



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.P. No. 12376 of 2021

Chidambaram Poosali ... Petitioner

Vs.

1. The District Collector
Kallakurichi District
Kallakurichi.
2. The Commissioner
Office of Municipality
Kallakurichi Taluk & District.
- 3.The Tahsildar
Kallakurichi Taluk & District.
4. Durai @ Duraikannu
5. Chitti @ Chitti Babu
6. Murali
7. Ganesan
8. Amudha

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents 1 to 3, particularly, the Second Respondent to initiate necessary steps, including penal action to remove the encroachments made by the Respondents 4 to 7 in the subject temple land, comprised in Survey No.293/6A to an extent of Acres 2.50 cents, situated at Kallakurichi Taluk and District on the basis of the representation dated 05.10.2020 sent to the Respondents 1 to 3 including District Revenue Officer, Kallakurichi.

For Petitioner : Mr. R.Thanjan

For Respondents : Mrs. R.Anitha (For R1 & R3)
State Government Counsel
Mr. L.P.Maurya (For R2)



ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The Petitioner has come before this Court seeking Writ of Mandamus, directing the Official Respondents to take action including penal action against the Private Respondents 4 to 8 to remove the encroachments made by them in the subject temple land, comprised in Survey No. 293/6A to an extent of 2.50 cents situated at Kallakurichi Taluk and District.

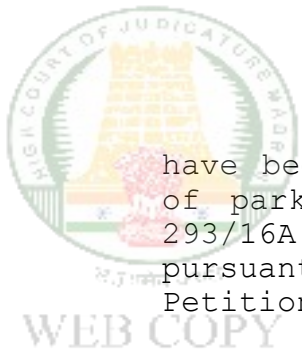
2. It is a specific case of the Petitioner that he is a Hereditary Trustee of Sri Mariamman Temple, which owns to an extent of 2.50 cents of Natham poramboke land, comprised in Survey No. 293/6A at Kallakurichi Taluk and District, which was also confirmed by a Decree and Judgment dated 03.08.1978 filed against the State of Tamil Nadu, represented by the Collector of South Arcot, Cuddalore and others made in O.S. No. 333 of 1977 on the file of the District Munsif Court, Kallakurichi.

3. When things stands so, the Private Respondents 4 to 8 encroached upon the property putting up construction. Therefore, the Petitioner has filed Writ Petition in W.P. No. 31843 of 2015 before this Court, which was disposed of vide order dated 08.10.2015. Since the said order was not complied with, the Petitioner filed a Contempt Petition in Cont. P. No. 552 of 2017. Subsequently, the said encroachment was removed by the Second Respondent on 17.06.2016 and recording the same, the said Contempt Petition was closed. Even thereafter, the Private Respondents 4 to 8 encroached upon the said property. Therefore, the Petitioner gave a representation dated 05.10.2020 to the First to Third Respondents including District Revenue Officer, Kallakurichi. Since no action has been taken so far, the Petitioner has come before this Court.

4. During the earlier hearing on 07.06.2021, this Court directed the Second and Third Respondents to have a joint inspection of the said property, after giving notice to the Petitioner as well as the Private Respondents 4 to 8 to find out as to whether encroachments have been made in the said property comprised in old Survey No. 293/6A, new Survey No. 450/1 and file a report in that regard.

5. Heard Mr. R.Thanjan, Learned Counsel for the Petitioner, Mrs. R.Anitha, Learned State Government Counsel appearing for the First and Third Respondents and Mr. L.P.Maurya, Learned Standing Counsel appearing for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

6. Mr. L.P.Maurya, Learned Standing Counsel appearing for the Second Respondent submits that a joint inspection had been conducted on 23.06.2021 and it is found that encroachments



have been made by the Private Respondents 4 to 8 in the form of parking shed made of asbestos sheets in old Survey No. 293/16A and new Survey No. 450/1 and they have been removed, pursuant to the orders passed by this Court in this Writ Petition on 07.06.2021.

7. It is stated in Paragraph No. 4 of the Status Report filed by the Second Respondent that though the Petitioner claims that the encroachments have been made by the Private Respondents 4 to 8 in the Temple land, comprised in Survey No. 293/6A, as per the Revenue records the 'Temple land' is situated in S.F. No. 443/19, whereas the encroachments in the form of parking shed made of asbestos sheets, were made by the Private Respondents 4 to 8 at S.F. No. 293/16A and new Survey No. 450/1, which has been classified as 'Street', which is being maintained in the interest of public. However, whether it is a temple land or street, the Private Respondents 4 to 8 have no right to encroach upon them, which obstructs the movement of the vehicles. Though the said encroachments have been removed, to prevent or prohibit the Private Respondents 4 to 8 from making any encroachment in the future, penal action as per the Criminal Law has to be taken by the authorities against the Private Respondents 4 to 8 /encroachers. Only if the penal action is taken as per the law, it will deter the encroachers from encroaching upon the property. The duties of the Official Respondents do not end up removing encroachments alone. Therefore, the Official Respondents are directed to initiate penal action against the Private Respondents 4 to 8 / encroachers.

8. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

Maya

To

1. The District Collector
Kallakurichi District
Kallakurichi.
2. The Commisioner
Office of Municipality
Kallakurichi Taluk & District.



3.The Tahsildar
Kallakurichi Taluk & District.

+1cc to Mr.L.P.Maurya, Advocate SR.No.30868

+1cc to Mr.R.Thanjan, Advocate SR.No.30866

+1cc to Government Pleader SR.No.30808

W.P. No. 12376 of 2021

SKY (CO)

GMV (03/08/2021)