



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.5479 of 2017 and 21836 of 2018

W.P.No.5479 of 2017:

A.Gunasekaran

...Petitioner

Vs

- 1.The Commissioner,
Office of the Commissioner,
HR & CE Department,
Nungambakkam, Chennai-34.
- 2.Secretary to Government,
Energy Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 3.District Collector,
Thiruvallur - 602 001.
- 4.Secretary to Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 5.Tahsildar,
Maduravoyal Taluk Office,
Chennai - 600 116.
- 6.Fit Person,
Sri Kalisathamman Temple,
Ramapuram, Chennai - 600 089.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records pertaining to Order No.571, dated 28.10.1999 passed by the fourth respondent directing the third respondent to transfer about 1.30 Acres of Sri Kalisathamman Temple land, comprised in S.No.71 of Ramapuram village in Thiruvallur District to the



second respondent and quash the same; issue a writ of mandamus to the first respondent to collect the mesne profits from the second respondent for its wrongful possession of 1.30 Acres of Sri Kalisathamman Temple land, comprised in S.No.71 of Ramapuram Village in Thiruvallur District and hand it over to Sri Kalisathamman Temple and to fix the quantum of lease for further period during which the second respondent wants to retain it for its substation and the said amount be handed over to the Sri Kalisathamman Temple.

For the Petitioner : Mr.SP.Chockalingam

For the Respondents : Mr.Arun Natarajan
Spl. Govt. Pleader (HR & CE)
for respondent No.1

: Mr.P.Muthukumar
State Government Pleader
for respondent Nos.2 to 5

: Mr.A.K.Sriram
for M/s.A.S.Kailasam Associates
for respondent No.6

W.P.No.21836 of 2018:

Arappor Iyakkam,
rep. by its Trustee P.Nakkeeran,
140A, Ground Floor, Marshalls Road,
Egmore, Chennai-600 008.

...Petitioner

Vs

- 1.The District Collector,
District Collectorate,
Master Plan Complex, NH 205,
Tiruvallur,
Tamil Nadu-600 008.
- 2.The District Revenue Officer,
Revenue Department,
Tiruvallur Collectorate,
Tiruvallur District.
- 3.Hindu Religious & Charitable Endowments Department,
rep. by its Commissioner,
119, Utamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.



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4. Greater Chennai Corporation,
rep. by its Commissioner,
Amma Maligai,
Ripon Building Campus,
Chennai - 600 003.

5. Chennai Metropolitan Water Supply and Sewerage Board,
rep. by its Chairman,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

6. The Tahsildar,
Maduravoyal Taluk Office,
Ganesh Nagar, Porur,
Chennai-600 116.

7. M.G. Mohan

8. R.E. Kumar

9. Amman Andal Nagar Welfare Association,
rep. by B. Muralidharan,
Ramavaram Village,
Maduravoyal Taluk,
Chennai.

10. Arulmighu Kalasathamman Thirukoil,
rep. by its Fit Person,
Kalasathamman Koil Street,
Ramapuram, Chennai-89.

... Respondents

(Respondent Nos. 7 and 8 impleaded vide order
dated 19.12.2018 made in WMP.No.35555 of 2018)

(Respondent No. 9 impleaded vide order
dated 03.01.2019 made in WMP.No.28825 of 2018)

(Respondent No. 10 impleaded vide order
dated 10.01.2019 made in WMP.No.719 of 2019)

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1, 2, 4 and 6 to restore the road for the public access by removing the encroachment on the road (Kalasathamman Kovil Vandi Paathai, Survey No.71/2), Ramapuram.

For the Petitioner : Ms. R.S. Akila

For the Respondents : Mr. P. Muthukumar
State Government Pleader
for respondent Nos. 1, 2 and 6



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- : Mr.Arun Natarajan
Spl. Govt. Pleader (HR & CE)
for respondent No.3
- : Mr.M.Ganesan
for respondent No.4
- : Mr.N.Ramesh
for respondent No.5
- : Mr.A.K.Sriram
for M/s.A.S.Kailasam Associates
for respondent No.10
- : R7 to R9 - No appearance

COMMON ORDER

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

W.P.No.5479 of 2017 has been filed to challenge the order dated 28.10.1999 passed by the fourth respondent - Secretary, Revenue Department directing the third respondent - District Collector, Tiruvallur to transfer about 1.30 acres of the alleged temple land comprised in Survey No.71 of Ramapuram Village, Tiruvallur District. A prayer is also sought on the first respondent - Commissioner, HR & CE Department to collect mesne profits from the second respondent - Secretary, Energy Department for the wrongful possession of the land.

2. Learned counsel for the petitioner in W.P.No.5479 of 2017, Mr.SP. Chockalingam, submitted that the land belonging to the temple has been allotted to the second respondent electricity board in violation of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short, "the Act of 1959"). The temple land could not have been allotted to the electricity board without the compliance of the provision referred to above. The second respondent electricity board has established a sub-station for power distribution after the allotment of the land. The villagers have objected the establishment of the sub-station, as the valuable rights of the devotees of the temple have been affected. It is more so when during festivals huge gatherings take place and the establishment of the sub-station would be at risk to the people celebrating near the sub-station. On this premise, the petitioner, in public interest, has filed the writ petition questioning the order dated 28.10.1999 and also for recovery of mesne profits for the benefit of the temple.

3. Learned counsel for the petitioner has made a reference to a civil suit preferred in the year 1991 by one of the villagers and submitted that the said suit was dismissed on the



ground of maintainability, as the plaintiff therein could not shown his locus. The said suit was dismissed in the year 1996 and the allotment of the land was made in the year 1999, which is subsequent to the dismissal of the said suit. He submits that the dismissal of the civil suit has no adverse effect on the present writ petition. Rather, the writ petition has been preferred by the petitioner in public interest and in the interest of all devotees of the temple.

