



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
02.07.2021	08.07.2021

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD) No.419 of 2019

and

W.M.P. (MD) Nos.365 & 21476 of 2019

R.Suresh

... Petitioner

-vs-

1.The District Collector
Theni District, Theni

2.The Commissioner
Bodinayakanur Municipality
Bodinayakanur
Theni District

3.The Tahsildar
Bodinayakanur Taluk
Theni District

4.C.Kubendran

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the entire records pertaining to the impugned order passed by the second respondent in Na.Ka.No.5337/2013/F1, dated 20.12.2018 and quash the same as illegal.

For Petitioner :Mr.P.M.Vishnuvarthanan

For Respondents :Mr.R.Baskaran

Government Counsel for R1 & R3

Mr.M.Karuppasamy Pandian

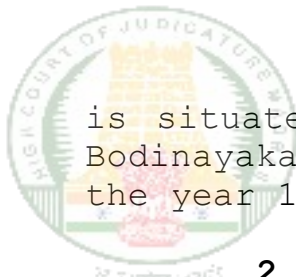
Standing Counsel for R2

Ms.Porkodi Karnan

for M/s.Polex Legal Solutions for R4

O R D E R

This writ petition has been filed by one R.Suresh, son of S.Rasu, claiming himself to be the head of a Committee, which manages a Temple called Arulmigu Sri Veerakaliamman Temple, which



is situated in T.S.No.4416, Vannimalai Thoppu Road, Aruna Nagar, Bodinayakanur, Theni District, stated to have been constructed in the year 1987.

2. The petitioner would allege that the fourth respondent, who belongs to a different religion, purchased the land in T.S.No.4413 during the year 2013 proposing to put up a prayer hall, which resulted in quarrel among the neighbours. It is submitted that though there are about six persons, who reside adjacent to the Temple, except the fourth respondent, no other persons have raised any objection about the Temple, alleging that it has been constructed encroaching a pathway. One of the residents, who is residing adjacent to the Temple, has filed an affidavit stating that the Temple is a very old Temple and the villagers have lot of belief on the deity and the allegations made by the fourth respondent are incorrect. It is further alleged that the fourth respondent attempted to demolish the Temple on 25.08.2013 and a criminal complaint was lodged before Bodinayakanur Town Police Station and a case was registered against the fourth respondent in Crime No.420 of 2013 and the fourth respondent obtained anticipatory bail.

3. Further, it is submitted that the fourth respondent suppressing all these facts filed a writ petition before this Court in W.P.(MD) No.6458 of 2014 alleging that the Temple has been constructed recently obstructing his pathway and entrance to his property. The writ petition was disposed of by order dated 31.08.2015 recording the submission of the learned Special Government Pleader stating that notices have been issued to the alleged encroachers and the Authorities are taking steps following due process of law. Therefore, the Court observed that it is not inclined to issue any direction except directing the Authority to proceed in the matter in accordance with law. It is further stated that without conducting any enquiry and without following directions issued by the Court, the second respondent passed the order dated 20.12.2018 directing the petitioner to remove the Temple within three days. This order is impugned in this writ petition.

4. Mr.P.M.Vishnuvarthanan, learned counsel appearing for the petitioner, submitted that the impugned order has been mechanically passed in total violation of the principles of natural justice and therefore, liable to be set aside. Further, it is submitted that before passing the impugned order, the second respondent ought to have enquired the general public of the area and not verified as to the correctness of the allegations made by the fourth respondent, who belongs to a different religion and the intention behind removing the Temple is only to convert his property into a prayer hall. Further, it is submitted the when a criminal case is still pending, the second respondent ought to



have taken note of all the factors before passing the impugned order. That part, it is contended that the Temple is not a hindrance or disturbance to any member of the Village or the commuters and the intention of the fourth respondent to remove the Temple is *mala fide* and lacks *bona fides*.

