



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.12.2021	27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.28145 of 2021
and
W.M.P.Nos.29749 and 29754 of 2021

S.Periyasamy

...Petitioner

-vs-

1.The District Collector,
District Collector Office,
Perambalur.

2.The Assistant Divisional Engineer,
Highways Department Ka (ma) pa,
Perambalur.

3.The Assistant Divisional Engineer,
Highways Department Ka (ma) pa,
Veppanthattai Post, Perambalur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for records of the 3rd respondent in Ku.No.02/2021/A1 dated 20.09.2021 and quash the same and consequently, direct the respondents to accord permission to continue to have the Vinayagar Kovil Temple in S.No.157, Ayan Perayur, Veppanthattai Taluk, Perambalur District as sought vide representation dated 07.10.2021.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents : M/s.Geetha Thamaraiselvan
Spl. Govt. Pleader



O R D E R

S.VAIDYANATHAN, J.,
AND
D.BHARATHA CHAKRAVARTHY, J.,

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This Writ Petition has been filed, seeking to quash the impugned proceedings dated 20.09.2021 of the 3rd respondent, made in Ku.No.02/2021/A1, by which, a notice under Section 28 of the Tamil Nadu Highways Act, 2001 (in short 'the Act, 2001') was issued to the Trustees of the Temple to remove the Vinayagar Kovil Temple situated in S.No.157, Ayan Perayur, Veppanthattai Taluk, Perambalur District within seven days. The petitioner also sought for a direction to the respondents to continue the Temple in the same place for the purpose of worship.

2. M/s.Geetha Thamaraiselvan, learned Special Government Pleader takes notice for the Respondents. By consent, final orders are passed in this Writ Petition at the admission stage.

3. It was the case of the petitioner, who is said to be a Trustee of the Vinayagar Temple, located at S.No.157, Ayan Perayur, Veppanthattai Taluk, Perambalur District, that the Temple is in existence for more than three decades and has been constructed without causing any obstruction for free flow of public and transport. One R.C.Govindaraj had filed a Writ Petition in W.P.No.13616 of 2021 for a direction to remove the illegal construction of the temple on his land, alleging that the temple is built in his land and he had also filed a Civil Suit, which is still pending.

3.1. It was further case of the Petitioner that in the meanwhile, the so-called impugned notice has been issued by the Highways Department for removal of the Temple, misconstruing it to be an encroachment and though a representation has been submitted for grant of permission, there is no response thereon till now. to the her late husband purchased the property in question in the year 1985 and since then, the property's rights vests with them. When her husband purchased the property, the area was governed by the Local Body and subsequently, it fell within the Greater Chennai Corporation limit after its due extension. It was further case of the Petitioner that during the life time of her husband, they constructed a residential house in ground floor to an extent of 1800 sq.ft. and subsequently, her husband died on 12.06.2017.

4. It was also the case of the petitioner that though she had applied for building plan approval before the 1st respondent through online, which is still pending, a lock and seal notice dated 21.01.2020 under Section 57 r/w Section 85 of the Town and Country Planning Act, 1971 (in short 'the Act, 1971') was issued, that too, without conducting any enquiry on her pending application. Thereafter, she applied for regularization of land



before the 3rd respondent on 14.02.2021, during pendency of which, a de-occupation notice dated 13.09.2021 under Section 56, Sub-Section 2(A) and Section 57 r/w Section 85 of the Act, 1971 came to be issued against her.

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5. It was averred by the petitioner that challenging the lock and seal notice and De-Occupation notice dated 21.01.2021 and 13.09.2021 respectively, she has preferred an appeal before the 2nd respondent on 20.09.2021. While the said appeal is pending, eviction notice has been issued, citing the direction issued by this Court in W.P.No.19111 of 2021 filed by the 7th respondent herein, even though the said Writ Petition was closed on 13.09.2021, without any positive direction. It was further averred that there was a suppression of pendency of appeal before the 2nd respondent by the 7th respondent, while the Writ Petition in W.P.No.19111 of 2021 was filed.

6. Learned counsel for the Petitioner assailed the impugned order on the ground that the act of the respondents in removal of the Temple on one fine morning without any notice is unheard in law, especially when there was no law and order problem, block in free movement of public vehicle or pedestrians and complaint from any person. Therefore, the impugned order is untenable and contrary to law. According to him, the Temple is an ancient one and instead of removing it, it should be allowed to be preserved either by the Government or by the Trust / Volunteers like the petitioner.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The foremost contention of the petitioner was that the impugned order has been issued, contrary to the principles of natural justice, as no notice of enquiry was issued, prior to the issuance of notice for removal of the Temple. He also drew the attention of this Court to the provisions of Sections 28 and 29 of the Act, 2001 (extracted below) in support of his submission that due process will have to be followed before initiation of action under the said Act.

