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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.22193 of 2021
and
W.M.P.No.23420 of 2021

V.Mani ... Petitioner
Vs

1. The Commissioner
HR & CE,
No.119, Uthamar Gandhi Salai
Nungabakkam, Chennai - 600 034.

2. The District Collector,
Singaravelar Maligai,
Chennai - 600 001.

3. The Joint Commissioner,
HR & CE,
Rengasamykulam Opp.,
Kanchipuram - 631 501.

4. The Executive Officer,
Sri Velleeswarar Temple,
Kovur, Chennai - 600 128.

5. The Thasildar,
Alanthur,
Chennai - 600 004.

6. The Inspector of Police,
S-4, Nandambakkam Police Station,
Nandambakkam,
Chennai - 600 089.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, restraining the respondents herein or their men or agents from demolishing the temple is situated in Survey No. 406, Manapakkam Village, Kanchipuram District without following due process of law and consider on the petitioner representation dated 30.09.2021.

For Petitioners : Mr.K.Gangadaran

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate
for R1, R2, R3, R5 & R6

: Mr.R.Bharnidharan
for R4



ORDER

Captioned main writ petition has been filed with a prayer to mandamus the respondents restraining them from demolishing a temple said to be situate in land being 'Survey No. 406, Manapakkam Village, Sriprumbudur Taluk, Kanchipuram District' [hereinafter 'said land' for the sake of convenience and clarity]. Writ petitioner, claiming to be a resident of Manapakkam Village, has come up with the captioned writ petition.

2. Be that as it may, writ petitioner says he had sent a representation dated 30.09.2021 to the respondents inter alia making a request that there should be no interference regarding worship in temple in said land.

3. To be noted, there is a temple, which goes by the name 'Sri Velleeswarar Temple' in Manapakkam Village, Sriprumbudur Taluk, Kanchipuram District [hereinafter 'said temple' for the sake of convenience and clarity]. Said land, even according to the writ petitioner, belongs to said temple. To be noted, said temple is not subject matter of captioned writ petition as even according to the writ petitioner, there is an ancient tree/temple with a small deity Muniswaran and Amman, which is being referred as 'Muniswaran Temple' situate in said land, which is being worshipped by several families, referred to as Muniswaran temple and this is the temple writ petitioner is concerned for in captioned writ petition.

4. Read this in conjunction with and in continuation of earlier proceedings made by this Court in the previous listing on 22.10.2021, which reads as follows:

'In the additional typed set of papers filed by writ petitioner, in communication dated 24.03.2017 from the Executive Officer of Arulmighu Valliswarar Temple, Manapakkam, Sriperumbudur Taluk, Kancheepuram District (hereinafter 'said Temple'), there is a reference to atleast two writ petitions (WMPs therein) and those two writ petitions are W.P.No.16063 of 2015 and W.P.No.4738 of 2016. To be noted, W.P.No.4738 of 2016 has been wrongly mentioned as 'W.P.M.P.No.4738/2016'. There is a reference to some orders in these proceedings, but the same have not been placed before this Court.

2. Faced with the above situation, Mr.K.Gangadaran, learned counsel requested for a short accommodation to produce copies of the orders of this Court. Adjourned at request of the counsel for writ petitioner.



Admission' on 26.10.2021.'

5. Pursuant to the aforementioned earlier proceedings of this Court, learned counsel for writ petitioner has placed before this Court another additional typed set of papers dated 25.10.2021 running to about 34 pages.

6. To be noted, writ petitioner has also averred in the writ affidavit that he is a worshiper qua said temple i.e., Velleeswarar Temple also, but it is not necessary to go into that aspect of the matter.

7. The orders in the writ petitions adverted to in earlier proceedings dated 22.10.2021 may do not directly relate to the prayer in the captioned writ petition as that pertains to some encroachment in said land removal of the same by consent orders and therefore it is not necessary to go into those aspects of the matter.

8. Mr.NRR.Arun Natarajan, learned State Counsel, accepts notice on behalf of Respondents 1, 2, 3, 5 and on behalf of State Public Prosecutor's Office (qua respondent No.6), Mr. R. Bharnidharan, learned counsel, who has joined the hearing, accepts notice on behalf of 4th respondent.

9. Owing to the narrow compass on which captioned writ petition turns, with the consent of all the aforementioned learned counsel i.e., learned counsel on both sides, main writ petition was taken up.

