

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.9795 OF 2022

AND

W.M.P.NO.9525 OF 2022

Murugan Nagar Land Owners & Residents

Welfare Foundation,

Represented by its President Srikanth,

No.12, Murugan Nagar,

Raman Nagar Post,

Mettur Dam-3, Salem District.

... Petitioner

Vs

1. The Registrar of Co-operative Societies,
Housing, No.48, Ritherdon Road,
Veppery, Chennai - 600 007.

2. The Deputy Registrar of Co-operative Societies,
Housing, Salem Region,
East Garden Road,
Fair Lands, Salem,
Salem District - 6.

3. The SLM HSG No.2, Murugan Nagar
Co-operative Building Society Limited,
Represented by its President/Secretary,
Murugan Nagar, Raman Nagar Post,
Mettur Dam, Salem District - 636 403.

4. The Executive Officer,
Veerakkalpudur Town Panchayat,
Kunjandiyur, Mettur Dam,
Salem District - 636 404.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents from disturbing the renovation work of Murugan Nagar Sri Sakthi

Vinayar Temple, Murugan Nagar, Raman Nagar Post, Mettur Dam, Salem District - 636 403 and consequently direct the first and second respondents to direct the third respondent not to disturb the said Temple in any manner and its administration by the petitioner Association.

For Petitioner	:	Mr.M.R.Jothimanian
For Respondents	:	
For R1 & R2	:	Mr.M.Shahjahan Special Government Pleader
For R3	:	Mr.M.S.Palaniswamy
For R4	:	Mr.U.Baranidharan Additional Government Pleader

ORDER

Mr.M.Shahjahan, learned Special Government Pleader takes notice on behalf of the first and second respondents, Mr.M.S.Palaniswamy, learned counsel takes notice on behalf of the third respondent and Mr.U.Baranidharan, learned Additional Government Pleader takes notice on behalf of the fourth respondent.

2. The petitioners have filed this writ petition for a Mandamus, to forbear the third respondent from interfering with the construction of the Temple and to direct the first and second respondents to issue appropriate direction to the third respondent.

3. The specific case of the petitioners appears to be that the petitioners are Members of the third respondent Association from whom they have purchased the land and have been residing there, after putting up their houses. It is further submitted that way back in 1980, the petitioners had put up a small deity in the place earmarked for public purpose and that in the year 1997 they had constructed the Temple with the permission of the third respondent. In this connection, a reference was made to the resolution dated 20.07.1997 of the third respondent, giving permission to the petitioners to put up a Temple in the place meant for public purpose.

4. It is further submitted that the Temple premises has got dilapidated and therefore the petitioners undertook the work of

renovation and therefore demolished the structure and have now started a new construction and a proper Kumbabhisekham will be conducted on completion of the work. At this stage, the third respondent has objected to the construction.

5. The learned counsel for the petitioner further submitted that the petitioner had also filed O.S.No.37 of 2018 before the District Munsif Court, Mettur, but had withdrawn the same. The said suit was filed for a bare injunction, to restrain the third respondent from interfering with the entire area.

6. Opposing the prayer in this writ petition, the learned counsel for the third respondent specifically submits that the so called resolution dated 20.07.1997 was not that of the third respondent and that, it is a fabricated document. It is submitted that the plan does not contemplate the construction of Temple. The public place was meant for building a Community Halls or Shopping Complexes.

7. The learned counsel for the third respondent further submits that the land cannot be used for Temple without proper permission under Rule 87 of the Tamil Nadu Co-operative Societies Rules, 1988. It is further submitted that the petitioner had filed a suit in O.S.No.37 of 2018 before the District Munsif Court, Mettur, for a very wide relief and thereafter withdrew the same. It is further submitted that the petitioner has also filed an application before the first respondent on 12.03.2022. Now without awaiting for the approval by the official respondents/first and second respondents, the petitioners have continued with the construction work. It is submitted that the petitioners cannot be allowed to continue with the construction without awaiting for suitable orders under Rule 87 of the Tamil Nadu Co-operative Societies Rules, 1988.

8. On behalf of the fourth respondent, the learned Additional Government Pleader submits that the fourth respondent has not concerned with the inter se dispute between the petitioner and its Members and therefore they will abide by any order that may be passed by this Court.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the third respondent. I have also perused the copy of the plan which was filed along with the typed set of papers at Page No.31.

10. The plan indicates that the space meant for public use in the form of shop adjacent to the Community Halls and Play Grounds has been used for place of worship by the petitioners and that they had put up a small deity of Vinayakar in the year 1980 and thereafter had put up the construction in the year 1997 ostensibly in terms of the resolution of the third respondent dated 20.07.1997. However, the genuineness of the aforesaid resolution is being questioned by the third respondent and therefore it is submitted that the structure which was put up earlier was without permission from either the third respondent or from the official respondents/first and second respondents.

11. In any event, before putting up the construction, the petitioners ought to have obtained permission from the official respondents/first and second respondents in terms of Rule 87 of the Tamil Nadu Co-operative Societies Rules, 1988, which reads as under:-

"87. Use of premises and immovable properties -

(1) No Society shall, except with the previous sanction of the Registrar, use or allow to be used any of its immovable properties of premises wholly or partly, for any purpose other than its business or other Co-operative activities:

Provided that no such sanction shall be granted to any Society for using or allowing to be used any such immovable properties or premises or portion thereof for any political purposes.

(2) In respect of guest houses or other places intended for the use of others also, regulations for the use off and collection of charges shall be framed by the Society with the approval of the Registrar."

12. The petitioners also ought to have obtained No Objection Certificate from the third respondent and a mere production of a resolution would not have been sufficient. Be that as it may, it appears that the pre-existing temple has been demolished and a new structure is now coming up at the premises which appears to be with a permission of statutory authority also.

13. That apart, it is noticed that the land does not belongs to the petitioners and it is a common area in the layout. Under these circumstances, I cannot grant any order to forbear the respondents from disturbing the so called renovation work

carried out by the petitioners as to the entire structure in existence has been demolished and the new structure of construction ought to have been made after appropriate permission was obtained from the official respondents/first and second respondents and with the consent of the third respondent. Such construction with the permission cannot be allowed and unilaterally to be put up by the petitioner.

14. Under these circumstances, I am inclined to dispose this writ petition by directing the official respondents/first and second respondents, to pass appropriate orders on the representation dated 12.03.2022 of the petitioner Foundation and dispose the same on merits and in accordance with law in terms of Rule 87 of the Tamil Nadu Co-operative Societies Rules, 1988. This exercise shall be carried out by the official respondents/first and second respondents, within a period of four weeks from the date of receipt of a copy of this order.

15. It is needless to state that not only the petitioner but also the third respondent shall be heard.

16. This Writ Petition stands disposed of in terms of the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-operative Societies,
Housing, No.48, Ritherdon Road,
Veppery,
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Veerakkalpudur Town Panchayat,
Kunjandiyur,
Mettur Dam,
Salem District - 636 404.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.35425
+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.35232
+1cc to the Government Pleader, S.R.No.36171

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and
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KV(CO)
PM/11/07/2022