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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.13247 OF 2011
AND MP NOS.1 AND 2 OF 2011

Tiruchengode Nagara Kavarai Naidumaargal

Samuthaya Sangam Reg. No.88/2007

Rep. by its Secretary

T.A.Sethupathy Ramalingam

... Petitioner

Vs.

1.The Divisional Engineer

Highways Department

Divisional Engineer Office

Namakkal, Namakkal District.

2.The Assistant Divisional Engineer

Highways Department

Travelers Bungalow

Tiruchengode, Namakkal District.

3.The Assistant Engineer

Highways Department

Travelers Bungalow

Tiruchengode, Namakkal District.

4.The Assistant Commissioner

Hindu Religious Charitable Endowment Board

(Administration) Department

Anjaneyar Koil Street, Namakkal,

Namakkal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents 1 to 3 from taking any steps either to demolish or evict the petitioner from the Kal Mandapam measuring an extent of 812 sq.ft., (0.0075.5 sq.meter) comprised in TSLR No.8, Ward D, Block No.24, Tiruchengode Town, Namakkal District, in view his settled possession by considering the petitioner's representation dated 22.11.2010.



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For Petitioner : Mr.N.Manokaran

For Respondents : Mr.T.Venkatesh Kumar
1 to 3 Special Government Pleader

For Respondent 4: Mr.K.Karthikeyan
Government Advocate (HR & CE)

O R D E R

The writ petition is against the attempt of the respondents 1 to 3 to demolish the Kal Mandapam belonging to the petitioner on the pretext that it is an encroachment on the Highways.

2.According to the petitioner, the property in dispute namely Kal Mandapam in TSLR No.8 (Old SF No.361/21) in Ward No.D, Block No.24, Tiruchengode Town, Namakkal District, was in occupation of Kavarai Naidu community since 1750. The ancestors of the Members of the petitioner Sangam were performing the Kattalai of 8th Holy day of Vaikasi Vishaga Car Festival of Arulmighu Arthanareeswarar Thirukovil. As per the records maintained by the fourth respondent Hindu Religious and Charitable Endowment Board, the named Trustees from the year 1753 till 1989 were performing the Kattalai. The register prepared and maintained by the fourth respondent under Section 29 of the Hindu Religious and Charitable Endowments Act, 1959, will stand testimony to the performance of Kattalai and administration of Kal Mandapam for long years. In the said Kal Mandapam, six shops bearing Door Nos.2/109E, 4/109D, 6/109C, 8/109B, 8/1 and 8/2 in S.F.No.8 were constructed and from that income, Kattalai is being performed. The Revenue Department has issued a patta in favour of the petitioner Sangam in Patta No.5965. The information given under Right to Information Act in Na.Ka.No.B2/9234/2010 dated 18.01.2011 also affirms the existence of patta in the name of the petitioner Sangam. It was further informed that the patta was issued during the town survey conducted in the year 1998. Further, under Right to Information Act, it was informed to the petitioner that if at all the land is to be taken, it shall be taken as per the procedure contemplated under the Tamil Nadu Land Acquisition Act, 1894. While the matter stood thus, suddenly respondents 1 to 3 attempted to demolish the Kal Mandapam which was existing for more than 2 ½ centuries. Hence, the writ petition.



3. Resisting the claim of the petitioner, the second respondent filed a counter affidavit for himself and on behalf of the respondents 1 and 3, wherein it is stated that an extent of 3 X 21 feet abutting the Tiruchengode - Erode Road is an encroachment on the Highways property and the petitioner Sangam does not have any right over the same. They are not entitled to any notice under The Land Encroachment Act. They are liable to be summarily evicted as per the Highways Act. However, a notice dated 19.11.2010 was issued giving reasonable time to the petitioner Sangam to remove the encroachment. Patta No.5965 dated 05.07.1999 stands in the name of Kavavarai Naidumaargal Mahajana Sangam and not in the name of the petitioner Sangam. Therefore, the action taken by the Highways Department is correct and justified.

4. Heard the submissions made on either side and perused the materials available on record.

5. Admittedly, during the town survey conducted in the year 1998, patta was issued to the petitioner in respect of the Kal Mandapam measuring an extent of 812 sq.ft in north south direction of Tiruchengode - Erode Highways. Under Right to Information Act, it is categorically informed that if at all the land is to be acquired, the provisions of the Tamil Nadu Land Acquisition Act, 1894, should be followed. This information given by the Revenue Department under Right to Information Act, clearly establishes the fact that the property in dispute is a private property and the petitioner Sangam is holding patta for the same. Though the respondents 1 to 3 have filed counter affidavit, there is no iota of evidence to show that the property belongs to Highways and that they are entitled to remove the encroachments. Mere statement that it is an encroachment is not enough, it shall be proved that it is Highways Road. On the other hand, there is an unassailable proof that it is a private property and patta was issued by the Revenue Department in favour of the petitioner. In that event, if the respondents 1 to 3 requires the property for expansion of road, they should follow the due process of law and acquire the lands by invoking the appropriate acquisition laws. On the other hand, by issuing a notice, the respondents 1 to 3 are not entitled to take away the property of any citizen in this Country.

6. Further, the fourth respondent would affirm that the property exists from 1750 and that the records show that the Kattalai is performed by the Trust belonging to the petitioner.



The names of the Trustees from the year 1753 to 1989 were not disputed and that it is well established by the statement of the fourth respondent that the said Kattalai is being performed for centuries. Therefore, it is well established that the attempt of the respondents 1 to 3 is high handed without power and authority.

7.It is also relevant to note that the respondents 1 to 3 are attempting to remove only a portion of the property belonging to the petitioner to which they hold patta. Even assuming that causes hindrance, the respondents 1 to 3 shall exercise their powers fairly and reasonably in respect of the entire stretch. They cannot pick and choose only one building belonging to the petitioner and leave out all other buildings in the very same road. This exercise to demolish only one building in the stretch of the road appears to be actuated by malafides and at any cost not a bonafide one. Therefore, demolishing a private property to which the land owners hold patta under the pretext that it is an encroachment is not sustainable. The respondents 1 to 3 are not entitled to touch the property of the petitioner without recourse to due process of law. The action of the respondents 1 to 3 is highly arbitrary, illegal and liable to be prevented.

8.Considering the facts and circumstances, the prayer of the writ petitioner to forbear the respondents 1 to 3 from taking any action to demolish or evict the petitioner from the Kal Mandapam measuring an extent of 812 sq.ft. in TSLR No.8, Ward D, Block No.24, Tiruchengode Town, Namakkal District is granted and the notice said to have been issued by the second respondent dated 19.11.2010 is without authority, competence, and therefore, no action can be taken pursuant to the issuance of notice.

9.In fine, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



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Highways Department,
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(Administration) Department,
Anjaneyar Koil Street, Namakkal,
Namakkal District.

+lcc to M/s.N.Manokaran, Advocate Sr.17913

+lcc to the Government Pleader Sr.18165

+lcc to the Special Government Pleader Sr.18289 [01/06/2022]

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srg 30/05/2022