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5. Mr.M.Karuppasamy Pandian, learned Standing Counsel appearing for the second respondent - Municipality, contended that the allegation made by the petitioner that there is violation of principles of natural justice is incorrect as notice was issued by convening a meeting on 07.09.2016 by the Tahsildar pursuant to the request made by the Commissioner of the Municipality vide letter, dated 31.08.2016. Similar communication was sent by the Commissioner of the Municipality to the District Collector, pursuant to which, notice was issued not only to the petitioner, but also to Mr.P.Chandran and Mr.P.Murugan, sons of Pilavadian, directing them to appear for enquiry on 14.09.2015 at 04.30 p.m. in the Office of the second respondent and produce all documents, which are in their possession to establish their contentions. The petitioner and two others did not appear for the enquiry on the date fixed nor submitted any written representation. Therefore, the Commissioner was constrained to pass order, dated 10.01.2017 informing the petitioner and two others that in spite of notice being issued to attend enquiry, they have not appeared for enquiry nor submitted any documents to establish their contentions and that the encroachment has resulted in reduction of the width of the road, which is likely to cause obstruction to free movement of the people and vehicles in the road in future and in spite of the petitioner and others being put on notice by notice dated 03.12.2015, they have not removed the encroachment and after receipt of the said notice, dated 03.12.2015, the petitioner and two others by letter dated 25.05.2016, agreed to remove the encroachment by themselves and though such undertaking was given in writing, since the encroachment has not been removed, further notices were issued and in spite of the same, since the encroachment was not removed, the order dated 10.01.2017 was passed directing the petitioner and two others to remove the encroachment within fifteen days from the date of receipt of the notice, failing which, the Municipality would be constrained to take action. The said order was issued under Section 182 of the Tamil Nadu District Municipalities Act, 1920 ("the Act" for brevity) and the same has been served in the residence of the petitioner and two others, which has been acknowledged by the ladies, who were available in the house and in spite of the same, the petitioner did not remove the encroachment.

6. All the above facts were placed before the District Collector, Theni District, by the Commissioner of the second respondent Municipality by communication dated 13.01.2017

<https://hcservices.hcscourts.gov.in/hcservices>



enclosing a sketch delineating the encroachment. Therefore, it is submitted that after following due procedure and in spite of the petitioner having received the notices issued by the Municipality, dated 10.01.2017, 11.04.2017, 13.06.2017 and 12.09.2017 and in spite of having been informed over phone several times, since encroachment has not been removed, the impugned order dated 20.12.2018 was passed directing the petitioner and two others to remove the encroachment within a period of three days from the date of the notice, failing which the Municipality will take action for removal of the encroachment and recover the expenses incurred from the petitioner. Therefore, it is submitted that due procedure was followed and full opportunity was given to not only the petitioner, but also two others, however, the petitioner did not avail the opportunity and since the construction is an encroachment, the second respondent - Municipality is entitled to remove the same.

7. Mr.R.Baskaran, learned Government Counsel appearing for the respondents 1 and 3, submitted that the encroachment has to be removed by the second respondent - Municipality and the facts placed by the Municipality before the Court are correct and the procedure, which was adopted by the Municipality, has been duly informed to the District Collector, Theni District as well as the Tahsildar, Bodinayakanur Taluk.

8. Ms.Porkodi Karnan, learned counsel appearing for the fourth respondent, submitted that the fourth respondent purchased Plot No.28, measuring an extent of 1143 sq.ft., by a sale deed dated 12.04.2010, registered as document No.1996 of 2010 and ever since the date of purchase, the fourth respondent is in peaceful possession and enjoyment of the property. It is submitted that the property faces south and in front of the property, there is a 50 Feet road formed by the second respondent - Municipality and access to the fourth respondent's property is through the said road. It is submitted that the writ petitioner put up a thatched construction, which is opposite to the fourth respondent's property, in the road with an intention to restrict the entry of the fourth respondent to his property. Inside the said thatched roof, the writ petitioner installed an idol and started performing poojas and rituals and festivals also. Since there was obstruction to the free entry to the fourth respondent's property, representations were submitted to the respondents 1 and 2 to remove the encroachment. Since timely action was not initiated, the fourth respondent filed W.P.(MD) No.6458 of 2014 to remove the encroachment and the said writ petition was disposed of by order dated 31.08.2015 directing the official respondents to consider the representation and pass orders.

