



W.P.No.26002 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
and**

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

**W.P.No.26002 of 2022
and W.M.P.No.25086 of 2022**

1. M.Parasuraman

2. K.Vijayakumar

.. Petitioners

-VS-

1. The District Collector,
Collectorate Office,
Vengikkal, Tiruvannamalai,
Tiruvannamalai District 606 604.

2. The Commissioner,
Tiruvannamalai Municipality,
Thirukovilur, Road,
Tiruvannamalai 606 601.

3. The Tahsildar
Mathalangulam,
Tiruvannamalai, Chennai 606 601.

..Respondents

Petition filed under Article 226 of the Constitution of India
praying for issue of writ of certiorarified mandamus to call for the



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records on the file of the 2nd respondent in Na.Ka.No.2986/2022/F1 and quash the impugned order dated 12.09.2022 passed therein as highly illegal and unconstitutional.

For Petitioners : Mrs.Karthikaa Ashok

For Respondents : Mr.P.Muthukumar
State Govt. Pleader
for RR 1 and 3

: Mr.L.P.Maurya
Stdg. Counsel for R-2

* * * * *

ORDER

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

This writ petition has been directed against the order dated 12.09.2022 passed by the second respondent calling upon the petitioners to remove the encroachment by way of a temple in the street falling in Survey No.3153, Block No.36, Ward No.1, Tiruvannamalai Municipality.

2. The learned counsel appearing for the petitioners assailing the impugned notice argued before us that the impugned notice issued by



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the second respondent calling upon the petitioners to remove the temple, namely, Selva Vinayagar Thirukoil, situated at New Karkana Street, Tiruvannamalai, is erroneous and illegal. When the impugned order itself shows that the third respondent/Tahsildar had requested in Form-I for demolition and removal of encroachment on a public road, the second respondent has to exercise his duties for removing all the illegal encroachments in a public road, whereas, in the present case, the temple is not situated in a public street nor on the Government land and the temple is not causing hindrance to any individual and therefore, the impugned order ought not to have been issued. Moreover, the impugned order has been passed without giving any opportunity for the petitioners to explain that the temple is not situated on a Government land or on an objectionable land. Therefore, the impugned order has to be set aside.

3. The learned standing counsel appearing for the second respondent/Municipality produced a copy of the 'A' Register in respect of S.No.3153 and submitted that the land covered in S.No.3153 is classified as 'Sarkar Poramboke' and further, it is shown as a street. Secondly, it is submitted that the impugned notice has been issued



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only in pursuant to the order passed by this Court in W.P.No.22728 of 2021 dated 07.02.2022 filed by one V.Damodharan for issuance of writ of mandamus under Article 226 of the Constitution of India to the respondents therein, namely, the District Collector, Tiruvannamalai and the Tahsildar, Tiruvannamalai, to consider the representation dated 19.02.2020 to demolish the unauthorised construction in front of the property of the petitioner therein situated at Ward No.15, New Karkana Street, Tiruvannamalai. This Court, while entertaining the writ petition, taking note of the relief sought for, without going into the merits of the matter, directed the Tahsildar, Tiruvannamali Taluk, to consider the said representation dated 19.02.2020 on merits and in accordance with law within a period of six weeks. It is submitted that while considering the aforesaid representation dated 19.02.2020, the Tahsildar has issued the impugned order calling upon the petitioners to remove the encroachment, as it is made on the public street as per the Revenue record, which is unauthorised and therefore, the same is liable to be removed and hence, the impugned order does not require any interference.



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4. Mr.P.Muthukumar, learned State Government Pleader, appearing for respondents 1 and 3, would submit that when actions are being taken pursuant to the direction issued by this Court on 07.02.2022 in W.P.No.22728 of 2021, the petitioners without placing before this Court any acceptable document to show that the land in question covered in S.No.3153 is not a public street, cannot come to this Court challenging the impugned order.

5. We find merit in the submissions of the learned counsel for the respondents. As per the revenue record, namely, 'A' Register, placed before this Court, we find that the land situated in S.No.3153 is a 'sarkar poramboke' land and is classified as a street. The petitioner has not produced any contra evidence to disbelieve the said document. Secondly, as pleaded by the learned counsel appearing for the second respondent, when this Court had already passed an order on 07.02.2022 in W.P.No.22728 of 2021, directing the Tahsildar, the third respondent herein, to consider the representation made by one V.Damodaran, in compliance of the same, the impugned order has been passed.



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6. That apart, the Apex Court, in the case of ***Union of India vs. State of Gujarat (SLP (C) No.8519/2006)***, has passed repeated orders making it clear that no unauthorised construction shall be carried out or permitted in the guise of temple, church, mosque or gurdwara, etc., on public streets, public parks or other public places, etc. and directed all the District Collectors and Magistrates/Deputy Commissioners in charge of the Districts to ensure that there is total compliance of the order of the Supreme Court in this regard. The order of the Supreme Court squarely applies to the present case as it is one of such encroachment in the name of a temple. In view of the fact that the revenue record clearly shows that the land covered in S.No.3153 is a sarkar poramboke land and is classified as street and there being no contra evidence shown by the petitioner that it is not a public street, we do not find any merit in the writ petition.

The writ petition, accordingly, fails and the same is dismissed. However, the petitioners are given one month's time to place the relevant documents in support of their case before the authorities and if any such documents are placed, the authorities may consider the



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same and take further course of action as per the provisions of law.

There will be no order as to costs. Consequently, W.M.P.No.25086 of 2022 is also dismissed.

(T.R., ACJ.) (D.K.K, J.)
28.09.2022

Speaking/Non-speaking order

Internet : Yes / No

sra

To

1. The District Collector,
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T.Raja, ACJ.
and
D.Krishnakumar, J.

(sra)

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