

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Rev.Aplw.No.11/2018 and WP.No.1841/2018 & WMP.Nos.2291, 2522
and 4942/2018 in WP.No.1841/2018

[Video Conferencing]

Rev.Aplw.No.11/2018

Mr.M.Govindan

Petitioner

Versus

1.R.Gajedran

..1st respondent/Writ
petitioner

2.The Secretary to Government
of Tamil Nadu,
Municipal Administration &
Water Supply, St. George Fort
Chennai 600 009.

3.The Director,
Directorate of Town Panchayats,
Kuralagam, Chennai 600 108.

4.The Executive Officer
Gummidipoondi Town Panchayat,
Tiruvallur District.

.. RR 2 to 4/RR1 to 3

Prayer:- Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the order daed 31.10.2017 in WP.No.11628/2017 passed by this Court.

For Petitioner : Mr.Ravikumar
Senior Counsel for
M/s.Paul & Paul
For RR 2 & 3 : Mr.M.Elumalai
Additional Government Pleader
For R4 : Mr.A.N.Thambidurai
Special Government Pleader

WP.No.1841/2018:-

M.G.Vignesh Kumar .. Petitioner

Versus

- 1.The Director,
Directorate of Town Panchayat,
Kuralagam, Chennai 600 108.
- 2.The District Collector
Tiruvallur District, Tiruvallur.
- 3.The Revenue Divisional Officer
Ponneri 601 204, Tiruvallur District.
- 4.The Tahsildar
Gummidipoondi Taluk
Gummidipoondi Panchayat,
Gummidipoondi 601 201.
- 5.The Executive Officer,
Gummidipoondi Town Panchayat,
Gummidipoondi 601 201.
- 6.R.Gajendran .. Respondents

***R6 impleaded as per order dated 02.02.2018
made in WMP.No.2849/2018 in WP.No.1841/2018

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 5th respondent culminating in his impugned notice Na.Ka.No.3 of 2017 dated 25.01.2018 and quash the same and consequently, direct the respondents herein from in any manner interfering with the rights of the petitioner in enjoying his property, situate in survey No.559/B bearing New No.230, Old No.242, GNT Road, Gummidipoondi Panchayat, Tiruvallur District.

For Petitioner : Mr.A.K.Sriram for
M/s.A.S.Kailasam Associates
For RR 1 to 4 : Mr.M.Elumalai
Additional Government Pleader

COMMON ORDER

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

(1) This Court, in continuation and in conjunction with the earlier orders, especially the last order dated 18.11.2019, is passing the following order.

(2) Heard the submissions of Mr.Ravikumar, learned Senior counsel appearing for the Review Applicant and Mr.A.K.Sriram, learned counsel for the writ petitioner in WP.No.1841/2018 and also perused the materials placed before it.

(3) The learned Senior counsel for the Review Applicant as well as the learned counsel for the writ petitioner in WP.No.1841/2018 has placed heavy reliance upon the judgment and decree dated 14.12.1970 passed in OA.No.1/1969 [OS.No.4/1958 on the file of the Court of Sub Judge, Chengalpet] on the file of the Court of Subordinate Judge at Kanchipuram and point out that the said suit was filed by Gummidipoondi Panchayat Union Council represented by the Councilor against the private parties, contending among other things that the "A" Schedule lands are granted by the Government for maintenance of the Choultries and the "B" Schedule properties belong to the said Trust and while answering the additional issue, i.e., whether the suit preferred by the Gummidipoondi Panchayat Union Council is maintainable, has given a finding that in the light of the decision rendered in the earlier suits in OS.No.41/1946 and OS.No.33/1951 on the file of the Sub Court, Chengalpet, the plaintiff-Council was not appointed as Trustee by the Scheme Court and as such, they cannot

maintain the suit. The petitioner in WP.No.11628/2017 has not brought to the knowledge of this Court the said findings and as such, the final order passed in WP.NO.11628/2017 is to be reviewed.

(4)Mr.A.K.Sriram, learned counsel appearing for the writ petitioner in WP.No.1841/2018 would submit that, by placing reliance upon the very same judgment, the writ petitioner makes a challenge to the impugned notice of the Local Body dated 25.01.2018 issued under Sections 56, 57 of the Town and Country Planning Act, 1971.