9. It is further submitted that pursuant to the said



direction, the second respondent conducted an enquiry and passed the impugned order, dated 20.12.2018 to remove the encroachment within three days. Further, it is submitted that the allegation made by the petitioner that the fourth respondent belongs to a different religion is false as the fourth respondent is a Hindu by religion and is not converted to any other religion and the allegation that the fourth respondent is to construct a prayer hall is utterly false. Further, the contention of the writ petitioner that the Temple is self-manifestation is utterly false and the so-called Temple has not been in existence for thirty years as alleged by the petitioner. Further, it is submitted that apart from the access from the 50 Feet Municipal road, the fourth respondent has no other access to his property and the fourth respondent has settled the property in favour of his elder son, who is a physically challenged, by a Settlement Deed, dated 13.06.2019, registered as document No.284 of 2019 and application has been submitted to the Municipality for building plan approval to construct a house and at this juncture, the fourth respondent came to know that the petitioner has filed the writ petition for the aforementioned relief. Hence, it is submitted that the attempt of the petitioner is to legalise the illegal encroachment on the road margin, which is obstructing the fourth respondent's entry into his property.

10. The learned counsel for the fourth respondent has drawn our attention to the communication sent by the Commissioner and the second respondent - Municipality to the Inspector of Police, Bodinayakanur Town Police Station, dated 13.04.2016; communication sent to the fourth respondent by the Commissioner of the second respondent - Municipality as to the action that is being taken to remove the encroachment; notice, which was sent to the petitioner and two others, dated 12.09.2017 and the direction issued by the District Collector, Theni District to the Commissioner of second respondent - Municipality vide proceedings dated 22.09.2017 requesting action to be initiated on the fourth respondent's representation for removal of encroachment and representation given by the fourth respondent's son, dated 22.07.2019 for removal of encroachment.

11. Further, it is submitted that the allegation that the plot owned by the fourth respondent is an unapproved site is incorrect, since the second respondent - Municipality has regularised the sub-division vide proceedings dated 22.10.2019 and an application has been submitted for obtaining building plan approval for construction of a house in the said property.

12. We have elaborately heard the learned counsel appearing for the parties and carefully perused the materials placed on record.



13. The undisputed facts are that the offending construction is in a road margin, which is under the control of the second respondent - Municipality. No person has any vested right to put up any construction be it a temple or any other construction in a road margin. Time and again this Court as well as the Honourable Supreme Court has directed the Authorities to take action against the construction of road side temples and places of worship as it causes nuisance and often lead to various other problems, including law and order problems. Therefore, all such structures were directed to be removed and in the State of Tamil Nadu also such directions have been implemented and temples and other religious structures on road margin and pavements have been removed. The petitioner alleges that the idol is a self-manifestation and is being for existence for over thirty years. There is no record placed before this Court to establish such a stand. In such circumstances, we are not inclined to accept the stand taken by the petitioner that the Temple is a self-manifestation and has been in existence for over thirty years.

14. It is not in dispute that the fourth respondent has purchased the property facing the road and access to the fourth respondent's property is through the road and therefore, the fourth respondent has to necessarily cross the road margin to reach his property. The petitioner cannot be heard to say that there is no obstruction to the fourth respondent's ingress and egress to his property as the question is whether the petitioner has any legal right to put up construction in a road margin. The answer to this question should be a definite no. The allegation made by the petitioner that the action initiated by the fourth respondent by submitting representations and filing a writ petition before this Court to be *mala fide* on account of the fact that the fourth respondent belongs to a different religion has not been established. The fourth respondent has filed a counter affidavit, wherein he has stated that he belongs to Hindu religion and also produced his community certificate, which certifies that he belongs to Hindu-Piramalai Kallar community. That apart, though the plot, which was purchased by the fourth respondent, was sub-divided, which sub-division was not initially approved, but subsequently, by order dated 22.10.2019 the sub-division has been approved by the Municipality.

