there is an objection from the other people or not and allow such encroachments to go on and further allow illegalities to continue in that place. Such a mindset or the conduct of the public servants are to be deprecated and therefore, all suitable actions are to be initiated in this regard.

12. The counter filed by the Tahsildar is absolutely inadequate and seems that to assist the 4th respondent by not stating the encroachments made by the 4th respondent in Government Meikal Poromboke as well as the illegal construction put up and running Church activities without getting prior approval from the District Collector under the Rules.

13. The learned counsel for the 4th respondent furnished the copy of the Resolution passed by the President / Panchayat. The President / Panchayat on 26.01.2013, passed a Resolution that the 4th respondent is permitted to construct a Church in the land



to be allotted. However, the Resolution is blanket and there is no indication about the Survey number and the details of the land including the Burial ground. It is not stated, in which land, the 4th respondent is permitted to construct a Church, whether in his own land or otherwise, which is allotted by the President in a particular survey number. Such a blanket resolution is not only illegal and passed without any authority under the provisions of the Village Panchayat Act. In this regard, the Collector is bound to initiate appropriate proceedings against the Then President of the Pennalur village and conduct an enquiry and proceed further in dealing with the Government lands in such an illegal manner, in the absence of any specification regarding allotment of land and building plan approval from the competent authority including the permission from the Collector. The resolution passed by the Panchayat cannot be taken as a lawful order for the purpose of approving the encroachment made by the 4th respondent as well as the construction of Church in the Government Meikal Poromboke.

14. Under the Tamil Nadu Panchayat Building Rules 1997, Rule 4 deals with "Application for approval of sites for building and huts". Rule 4, Sub-Section (1) stipulates "Every person who intends, to construct or reconstruct or alter or add to a building or to a hut shall submit an application to the Executive Authority for the approval of the site and for permission to execute the work, in the Form specified in Appendix-B, with such variations as circumstances may require which shall be accompanied by a site plan, a plan or plans, a specification etc.,". Sub Section 3 to Rule 4 unambiguously enumerates that "No site shall be used for the construction of a building intended for public worship or religious purposes without the prior approval of the Collector of the district who may refuse such approval, if in his opinion, the use of the site and buildings is likely to endanger public peace and order."

15. Therefore, the permission of the District Collector is mandatory under the Tamil Nadu Panchayat Building Rules, 1997. Admittedly, in the present case, the 4th respondent encroached upon the Government Meikal Poromboke land and constructed a building without obtaining proper building approval and without any permission from the District Collector. This being the factum, the entire activity of the 4th respondent, running a religious institution is illegal and cannot be approved by this Court.

16. Even under the Tamil Nadu Combined Development and Building Rules 2019, construction of the religious buildings are to be undertaken only by following the procedures. Annexure - XVII, Rule 6 contemplates "The competent authority shall not entertain any building application for construction of buildings in relation to any religious institution unless such application



is accompanied with a No Objection Certificate obtained from the District Collector concerned". Even for submission of application, the applicant must establish that he is the owner of the property under the very same Rules. Thus, the owner of the property alone is entitled to submit an application for grant of permission and in respect of encroachments, no such application is entertainable by the competent authorities under the provisions of the Building Rules. This being the scope of the old rules as well as the revised rules in force, construction made by the 4th respondent is absolutely illegal and the encroachment of Government land also not prevented by the competent authorities in spite of the fact that the petitioner submitted a complaint regarding the encroachments along with other village people at the time of commencement of illegal constructions.

17. This being the facts and circumstances, this Court is inclined to pass the following orders:

(1) The respondents 1 to 3 are directed to demolish the unauthorized building constructed by the 4th respondent in the 'Government Meikal Poromboke land' within a period of four weeks from the date of receipt of a copy of this order.

(2) The fourth respondent if owns any land, then he is at liberty to submit a fresh application along with all the necessary relevant documents to the competent authority, seeking permission to construct a building and carry on the Church activities, after getting approval from the competent authorities under law.

(3) The District Collector is directed to conduct an enquiry in respect of the negligence, dereliction of duty and lapses committed on the part of the respondents 2 and 3 in not initiating action in spite of the complaint and permitting such illegal activities to go on in respect of the Meikal Poromboke land and institute disciplinary proceedings and all further actions against all such officials, who have involved in such activities.

(4) The District Collector is directed to conduct an enquiry in respect of the resolution passed by the Panchayat in an unlawful manner and in violation of the provisions of the Act and Rules and initiate all suitable actions against the persons involved in passing such Resolutions.

(5) It is needless to state that any such illegal encroachments or illegal constructions of religious institutions are found, then the District Collector is bound to initiate actions by following the procedures as contemplated under law.



18. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The District Collector,
Kancheepuram District,
Office of the District Collectorate,
Kancheepuram.

2.The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram.

3.The Thasildhar,
Sriperumbudur Taluk,
Kancheepuram District.

+1cc to M/s.M.Sneha, Advocate SR.No.60871

+1cc to Mr.R.Karunagaran, Advocate SR.No.60856

+1cc to the Government Pleader SR.No.61560

W.P.No.11707 of 2013

SSI(CO)
RVM(09/12/2021)