(5)The Review Applicant, in paragraph No.5 of the Grounds of Review would aver among other things that Natesa Mudaliyar has executed a registered Mortgage Deed in favour of one Salammal on 30.07.1941 and after the mortgage period was over, the original owner, viz., Chandrasekara Chetty, did not come forward to redeem the mortgage and therefore, the title to the said property has been perfected by prescription in favour of Salammal, who is none other than the sister of M.Munusamy Naidu and since Salammal did not have any child, she had settled the property in favour of her brother M.Munusamy-father of the Review Applicant on 23.01.1980 and also executed a Will dated 23.06.2010 in favour of his daughter Mrs.Usha Rani and his grandson, viz., Mr.M.G.Vignesh Kumar – petitioner in

WP.No.1841/2018 and as such, the said property is in possession and enjoyment of the petitioner in WP.No.1841/2018 for decades together.

(6) ***Per contra***, Mr.M.Elumalai, learned Additional Government Pleader appearing for official respondents would submit that in the light of the fact that the land has been classified as "Chatram", it is always open to the Government to take appropriate action for removal of encroachments and insofar as the challenge made to the notice issued under the provisions of the Town and Country Planning Act, 1971, is concerned, the writ petitioner in WP.No.1841/2018 is not able to produce any sanctioned plan or permit and since the construction is wholly an unauthorised one, the law must take its course and as such, it is not open to the writ petitioner to make any grievance in this regard and prays for dismissal of WP.No.1841/2018.

(7) This Court paid its anxious consideration to the rival submissions and also perused the materials placed before it.

(8) The Review Applicant as well as the writ petitioner in WP.No.1841/2018 placed heavy reliance upon the judgment dated 14.12.1970 made in OS.No.1/1969 on the file of the Court of the Subordinate Judge at Kanchipuram.

(9)A perusal of the Schedule of Properties would read among other things that the land admeasuring to an extent of 4.43 acres in S.No.559-B of Old Gummidipoondi Village, Ponneri Taluk, Tiruvallur District, is one of the properties of the Charitable Trust. The father of the Review Applicant, viz., Thiru M.Munusamy Naidu, has executed a Will dated 23.06.2010 creating life interest and vested remainder in favour of his daughter Mrs.Usha Rani – mother of the writ petition in WP.No.1841/2018 as well as in favour of the petitioner – son of Mr.M.Govindan, who was a minor at that point of time and another minor, viz., Tharun @ Dinesh Kumar – son of Mr.M.Varadharajan. As per the Schedule of property given in the said Will, the landed property admeasuring to an extent of 4.43 acres in S.No.559-B at Gummidipoondi Village, has been bequeathed in favour of the said persons.

(10)In the light of the findings given in the judgment and decree dated 14.12.1970 in OS.No.1/1969 by the Court of Subordinate Judge at Kanchipuram, the Will executed by the father of the Review Applicant in favour of Usha Rani and his grandsons, *prima facie* appears that the testator may not have any title.

(11)Now, insofar as WP.No.1841/2018 is concerned, the writ petitioner appears to have submitted an application seeking permission to put up a superstructure and it *prima facie* appears that the superstructure has been put up without any Planning Permission.

(12)This Court, vide last order dated 18.11.2019, has also observed that "it *prima facie* appears that very many unauthorised constructions came into being despite the dispute pertains to the classification of the land as to whether it is a patta land or Chatram land?

(13)In the absence of any Planning Permission, it is open to the Local Body to proceed against the unauthorised construction, despite the dispute as to whether the land in S.No.559-B belongs to the Trust or "Chatram Land"?

(14)Mr.A.K.Sriram, learned counsel for the writ petitioner in WP.No.1841/2018 has drawn the attention of this Court to the photographs made available at page No.89 of the typed set of documents and would submit that there are very many structures exist in the land in S.No.559-B of Gummidipoondi Village and the Local Body cannot target the superstructure put up by the petitioner alone. This Court finds force in the said submission.

(15)Accordingly, the 5th respondent in the writ petition / Local Body, is directed to cause inspection of the existing superstructures in S.No.559-B of Gummidipoondi Village, after putting on notice, the concerned person/s and if the result of the inspection reveals any unauthorised / deviated construction, immediate and necessary action shall be taken in accordance with law, by also adhering to the principles of natural justice. **The 5th respondent is directed to file an Action Taken Report along with supporting documents and photographs, in the light of the observations made in this order.**

(16)In the light of the above facts and circumstances coupled with the reasons assigned above, the challenge made to the impugned notice dated 25.01.2018 of the 5th respondent is unsustainable.