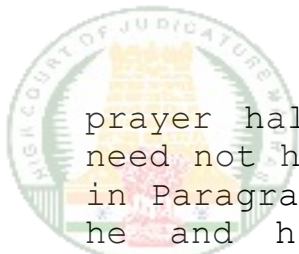
15. The petitioner further alleged that the fourth respondent intends to establish a prayer hall in his property. This submission also not substantiated. We take note of the averments made by the fourth respondent in Paragraph No.8 of the counter affidavit, stating that he and his son, who is presently the registered owner of the property, have applied for building plan approval and started construction of a house. This



submission is placed on record and the fourth respondent and his son shall be bound by such submission.

16. The main ground on which the petitioner has challenged the impugned order is by contending that it is in violation of the principles of natural justice. This submission is factually incorrect as it has been established before us by the second respondent - Municipality that notice was issued to the petitioner for attending an enquiry on 14.09.2015 and to produce documents to support the stand taken by the petitioner and two others. But, neither the petitioner nor the two other persons to whom notices were issued, availed the opportunity. In such circumstances, the petitioner cannot be heard to say that there was a lack of opportunity and that there is violation of principles of natural justice. Even thereafter, another notice has been issued to the petitioner on 03.12.2015. Pursuant to such notice, the petitioner has given in writing by letter dated 25.05.2016 stating that he will remove the structure on his own accord. Since the petitioner did not keep up to the said commitment, another notice was issued and in spite of the same, the petitioner did not remove the encroachment and therefore, final notice dated 10.01.2017 was issued under Section 182 of the Act to remove the encroachment within fifteen days. Proof has been produced to show that notice has been served on an adult member in the house of the petitioner. In spite of such notice, the petitioner did not remove the encroachment. All the aforesaid proceedings initiated by the second respondent - Municipality have been duly intimated to the District Collector vide communication dated 13.01.2017 and also showing the nature of the encroachment by appending a sketch to the said communication. It is only thereafter, the impugned notice has been issued. Therefore, the contention raised by the petitioner that there is violation of principles of natural justice is incorrect as the petitioner has been provided sufficient opportunity to put forth his case, which he has failed to avail and after receiving notice, dated 03.12.2015, the petitioner has given in writing on 25.05.2016 to remove the encroachment by himself, which undertaking he did not comply and one more opportunity was given to the petitioner by final notice, dated 10.01.2017, which also not complied with and finally, the impugned order has been passed. Thus, we find there is no illegality or irregularity in the action initiated by the second respondent in passing the impugned order. The petitioner has not made out any grounds to set aside the said notice.

17. In the result, the writ petition is dismissed and the second respondent - Municipality shall remove the offending structure within a period of fifteen days from the date of receipt of a copy of this order. The apprehension of the petitioner is that the fourth respondent and his son are proposing to put up a



prayer hall in the property purchased by them. The petitioner need not have any such apprehension, because the fourth respondent in Paragraph No.8 of the counter affidavit has stated on oath that he and his son have applied for building plan approval to construct a house. This submission is also placed on record and therefore, the property owned by the fourth respondent, presently settled on his son, shall be used only for the purpose of constructing a house and not any other commercial structure or a prayer hall. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

Krk

To:

1.The District Collector,
Theni District, Theni.

2.The Tahsildar,
Bodinayakanur Taluk,Theni District.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-21762[F] dated 08/07/2021)

ORDER IN

W.P. (MD) No.419 of 2019

and

W.M.P. (MD) Nos.365 & 21476 of 2019

08.07.2021

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