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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

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THE HONOURABLE MR.JUSTICE T.RAJA  
AND  
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.NO.7376 OF 2021

1. M.Kuppusamy
2. K.Srinivasan

... Petitioners

-Vs-

1. Union of India rep.by its Secretary  
to Government,  
Department of Cultural Affairs,  
Room No.501, "C" Wing,  
Shastri Bhavan,  
New Delhi - 110 015.
2. The District Collector,  
Kancheepuram District,  
Collectorate Office,  
Thaiyar Kullam,  
Kancheepuram - 631 501.
3. The Superintendent/Conservator,  
Archaeological Survey of India,  
Fort St.George,  
Chennai - 600 009.
4. The Conservation Assistant,  
Archaeological Survey of India,  
Kancheepuram Sub Circle,  
Vaikundaperumal North Mada Street,  
Kancheepuram - 631 502.
5. The Commissioner,  
Kancheepuram Municipality,  
Kancheepuram District - 631 502.
6. The Tahsildar,  
Kancheepuram Taluk Office,  
Kancheepuram District - 631 501.



7. The Superintendent of Police,  
Office of the Superintendent of Police,  
Thaiyar Kullam,  
Kancheepuram District - 631 501.

8. The Inspector of Police,  
B-1, Kancheepuram Police Station,  
Kancheepuram District - 631 502.

9. A.Aruljothi ... Respondents

PRAYER:-

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 6 to demolish the illegal construction put up by the 9<sup>th</sup> respondent in his property bearing Door No.38, Arutperum Selvi Street, Kancheepuram which falls under the Prohibited Area of Archaeological Survey of India Monument Sri Vaikuntaperumal Temple, Kancheepuram, in violation of the provisions of Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and without planning permit and building permit from the 5<sup>th</sup> respondent herein.

For Petitioners :: Mr.Venkateswaran  
For Mr.K.Manikandan

For Respondents :: No appearance for R1

Mr.T.Arunkumar  
Government Advocate  
For R2, R6 to R8

Mr.G.Karthikeyan  
For R3 & R4

Mr.G.B.Rajesh for R5

Mr.G.Punniakoti for R9

ORDER

(Order of the Court was made by T.RAJA, J.)

Mr.M.Kuppusamy and Mr.K.Srinivasan, the petitioners herein, being the father and son, have approached this Court praying for issuance of a writ of mandamus, directing the respondents 1 to 6 to demolish the illegal construction put up by Mr.A.Aruljothi,



the 9<sup>th</sup> respondent herein in his property bearing Door No.38, Arutperum Selvi Street, Kancheepuram, which falls under the Prohibited Area of Archaeological Survey of India Monument Sri Vaikuntaperumal Temple, Kancheepuram, in violation of the provisions of Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 and without planning permit and building permit from the 5<sup>th</sup> respondent herein.

2. Heard learned counsel for the parties.

3. At the time of entertaining the writ petition on 22.3.2021, this Court has passed the following order:-

"5. The learned counsel for the petitioners has drawn the attention of this Court to the typed set of documents and would submit that the 9th respondent, challenging the proceedings of the Archaeological Survey of India, filed WP.No.5616/2014 and it came to be dismissed and challenging the same, he filed WA.No.636/2014 and it was admitted on 07.05.2014 and pending disposal of the writ appeal, prayed for an order of ad-interim injunction, restraining the respondents, their subordinates, from demolishing and from interfering with the peaceful possession and enjoyment of his house property bearing Door No.111/38 comprised in S.Nos.927 and 928, Arutperumselvi Street, Kancheepuram, in pursuant to the proceedings of the 2<sup>nd</sup> respondent therein, dated 17.12.2013 and interim injunction has been granted and the said order would not confer any right upon the 9th respondent to put up an additional construction without any planning permission and therefore, prays for interim orders.

6. Since it has been brought to the knowledge of this Court as to the pendency of the writ appeal in WA.No.636/2014, this Court has also summoned the English Bundle [EB] relating to the said case and verified the typed set of documents.

7. A perusal of the Reply dated 13.02.2021 sent by the 9<sup>th</sup> respondent herein to the 3<sup>rd</sup> respondent would disclose that his application for planning permission came to be returned on 18.09.2010 and she intend to apply for revised plan for getting approval of the existing



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building, though it prima facie appears that not only the existing construction is unauthorised, but also the additional construction being put up by the 9<sup>th</sup> respondent, as evidenced from the photographs made available from pages No.66 to 69 of the typed set of documents.

8. Therefore, this Court is of the considered view that a prima facie case has been made out for grant of interim orders ; otherwise the 9<sup>th</sup> respondent may proceed further with the construction and in that event, not only the petitioners, but also the official respondents, viz., respondents 3 and 4, would also be put to hardship and difficulties and the balance of convenience, as on date, lies in favour of the petitioners.

