



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.06.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S. SIVAGNANAM**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P. (MD)No.12885 of 2019

and

W.M.P. (MD)Nos.9587 and 14338 of 2019

The Idol of Arulmighu Siddhivinayagar,
Paikadai Sandhu, Mylam Bazaar,
Tiruchirapalli - 620 001,
Rep. by its Hereditary Trustee,
M.D.Dhanakoti Chettiar

... Petitioner

Vs.

1. The Commissioner,
Tiruchirapalli City Corporation,
Promenade Road, Cantonment,
Tiruchirapalli - 620 001.

2. The Assistant Commissioner,
Ariyamangalam Zone,
Tiruchirapalli City Corporation,
Promenade Road, Cantonment,
Tiruchirapalli - 620 001.

3. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Board,
Tiruchirapalli - 620 005.

4. The Assistant Commissioner (Administration),
Hindu Religious and Charitable Endowments Board,
Tiruchirapalli - 620 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records of the 2nd respondent in his impugned notice in Na.Ka.No.2747/2019/F1/Ariya dated 19.03.2019, quash the same as being arbitrary, illegal and opposed to principles of natural justice.

For Petitioner : Mr.Raguvaran Gopalan

For Respondents : Mr.A.K.Manickam

1&2

**ORDER**

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

The petitioner is a Temple and they have challenged the notice issued by the respondent Corporation stating that an encroachment has been made by the Temple to an extent of 7.35 meters x 3.30 meters by raising a brick wall structure.

2. The petitioner's case is that a Temple has been in existence from time immemorial and with the available records, they can establish that it was there for more than 100 years. The structure of the Temple having become old and dilapidated and on account of the unchecked growth of a peepul tree, the structure got damaged. The petitioner sought permission from the HR&CE Department and obtained permission from the HR&CE Department for reconstruction, by proceedings of the Joint Commissioner, dated 23.7.2019. When the construction was in progress, the impugned notice has been served.

3. The petitioner's case is that there is no encroachment and without issuing notice to the HR&CE Department, which is the authority, who granted permission, the respondent Corporation shall not proceed solely against the petitioner. The Assistant Commissioner, HR&CE Department had filed a counter affidavit on behalf of the respondents 3 and 4, wherein, the following stand has been taken :

"5. It is true that based on the report of the Inspector of HR&CE Department, Trichy, the 4th respondent had recommended for permission to be granted for the renovation of the aforesaid temple and based on the same, the 3rd respondent had in turn granted permission on 23.07.2018, vide proceedings in Se.Mu.Muu.No.10531/2018/A1, for renovation. It is true that based on such permission, renovation had commenced and was in progress.

6. I submit that at that circumstances, the notice dated 19.03.2019 had been issued by the 2nd respondent as if in T.S.No.90, Ward O, Block 1 in Paikkara Street in Kayidhe Millath Road, an extent of 7.35m x 3.30m have been encroached in the form of a temple. It is submitted that though the initial history of the temple is not known, the fact remains that the temple also called as Arasamara Pillayar Koil is there in existence for several decades. Even the Town Survey and Resettlement Register of the year 1914 of the village of Trichino Poly Town, Proper No.86, reveals that T.S.No.2004 and 2005 was assessed to ground rent and



stood in the name of Poologanathasamy. The same measures about 197 and 298 sq. feet respectively. T.S.No.2008 measuring 110 sq. feet is mentioned as "Sandhu" i.e. lane in the settlement records. All other adjoining survey numbers were assessed to ground rent and were in the name of individuals.

7. It is submitted that the impugned notice is bereft of particulars. Whether T.S.No.2008 co-related to T.S.No.90 mentioned in impugned notice and whether the so called encroachment of 7.35m x 3.30m is in T.S.No.2008 or not is not clear in the impugned notice. Impugned order reads "Paikara Theruvil" T.S.No.90. Whether the lane is S.No.90 or not, is not made clearly known. If it is in Street, what is its survey number, its total extent, the actual area of so called encroachment must be spelt out clearly.

8. It is submitted that, our enquiry reveals that for the petitioner is putting up temple in the same area for the same extent as it was prevelant all along. Therefore, in the said circumstances, what is required is a proper survey with help of relevant records i.e. revenue records, municipal corporation records and documents of writ petitioner etc., that too in the presence of all. Appropriate proceedings need to be taken, if necessary, only thereafter.

9. It is submitted that thus the respondents 1 & 2 have failed to follow proper procedures and ascertain proper facts before ever proceeding to act. The impugned proceeding is liable to be set aside as not supported by proper survey and proper ascertainment of facts. Hence, in the interest of justice, appropriate orders may be passed in this regard. The temple construction is half way through and have now been installed. Hence, in the interest of justice, it is prayed that appropriate orders, be passed, at the earliest."

4. On a reading of the above averments from the counter affidavit filed by the HR&CE Department, it clearly shows that the Department has accepted a substantial portion of the averments set out by the petitioner, though they do not recognize the claim made by the deponent about the trusteeship.

5. In such circumstances, the respondent Corporation, before taking action, should have first informed the HR&CE Department, obtained report from them and then, after ascertaining the full facts, should have proceeded to take action, if there is any encroachment. Therefore, without doing so, issuing notice to the petitioner is not sustainable.



6. For the above reasons, the writ petition is allowed and the impugned notice is quashed and the respondents 1 and 2 are directed to issue notice to the respondents 3 & 4 as well as the petitioner, call upon them to produce all the documents to show the exact extent of the land, when the temple was constructed etc., thereafter, conduct a spot inspection and pass orders on merits and in accordance with law. Till then, status quo, which was ordered to be maintained pursuant to the interim orders granted on 17.06.2019, shall be maintained. No constructions shall be undertaken. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RM/ogy

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

1. The Commissioner,
Tiruchirapalli City Corporation,
Promenade Road, Cantonment,
Tiruchirapalli - 620 001.
2. The Assistant Commissioner,
Ariyamangalam Zone,
Tiruchirapalli City Corporation,
Promenade Road, Cantonment,
Tiruchirapalli - 620 001.



3. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Board,
Tiruchirapalli - 620 005.

WEB COPY

4. The Assistant Commissioner (Administration),
Hindu Religious and Charitable Endowments Board,
Tiruchirapalli - 620 005.

+1 CC to M/s.SPL GP (SR-19052[F] dated 08/06/2021)

W.P. (MD) No.12885 of 2019

04.06.2021

_CN(14.06.2021)3P 6C