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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.15557 of 2022

Mylai Nochikuppam
Meenavar Grama Sabha,
Rep. by its President S.Ropeshkumar
Residing at : Door No:
Elaiamman Koil Street,
Nochikuppam, Mylapore,
Chennai - 600 004.

.. Petitioner

Vs

1.The Managing Director,
Tamilnadu Urban Habitat Development Board,
No.8, Kamarajar Salai,
Triplicane, Chennai - 600 005.

2.The Commissioner,
The Corporation of Chennai,
Ripon Building,
Chennai 600 003.

3.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

4.The Inspector of Police,
E5 Police Station,
Foreshore Estate,
Chennai 600 004.

5.Anjalai

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus to consider the representation dated 21.02.2022 and to direct the first respondent not to demolish the temple.



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For the Petitioner : Ms.V.Mahathi Chari

For the Respondents : Mr.G.Venkatesan
Standing Counsel
for respondent No.1

: Mrs.Karthika Ashok
Standing Counsel
for respondent No.2

: Mr.J.Ravindran
Addl. Advocate General
assisted by
Mr.P.Muthukumar
State Government Pleader
for respondent Nos.3 and 4

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed to seek a direction for consideration of the representation made by the petitioner dated 21.02.2022 to the first respondent and not to demolish the temple - Arulmigu Sri Gangai Bhavani Amman situated at Mylai Nochikuppam Village, Mylapore, Chennai.

2. The writ petition has been filed apprehending demolition of the temple. Before filing the writ petition, a representation was given to save the temple. According to the petitioner, action would be taken to demolish the temple without consideration of the representation given by the petitioner. It is even without verification of the record as to whether the temple has been constructed unauthorisedly, because according to the petitioner, the temple is existing for more than 50 years.

3. We have considered the submissions of learned counsel for the petitioner and also perused the materials available on record.

4. Before addressing the issue raised before us, it would be relevant to refer the order dated 16.06.2021 passed by a Coordinate Bench of this Court in W.P.No. 8986 of 2021 in the case of S.Anjalai v. The Managing Director, Tamil Nadu Slum Clearance Board, No.8, Kamarajar Salai, Triplicane, Chennai-600 005 and others, wherein following directions have been given in regard to the temple in question:



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"11. It is also represented by Mr.S.Ilamvaludhi, Learned Counsel for the Petitioner that in spite of the interim order passed by this Court, the structure is being constructed. If it is true, it would establish that the persons, who are making construction, are not law abiding citizens and they have to be dealt with very firmly. Therefore, the First and Second Respondents are directed

(i)to verify as to whether any approval is available for construction?

(ii)If there is any approved plan available, whether construction is being made according to the approved plan?

If no approval is available for construction, the superstructure shall be demolished and removed. In case there is an approved plan and if any deviation exists, the same is required to be demolished and removed. Since it appears that the persons making constructions are not law abiding citizens, this Court directs the newly impleaded Fourth Respondent, viz., Police authority to give police protection while carrying out inspection and demolition, if it is required, as per order of this Court, within a period of one week from the date of receipt of a copy of this order."

5. The Coordinate Bench ordered that if no approval is available for construction, the superstructure shall be demolished and removed and in case there is an approved plan and if any deviation exists, the extent of deviation shall be demolished. Before that, an inspection was directed to be conducted within the period given in the said order. When the action of the respondent authorities was pursuant to the aforesaid order, this Court cannot pass an order contrary to it. More so, when the petitioner did not file an application to seek recall of the aforesaid order, the same attained finality. In the light of the aforesaid, the representation of the petitioner to inspect the site before an action is nothing but to seek the same direction which has already been given.

6. The aforesaid is only one part. Otherwise while the petitioner wants to save the construction, he could have placed on record the approved plan. But no approved plan has been placed on record to pass a restraint order against the respondent authorities. In view of the above, the writ petition has been filed without placing on record the relevant documents, if any, existing and, further, without going through the directions given by the Coordinate Bench of this Court in the earlier writ petition filed by one Anjalai.



7. Taking note of the aforesaid, the direction now sought by the petitioner cannot be given. However, the respondent authorities would be expected to take necessary action keeping in mind the order passed by the Coordinate Bench in the case of Anjalai (supra).

8. The writ petition is disposed of accordingly. There will be no order as to costs. Consequently, W.M.P.No.14737 of 2022 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1.The Managing Director
Tamilnadu Urban Habitat Development Board,
No.8, Kamarajar Salai,
Triplicane, Chennai - 600 005.

2.The Commissioner
The Corporation of Chennai,
Ripon Building,
Chennai 600 003.

3.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

4.The Inspector of Police,
E5 Police Station,
Foreshore Estate,
Chennai 600 004.

+1 cc to Mrs.Karthika Ashok, Advocate Sr.NO. 38647
+1 cc to Mr.G.Venkatesan, Advocate Sr.NO. 38689
+1 cc to Government Pleader Sr.NO. 39296

W.P.No.15557 of 2022

ca(CO)

A.SK(30/06/2022)