(17)Insofar as the Review Application No.11/2018 is concerned, in the light of the findings given by the Civil Court in OS.No.1/1969, **respondents 2 and 3 in the Review Application are directed to file their counter affidavits with supporting documents to sustain their claim that the land in S.NO.559-B of Gummidipoondi Village is a Chatram land and the Local Body, viz., the 3rd respondent is**

entitled to take action and also, as to the existence or otherwise of the Trust.

(18)In the result,

A) WP.No.1841/2018 stands dismissed. No costs. Consequently,

the connected miscellaneous petitions are closed. Post the writ petition on 21.04.2021 for filing of the Status Report by the 5th respondent with supporting documents and photographs.

B) Post the Review Application NO.11/2018 on 21.04.2021.

Counter affidavits of respondents 2 and 3 with supporting documents.

[MSNJ] [NSSJ]
03.02.2021

AP
Internet:Yes

सत्यमेव जयते
WEB COPY

To

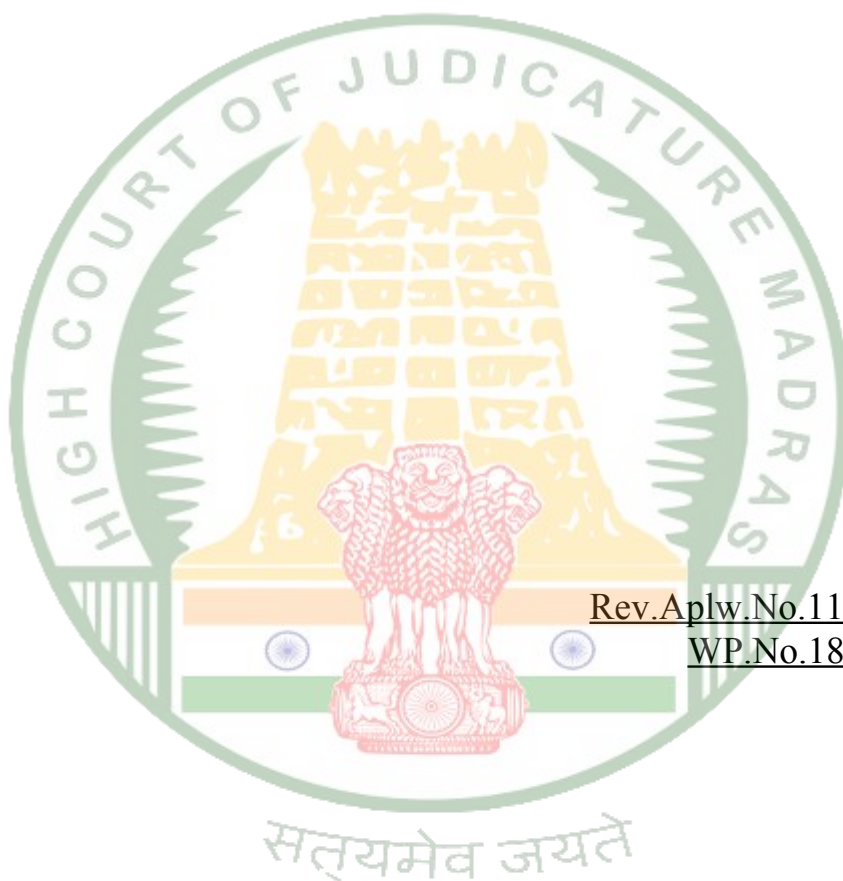
- 1.The Secretary to Government of Tamil Nadu,
Municipal Administration &
Water Supply, St. George Fort
Chennai 600 009.
- 2.The Director,
Directorate of Town Panchayat,
Kuralagam, Chennai 600 108.
- 3.The District Collector
Tiruvallur District, Tiruvallur.
- 4.The Revenue Divisional Officer
Ponneri 601 204, Tiruvallur District.
- 5.The Tahsildar
Gummidipoondi Taluk
Gummidipoondi Panchayat,
Gummidipoondi 601 201.
- 6.The Executive Officer,
Gummidipoondi Town Panchayat,
Gummidipoondi 601 201.

WEB COPY

Rev.Aplw.No.11/2018 & WP.No.1841/2018

M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,

AP



Rev.Aplw.No.11/2018 &
WP.No.1841/2018

WEB COPY

03.02.2021