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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.A.NO.636 OF 2014 AND M.P.NO.1/2014

S.Aruljothi

... Appellant

-Vs-

1. Union of India rep. by its
Secretary to Government,
Department of Cultural Affairs,
New Delhi.
2. Government of India rep. by
The Superintendent/Conservator,
Archaeological Survey of India,
Chennai Circle, Fort St. George,
Chennai-600 009.
3. The Conservation Assistant,
Archaeological Survey of India,
Kancheepuram Circle,
Vaikundaperumal North Mada Street,
Kancheepuram 631 502.
4. The District Collector,
Kancheepuram District Collectorate,
Kancheepuram.

... Respondents

Prayer:-

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.04.2014 made in W.P.No.5616/2014 by a learned Single Judge of this Court.

Prayer in W.P.No.5616 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records made in the impugned order in No.1/Demolition/2013/M6080, dated 17.12.2013 passed by the 2nd respondent, quash the same.



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For Appellant : Mr.G.Punniakoti

For respondents : Mr.G.Karthikeyan
2 and 3

For 4th respondent : Mr.T.Arunkumar

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been directed against the order dated 01.04.2014 made in W.P.No.5616/2014 by a learned Single Judge of this Court, thereby declining to quash the Communication dated 17.12.2013 by which the 2nd respondent requested the 4th respondent, namely, the District Collector, Kancheepuram District, Kancheepuram to take appropriate steps to expedite the demolition of the offending construction made by the writ petitioner/appellant herein on the ground that the order dated 19.12.2011 passed by this Court in W.P.No.27664/2010 has not been adhered to.

2. Learned Counsel for the appellant submitted that the sole issue raised in this appeal is whether the building put up by the writ petitioner/appellant in his own property bearing present Door No.111/28 comprised in S.Nos.927 and 928, Arutperumselvi Street, Kancheepuram falls within the prohibited and regulated area of Sri Vaikuntaperumal temple, Kancheepuram or not. Explaining further, he has stated that the distance between the appellant's building and Sri Vaikuntaperumal Temple was calculated approximately by the 3rd respondent as 70 metres which is in the prohibited area whereas as per the Superintendent of Archaeological, the distance is at 97.20 metres which also falls within the prohibited and regulated area of National Monument Sri Vaikuntaperumal Temple, Kancheepuram.

3. Learned Counsel for the appellant further submitted that now the grievance of the writ petitioner/appellant is that if the distance is correctly measured by an Advocate Commissioner appointed by this Court, it would be beyond 100 metres and that would clearly show that the building belonging to the appellant would not fall within the prohibited and regulated area of Sri Vaikuntaperumal temple, Kancheepuram.

4. We are not here to examine whether the building-in-question falls within the prohibited and regulated area of Sri Vaikuntaperumal Temple, Kancheepuram or not. The reason is very simple. The learned Single Judge after examining the grievance



of the writ petitioner has come to the conclusion that the writ petitioner has already given adequate opportunity to put forth his submissions and only thereafter, the impugned communication was issued to demolish the unauthorized construction made by the writ petitioner/appellant herein since he has put up the constructions within the prohibited and regulated area of Sri Vaikuntaperumal Temple, Kancheepuram. However, as the impugned communication dated 17.12.2013 is an intra-departmental communication exchanged between the respondents 2 and 4 and so far as no final order whatsoever has been sent to the writ petitioner/appellant herein, accepting the view taken by the learned Single Judge that the appellant cannot say that he has been prejudiced since he has not been served with a copy of the same, we are not inclined to entertain the Writ Appeal. Secondly, it is not known whether the District Collector has come to any conclusion that the building-in-question belonging to the appellant falls within the prohibited and regulated area of Sri Vaikuntaperumal Temple, Kancheepuram and the same has to be demolished. Thirdly, as stated earlier, since the writ petitioner/appellant has questioned only the intra-departmental communication without even challenging the final order passed by the 3rd respondent, that was also said to have been communicated to the writ petitioner/appellant, we are not inclined to interfere with the findings and conclusions reached by the learned Single Judge of this Court. Fourthly, in the connected W.P.No.7376/2021 filed by one M.Kuppusamy and another seeking a direction to the respondents 1 to 6 to demolish the illegal construction put up by the appellant herein/9th respondent therein, while disposing of the same, we have directed the District Collector, Kancheepuram District, Kancheepuram and other competent authorities to proceed further for taking appropriate action against the 9th respondent therein/appellant herein for removal of the illegal unauthorized construction in the building-in-question, in accordance with law. Therefore, the interim injunction already granted by this Court in this appeal while admitting the present Writ Appeal is vacated. In view of all the above, we find no merit in the present Writ Appeal.

5. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Union of India,
Department of Cultural Affairs,
New Delhi.
2. The Superintendent/Conservator,
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4. The District Collector,
Kancheepuram District Collectorate,
Kancheepuram.

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.38424
+1cc to Mr.K.Manikandan, Advocate, S.R.No.38329
+1cc to Mr.G.Punniakoti, Advocate, S.R.No.38157
+1cc to the Government Pleader, S.R.No.38469

W.A.No.636/2014

LN(CO)
PBS/07/09/2021