4. The writ petition has been contested by learned Government Pleader and learned counsel appearing for the respondent temple.

5. Learned counsel appearing for the temple submitted that the land in question allotted to the electricity board for establishment of the sub-station is a government land. Finding that the land in question is government land, the civil court dismissed the suit. The petitioner has wrongly described the land to be a temple land. The temple is located on the Government land and due to the existence of the temple, the name of the temple has also been recorded in the revenue records. Since the land in question is a government land, it has been rightly allotted for establishment of the sub-station so as to serve the public in a better and effective manner for supply of electricity. It is even to the agriculturists of the nearby area. Thus, the allotment of the land to the electricity board for establishment of the sub-station was in the interest of public and the sub-station was established long back.

6. Learned counsel has further submitted that the petitioner has filed the writ petition to challenge the order dated 28.10.1999 after a lapse of more than 18 years without explaining the delay. Thus, a prayer is made to dismiss the writ petition on the ground of laches, apart from merit also.

7. We have considered the rival submissions made by learned counsel for the parties.

8. The writ petition - W.P.No.5479 of 2017 has been filed mainly to challenge the order dated 28.10.1999. The said writ petition has been preferred in the year 2017 i.e. after a lapse of 18 years. The petitioner is unable to explain the delay. The sub-station was established after the allotment was made. The petitioner has not approached this court immediately after the allotment of land or establishment of the sub-station. The towering delay of over 18 years in approaching this court is fatal. When this court looked into the finding recorded by the civil court, it is clear that the land in question is not a temple land and it is a government land.



9. In view of the above, the third respondent - District Collector within his competency, allotted the land to the electricity board for establishment of the sub-station. Therefore, Section 34 of the Act of 1959 does not come into play for the aforesaid reason. The petitioner submitted revenue records to show that the land in question is a temple land, but the same is contrary to the finding of fact rendered by the civil court, which has adjudicated the matter and dismissed the suit. Furthermore, the documents placed on record would show that the land in question is government land where the temple is situate and, that too, a part of the land was shown to be temple land. In any case, without going on the issues raised, this court is of the view that the writ petition, being W.P.No.5479 of 2017, suffers from laches and no convincing explanation is forthcoming for the inordinate delay. Rather, the efforts of the villagers seem to be somewhat not to allow the electricity board to establish the sub-station, though the sub-station has been established for the benefit of the villagers for proper supply of the electricity.

10. Taking into consideration the overall facts and finding that no explanation is forthcoming to justify the inordinate delay of over 18 years, the writ petition, being W.P.No.5479 of 2017 is dismissed.

11. Coming to W.P.No.21836 of 2018, the same has been filed to seek a direction on the respondents 1, 2, 4 and 6 therein to remove the encroachment on the road. The allegation is that encroachment has been made by the respondent temple.

12. Learned counsel for the petitioner in W.P.No.21836 of 2018, Ms.R.S.Akila, submitted that a public pathway has been encroached by the temple and thus, the respondent authorities may be directed to remove the encroachment in the the public pathway.

13. The argument aforesaid has been opposed by learned Government Pleader as well as learned counsel appearing for the respondent temple.

14. Learned counsel appearing for the temple submitted that the matter was earlier considered by the competent authority on the representation made by the petitioner and in that a finding has been recorded that no encroachment exists, rather the land remains with the temple for long. A detailed order in that regard had been passed on 04.06.2018. However, the said order dated 04.06.2018 has not been challenged by the petitioner in a writ petition though it was passed on their representation.



15. We have considered the submissions and find that in the absence of a challenge to the order dated 04.06.2018, despite availability of appellate remedy, the order dated 04.06.2018 has become final and, therefore, the present writ petition seeking to remove the alleged encroachment on the road is not maintainable. It is more so when the authority concerned has already considered the representation of the petitioner and passed an order. Such a finding of fact cannot be re-opened by exercising jurisdiction under Article 226 of the Constitution of India.

16. For the foregoing reasons, we find that there is no merit in the writ petition, being W.P.No.21836 of 2018, and the same is also dismissed.

17. In the result, both the writ petitions are dismissed. No costs. Consequently, W.M.P.Nos.5836, 5837 of 2017; 25606 and 25607 of 2018 are closed.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

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To:

- 1.The Commissioner,
Office of the Commissioner,
HR & CE Department,
Nungambakkam, Chennai-34.
- 2.The Secretary to Government,
Energy Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 3.The District Collector,
Thiruvallur - 602 001.
- 4.The Secretary to Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 5.The Tahsildar,
Maduravoyal Taluk Office,
Chennai - 600 116.



6.The Commissioner,
Greater Chennai Corporation,
Amma Maligai,
Ripon Building Campus,
Chennai - 600 003.

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7.The Chairman,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

8.The District Revenue Officer,
Revenue Department,
Tiruvallur Collectorate,
Tiruvallur District.

9.The District Collector,
District Collectorate,
Master Plan Complex - NH-205,
Thiruvallur, Tamil Nadu - 600 008.

+1cc to Mr.M.Ganesan, Standing Counsel Sr.No.12057
+2ccs to M/s.Sudha Ramalingam, Advocate Sr.No.11153
+1cc to SP.Chockalingam, Advocate Sr.No.11400

W.P.Nos.5479 of 2017 and 21836 of 2018

AD(CO)
RVM(03/03/2022)