9. Hence, there shall be an order of ad-interim injunction as prayed for till 22.04.2021.

10. The 5<sup>th</sup> respondent, upon putting the 9<sup>th</sup> respondent on notice, shall cause inspection of the existing construction as well as the alleged on-going construction in old Door No.38, New No.111, Arutperumselvi Street, Kanchipuram-631501 and file a Status Report with supporting documents and photographs, as to the authorised/deviated/unauthorised construction.

11.The Registry, after obtaining appropriate orders, is to list WA.No.636/2014 along with this writ petition and call on 22.04.2021."

4. As directed by this Court, after giving opportunity to all the parties, inspection was undertaken by the Commissioner, Kancheepuram Municipality, the 5<sup>th</sup> respondent herein and he has also filed the status report with supporting documents and photographs. Mr.Venkateswaran, learned counsel appearing for the petitioners has also drawn our attention to paragraph-8 of the status report showing the deviated unauthorised construction made by the 9<sup>th</sup> respondent herein in the prohibited area.

5. Mr.G.Karthikeyan, learned counsel appearing for the respondents 3 & 4, supporting the learned counsel appearing for the petitioners, also stated that the 9<sup>th</sup> respondent has no regard or respect to abide by the law. Therefore, the status report submitted by the 5<sup>th</sup> respondent can be taken on record and



a direction can be given to the District Collector, Kancheepuram and other competent authorities to proceed further for taking appropriate action against the 9<sup>th</sup> respondent to remove the illegal unauthorised construction in the building in question that is noted.

6. Since the notice of inspection was also given to the 9<sup>th</sup> respondent-A.Aruljothi on 25.3.2021 preceding the inspection, we have no hesitation to accept the status report filed by the 5<sup>th</sup> respondent on 20.4.2021, more particularly, paragraph-8, which reads as follows:-

"8. I submit that thereafter as per the Hon'ble High Court's Order dt.22/3/2021, the Inspection Notice was given on 25-3-2021 to the 9<sup>th</sup> respondent and inspected the property and on inspection, it is founded that the construction of the building is unauthorised one. The violations are as follows:-

(a) In the year of 2010 in the Ground Floor the unauthorised construction is about 1889 sq.ft and (b) now in the year of 2020 & 2021 also in the first floor the unauthorised further illegal construction is about 1189 sq.ft and (c) the Staircase & Head room area is about 100 sq.ft and while during inspection, it is also further founded that already there was (d) an old existing building in the Ground Floor constructed in the year of 2004 situated behind the present unauthorised construction which is about 952 sq.ft and (e) also in the First Floor which is about 952 sq.ft. Hence the entire building is constructed without planning permission from this respondent an No Objection Certificate from the Superintendent/Conservator, Archaeological Survey of India, the 3<sup>rd</sup> respondent herein and the Conservation Assistant, Archaeological Survey of India, Kancheepuram Sub-Circle, the 4<sup>th</sup> respondent herein. Thereafter this respondent issued a Confirmation Notice dt.30-3-2021 under Sections 216(3) and order under Sections 338, 339(2), 340 (1), 344 to the 9<sup>th</sup> respondent. I submit that I am ready to oblige the orders passed by this Hon'ble Court."

7. A perusal of the status report clearly shows that in the ground floor, unauthorised construction has been found to an extent of 1889 sq.ft put up in the year 2010 by the



9<sup>th</sup> respondent. Subsequently, in the year 2020 & 2021, when the first floor was put up, again the 9<sup>th</sup> respondent has continued to raise the unauthorised illegal construction to an extent of 1189 sq.ft. Besides, an extent of 100 sq.ft has been illegally constructed between the staircase and headroom area. This has been noticed by the inspecting authority. Moreover, the 5<sup>th</sup> respondent has also stated that the entire building is constructed without planning permit from the 5<sup>th</sup> respondent herein and again without obtaining the no objection certificate from the Superintendent/Conservator, Archaeological Survey of India, the 3<sup>rd</sup> respondent herein, the said deviated construction has been put up by the 9<sup>th</sup> respondent. Therefore, placing on record the status report filed by the 5<sup>th</sup> respondent, the District Collector, Kancheepuram District, the 2<sup>nd</sup> respondent herein and other competent authorities are directed to proceed further for taking appropriate action against the 9<sup>th</sup> respondent for removal of the illegal unauthorised construction in the building in question, in accordance with law. With this direction, the writ petition is ordered accordingly. Consequently, W.M.P.No.7886 of 2021 is closed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of India,  
Department of Cultural Affairs,  
Room No.501, "C" Wing,  
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B-1, Kancheepuram Police Station,  
Kancheepuram District - 631 502.

+2ccs to Mr.K.Manikandan, Advocate, S.R.No.38330  
+1cc to Mr.G.Punniakoti, Advocate, S.R.No.38156  
+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.38425  
+1cc to the Government Pleader, S.R.No.38469

W.P.NO.7376 OF 2021

LN(CO)  
PBS/07/09/2021