



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.5193 of 2021

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D.Kesavan ... Petitioner
Vs.

- 1.The Commissioner
Hindu Religious and Charitable Endowments,
No.119, Uthtyhamar Salai,
Chennai - 600 034.
- 2.The Joint Commissioner
Hindu Religious and Charitable Endowments,
Neelakandeshwarar Temple Complex,
T.V. Koil,
Trichy - 6.
- 3.The Commissioner
Department of Archaeology,
Tamil Valarchi Valaagam,
Tamil Salai, Egmore,
Chennai - 8.
- 4.The Senior Conservation Assistant,
Archaeological Survey of India
Chennai Sub - Circle, 1st Floor,
Fort St. George,
Chennai - 9.
- 5.The Conservation Assistant
Archaeological Survey of India,
Trichy Sub - Circle,
Fort Gateway (Main Guard Gate)
Theppakulam (P.O),
Trichy - 2.
- 6.The Executive Officer
Erumbishwarar Temple,
Thiruverambur,
Trichy - 13.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the Respondents 1 to 6 to remove the encroachment made upon the Arulmigu Erumbishwarar Temple's land comprised in S.No. 42/1 in Thiruverambur Village, Trichy and to take effective steps to



renovate the damaged part of the temple and its pond and to protect the holiness of the temple by the way of proper maintenance and take steps to conduct the chariot festival through the street surrounding to the Arulmigu Erumbishwarar Temple, by considering his representation, dated 27.07.2020.

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For Petitioner : Mr.M.Karthikeyavenkitachalapathy

For Respondents 1 & 2 : Mr.R.Baskaran,
Standing Counsel for Government

For Respondents 3 to 5 : Mrs.L.Victoria Gowri
Assistant Solicitor General of India

For 6th Respondent : Mr.P.Thiyagarajan

ORDER

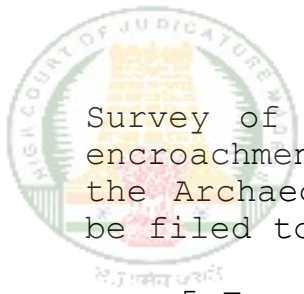
[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

We have heard Mr.M.Karthikeya Venkitachalapathy, learned counsel appearing for the petitioner, Mr.R.Baskaran, learned Standing Counsel for Government appearing for the respondents 1 and 2, Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India appearing for the respondents 3 to 5 and Mr.P.Thiyagarajan, learned Counsel appearing for the sixth respondent.

2.This writ petition has been filed, as a Public Interest Litigation praying for a direction upon the respondents 1 to 6, to remove the encroachments made upon the lands comprised in Survey No.42/1, Thiruverumbur Village, Trichy District, belonging to Arulmighu Erumbishwarar Temple and to take effective steps to renovate the damaged part of the temple and its pond to preserve its sanctity and also to take steps to conduct the chariot festival through the streets surrounding the temple, by considering the petitioner's representation, dated 27.07.2020.

3.On the last occasion i.e. 23.04.2021, the sixth respondent, The Executive Officer of the Temple was directed to hold discussion with the Officials of Archaeological Survey of India and to file a report to this Court, as to how such encroachments can be removed and whether the Executive Officer is required to proceed under the provisions of the Hindu Religious and Charitable Endowments Act, 1959, when the temple and the land appurtenant to the temple is a protected monument.

4.Mr.P.Thiagarajan, learned counsel for the sixth respondent temple submitted that as per the direction issued by this Court, a meeting has been convened by the Officials of the Archaeological



Survey of India with the Executive Officer of the Temple and the encroachments have been enumerated. However, since the Official of the Archaeological Survey of India is indisposed, report could not be filed today.

5.From the averments set out by the learned counsel for the sixth respondent, what emerges is that there are two categories of encroachments. One category of encroachment is a property under control of the Archaeological Survey of India. The other category of encroachment is the properties, which are under the control of the temple. So far as, the properties under the Archaeological Survey of India is concerned, they are empowered to evict the encroachments, by following the procedures under Public Premises Act. So far as, the encroachments in the properties belonging to the temple, the Temple can initiate action under the Hindu Religious and Charitable Endowments Act.

6.We are informed that already 46 petitions have been filed by the temple, under section 78(2) of the Act, before the second respondent taken on file as M.P.Nos.214 to 260 of 2020, in which, notice has been ordered. If the temple Car cannot be taken on a perambulation around the temple and along the "Car Street", it is a very shameful situation caused by the unethical encroachers. The deity being a perpetual minor, its interest has to be protected by the Court. Therefore, this Court would be well justified in issuing a positive direction to remove the encroachments. This Court can take judicial notice of the fact that whenever, the proceedings are initiated by the temple, under Section 78(2) of the Act, the encroachers drag on the matter for several decades and continued to squat on the temple property and this should not be allowed to happen in the present case.

7.Therefore, we dispose of the writ petition with the following directions :

- 1) The Archaeological Survey of India is directed to initiate immediate action for removal of encroachment by resorting to the provisions of the Public Premises Act and such action will be initiated within a period of 60 days from the date of receipt of a copy of this order and after following the due procedure, the encroachments shall be removed.
- 2) Since the Archaeological Survey of India, has already initiated steps to renovate the damaged part of the temple, the work may be proceeded expeditiously.
- 3) The Executive Officer of the sixth respondent temple is directed to diligently prosecute the M.P.Nos.214 to 260 of 2020, pending before the

<https://hcservices.ecourts.gov.in/hcservices> Commissioner, Hindu Religious and



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Charitable Endowments Department, Trichy. The Joint Commissioner is directed to give top priority to the petitions, ensure that notices are promptly served and also ensure that the respondents therein, do not adopt any delaying tactics and make every possible endeavour to conclude the proceedings within a period of three months from the date of receipt of a copy of this order.

- 4) The Commissioner, Hindu Religious and Charitable Endowments Department is directed to issue appropriate direction for conduct of survey in the "Car Street" and take all possible steps to ensure that the "Temple Car" perambulates in the "Car street", as was done from time immemorial.
- 5) Since the Petitioner, D.Kesavan, S/o.V. Dhanavel has brought to the notice of this Court, about the encroachments by filing a Public Interest Litigation, we permit the Petitioner, D.Kesavan, to implead himself in M.P. Nos.214 to 260 of 2020 pending before the second respondent, under the category of a person interested in the properties of the temple.
- 6) The Commissioner, Hindu Religious and Charitable Endowments Department, is directed to monitor the progress of the land.

8. With the above directions, the writ petition stands disposed of. No Costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm/ksa

Note In view of the present lock down
: owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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Fort Gateway (Main Guard Gate)
Theppakulam (P.O),
Trichy - 2.
- 6.The Executive Officer,
Erumbishwarar Temple,
Tiruverumbur, Trichy-13.

Copy to:

The Principal Secretary to the Government,
Commercial Taxes Department, Secretariat, Chennai.

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-19002[F] dated 08/06/2021)

W.P. [MD]No.5193 of 2021
07.06.2021

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KK(16.06.2021) 5P 9C