28. (1) The Highways authority or any person authorised by it in this behalf, shall, at such time as maybe considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment

(2) The Highways authority or any person authorised by it in this behalf, may -

(i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed



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for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(ii) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders.

29. (1) Whenever any encroachment is removed or any protective work is carried out in respect of any encroachment, the cost thereof shall be recovered from the person responsible for the encroachment, as if it were an arrear of land revenue.

(2) The materials, if any, recovered as a result of the removal of any encroachment shall be handed over to the person responsible for the encroachment on payment of the cost, if any, recoverable under sub-section (1). Where the cost is not paid, the materials seized shall be disposed of, in such manner as may be prescribed."

9. The petitioner nowhere stated in the affidavit that the land belongs to the Temple. Moreover, a reading of sub-section 2 (ii) of Section 28 of the Act, 2001 discloses that the Authority under the Act, 2001 has every right to remove a structure after issuing notice, if it is found to have been constructed on a land belonging to the Highways Department and one such notice is impugned herein. Therefore, it cannot be said that there is a violation of principles of natural justice and even at the initial stage itself, the petitioner cannot stall further proceedings. The proviso to Section 28 makes it very clear that the representation received within the time limit shall be considered by the Authority and in this case, the petitioner, on behalf of the local residents of the area is said to have sent a representation on 07.10.2021 to the respondents, but there was no proof adduced in respect of despatch of the same on the said date, as the track consignment slip annexed in the typeset of papers shows that it was posted only on 13.10.2021, whereas the impugned notice was issued as early as on 20.09.2021. It is not known as to why the Authority concerned has not taken any steps to remove the Temple from the encroachment till filing of this



Writ Petition and this Court suspects that there is a collusion between the Officials and the encroachers of the public land.

10. Even though the petitioner has stated that the Temple has been constructed three decades ago and the land belongs to the Temple, what prevented him to produce necessary documents to the Authority concerned to establish his case that the Highways property has not been encroached upon, as adverse possession of the Highways property cannot be allowed to be continued by anyone. The submission of the petitioner that deities have not been causing any hindrance to public or free flow of traffic all along and it is purely used for the purpose of worship, cannot be accepted for the reason that firstly, the petitioner has miserably failed to produce documents to prove that the land is under the control of the Trust and that if the submission of the petitioner is accepted, then everyone will encroach upon public lands and come with the plea that there is no obstruction to any public and therefore, they should be permitted to continue their illegal occupation.

11. It is apposite to state here that according to Hindu mythology, God is omnipresent everywhere (இறைவன் தூணிலும் இருப்பான் துருப்பிலும் இருப்பான்) and God Vinayagar does not want a secluded / specific place for His divine presence. It is the Fanatic, who is the root cause for all the problems to divide the people in the name of religion. If the petitioner is so particular in facilitating the deities to worship God Vinayagar, it is open to him either to allot his unencumbered land or the land, if any, available to the temple and thereafter, shift God Vinayagar to that place. The petitioner, in the garb of setting up a Temple, cannot usurp the Highways property, which is meant for public use irrespective of creed, caste and religion

12. A Division Bench of this Court, in which one of us (SVNJ) was a party, in the case of G.Gurusamy @ Appu, The Priest of Kottai Palayathamman Thirukoil, Rajaji Salai, Opp. to RBI & Secretariat, Chennai - 600 009 vs. The District Revenue Officer, Chennai District, Rajaji Salai, Chennai - 600 001 and another [W.P.No.34097 of 2017] decided on 25.07.2018, heavily condemned the act of the petitioner therein and directed the Authorities to evict the Temple with the help of Police Force.

13. For the foregoing discussions and observations, this Court is of the view that the impugned notice of the 3rd respondent issued in Ku.No.02/2021/A1 dated 20.09.2021 does not require any interference by this Court and the belated decision taken by the respondents to remove and evict the temple cannot be found fault with. The respondents are directed to evict the Temple within a period of 15 days from the date of receipt of a copy of the order.



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14. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The District Collector,
District Collector Office,
Perambalur.
- 2.The Assistant Divisional Engineer,
Highways Department Ka (ma) pa,
Perambalur.
- 3.The Assistant Divisional Engineer,
Highways Department Ka (ma) pa,
Veppanthattai Post, Perambalur District.

+1cc to M/s.N.A.Nissar Ahmed, Advocate SR. No.5585
+1cc to Government Pleader SR. No.5137

W.P.No.28145 of 2021

PMK (CO)
PR (14/02/2022)