10. In the light of the narrative thus far, viewed in the light of the submissions made today, this Court is convinced that there is no ground to interfere in the matter, much less accede to the prayer of the writ petitioner and the reasons are as follows:

(a) The writ petitioner has no legal right. A writ petitioner seeking mandamus should have a legal right going by the ratio in Praga Tools case law [Praga Tools Corporation Vs. Imanuel and others reported in AIR 1969 SC 1306]. In the instant case, there is nothing to demonstrate any legal right of the petitioner qua prayer.

(b) In continuation of above reason, 'person having interest' qua any temple is defined in Section 6(15) of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No.22 of 1959)' [hereinafter 'TN HR&CE Act' for the sake of convenience and clarity] and there is nothing to demonstrate that the writ petitioner satisfies any of the ingredients determinants qua the definition. To be noted, Section 6(15) of TN HR&CE Act reads as follows:



6. Definitions.-

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) ...
- (9) ...
- (10) ...
- (11) ...
- (12) ...
- (13) ...
- (14) ...
- (15) " person having interest" means-

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in th habit of partaking in the benefit of the distribution of gifts thereat;

(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

(d) in the case of samadhi, brindhavan or any other institution established or maintained for a religious purpose a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake oris in the habit of partaking in the benefit of the distribution of gifts thereat;

There is no averment whatsoever in the writ affidavit to suggest writ petitioner satisfying above conditions except broadly and vaguely saying 'worshiper'.

(c) Learned State Counsel and Learned counsel for Executive Officer submit in one voice that various encroachments in said land were removed with



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great difficulty. However both learned State Counsel and Learned counsel for Executive Officer submit further in one voice that there is a small Muniswaran and Amman Deity in the North Western corner of the said land situate in about 1307 sq.ft of land that has access from Manapakkam Gerugambakkam main road and the same is not being disturbed by any one much less the respondents. This submission is recorded and this itself gives a quietus to the matter.

(d) On the contrary, a careful perusal of the affidavit of the writ petitioner, more particularly paragraph No. 8 thereat, reveals that the writ petitioner is talking about a 'new' Muniswaran Stone Statue qua said land. Paragraph No. 8 of the writ affidavit reads as follows:

'8.I submit that, on 27.09.2021, the staff of the 4th respondent came to the said property and threatened me and others that we should remove New Muniswaran Stone Statute from the said property, failing which they would remove the Muniswaran Stone statue by force from the said property and the petitioners would be thrown out from the said property.'

(underlining made by this Court to highlight, to supply emphasis and for ease of reference)

(e) The above averment by itself lends support and buttresses the submission of learned State Counsel and temple counsel that the writ petitioner is attempting to install a new statue in another part of the said land and encroach upon the same, by making it appear as if that is the Muniswaran which is being worshipped for several years.

(f) To buttress his arguments in above direction and to show bonafides, State counsel placed before this Court four photographs regarding Muniswaran temple and the same are as follows:



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(g) The above will not be disturbed is the common say of learned state counsel and temple counsel as already alluded to supra. This by itself draws the curtains on the prayer of the writ petitioner.

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11. Though this Court is not inclined to interfere, much less accede to prayer of the writ petitioner, considering the nature of the matter, the position that the writ petitioner's anxiety (though this Court has held that writ petitioner has no locus and this Court is not accede to Mandamus prayer) also stands addressed and this is noticed by this Court.

12. Though obvious, for the purpose of eliminating any ambiguity, this Court makes it clear that it is well open to the said temple i.e., Sri Velleeswarar Temple, Manapakkam Village, Sriperumbudur Taluk, Kancheepuram District to protect the said land i.e., 3.24 acres comprised in Survey No. 406 in Manapakkam Village, Sriperumbudur Taluk, Kancheepuram District by resorting to all legal means available to the said temple and State as the stated position that 1307 sq.ft. North Western corner of this land where Muniswaran temple is situate (photographs scanned and reproduced supra) will remain undisturbed is recorded.

13. Curtains on the above writ petition. In other words, captioned Writ Petition is dismissed. Consequently, captioned writ miscellaneous petition is also dismissed as unnecessary. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

nst/nsa

To

1. The Commissioner
HR & CE,
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2. The District Collector,
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5. The Thasildar,
Alanthur, Chennai - 600 004.

6. The Inspector of Police,
S-4, Nandambakkam Police Station,
Nandambakkam,
Chennai - 600 089.

+1cc to the Special Government Pleader(HR & CE), S.R.No.55930

W.P.No.22193 of 2021
and
W.M.P.No.23420 of 2021

SS(CO)
SB(23/11/2021)