



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.1976 of 2022

and W.M.P. (MD)No.1707 of 2022

WEB COPY

Kalaiyarasi

... Petitioner

-Vs-

1.The Assistant Commissioner, H.R& C.E,
Chidambara nagar,
Thoothukudi.

2.The Executive Officer,
Arulmigu Poovananatha swamy temple,
Kovilpatti, Thoothukudi District.

3.The Divisional Engineer,
Highways (Construction and Maintenance)
Ettayapuram road,
Sundaravelpuram West, KTC Nagar,
Thoothukudi and District.

4.The Inspector of Police,
East police station,
Kovilpatti, Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus forbearing the respondents 1,2 and 4 from interfering, evicting the possession and enjoyment of the petitioner shop situated at ward No.21, KM 40/10 Paruvakudi-Kovilpatti-Ettayapuram-Vilathikulam-Vembar road in Kovilpatti, under the guise of encroachment on temple land.

For Petitioner : Mr.S.Siva Ilayaraja

For Respondents : Mr.M.Lingaduri,
Special Govt. Pleader for R1, R3 & R4

Mr.M.Muthugeethayan for R2



ORDER

This order will dispose of the captioned main writ petition.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 02.02.2022 which reads as follows:

'Immovable property in the form of 'land admeasuring 630sq.ft or thereabouts (35ft. length X 18ft. breadth) comprised in T.S.No.28, Block No.24, Ward C in Ettayapuram Valivuroad (tist Nuhl;) in Kovilpatti Taluk, Thoothukudi District' (hereinafer 'said property' for the sake of convenience and clarity) is the subject matter of captioned main writ petition.

2. This Court is informed that said property is situate on the southern side of Door No.169.

3. The case of the writ petitioner is that the third respondent (State Highways Authority) had granted permission to her to occupy '3.05 m X 2.50 m (7.36 sq.mt area) at km 40/10 left side at Paruvakudi, Kovilpatti, Vilathikulam, Vembar Road' for installing an Aavin Milk Booth (hereinafter 'said land' for the sake of convenience and clarity). It is the case of the writ petitioner that she is running an Aavin parlour in said land from 2015 onwards and her husband (Mr.Ramar) is running a two wheeler mechanic shop by putting up a temporary TIN shed in said land as he is said to have been evicted from the rented building in which he was running the mechanic shop.

4. The original permission of Highways Authority qua said land was granted on 07.08.2015 vide letter No.462/2015/ID02 (page 24 of typed set of papers). A perusal of 07.08.2015 proceedings brings to light that permission was granted under Section 26 of the 'Tamil Nadu Highways Act, 2001 (hereinafter 'TN Highways Act' for the sake of convenience and clarity). The permission has been granted in Form-A as per Rule 6 of 'Tamil Nadu Highways Rules, 2003' (hereinafter 'TN Highways Rules' for brevity). The aforementioned permission given by the Highways Authority is for one year which elapsed on 06.08.2016 and thereafter vide letter dated 11.06.2019 bearing letter No.462/2015/ID02 there appears to be a further permission for one more year. Though 11.06.2019 letter says that one year from the date of agreement, this Court is informed that date of letter itself is the date of agreement and therefore, one year elapsed



on 11.06.2020. Writ petitioner submits that thereafter she has applied for renewal from 28.08.2019 to 27.08.2021 and the same is pending. In any event 28.07.2021 has also elapsed. Therefore, as of today there is no permission from the Highways Authority qua said land.

5. In the aforementioned circumstances, the writ petitioner was visited with a notice dated 27.11.2021 from the second respondent alleging that the writ petitioner has encroached upon said property and calling upon the writ petitioner to remove the encroachment and also putting the writ petitioner on notice that failure to comply within 15 days will lead to proceedings under Section 78 of 'The Tamil Nadu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter 'TN HR&CE Act' for the sake of convenience and clarity).

6. Captioned writ petition has been filed with a mandamus to restrain the respondents 1, 2 and 4 from dispossessing the petitioner qua said land.

7. To be noted, the two proceedings of Highways Authority referred to supra being proceedings dated 07.08.2015 and 11.06.2019 do not throw any light on survey number. The reason is in 07.08.2015 letter, the survey number reads as many as 111/231 but it is handwritten and interpolated. In 11.06.2019 letter no survey number has been mentioned.

8. Mr.M.Lingadurai, learned Special Government Pleader accepted notice on behalf of respondents 1, 3 and 4. On instructions from respondent No.1 [Assistant Commissioner, 'Tamil Nadu Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu' (hereinafter 'TN HR&CE Dept.' for the sake of convenience and clarity)] learned State Counsel submitted that the second respondent has already written a communication dated 07.01.2022 regarding site inspection and report for removal of encroachment qua said property. Mr.M.Muthugeethayan, learned private counsel who accepted notice on behalf of second respondent (Executive Officer of 'Arulmighu Poovanatha Swamy Temple, situate in Kovilpatti, Thoothukudi District' [hereinafter 'said temple' for the sake of convenience and clarity] submitted that said property belongs to said temple. The extent mentioned in the letters of State Highways authority is only 7.36 sq.mt. which translates to 79.22 sq.ft whereas the said temple is concerned 630 sq.ft or thereabouts. Learned private counsel went on to add that the writ petitioner is a rank encroacher who has



occupied and put up a sweet stall, fruit shop, juice centre and workshop and is exploiting of temple land i.e., said property. Learned counsel, on instructions, submits that proceedings under Sections 78 of TN HR&CE Act would be initiated.

9. Learned counsel for writ petitioner very fairly submitted that his simple prayer before this Court is the writ petitioner should not be dispossessed de hors due process of law.

10. In the aforesaid backdrop, learned State Counsel requested for a short accommodation to get instructions from the third respondent (State Highways Authority) and revert to this Court. Request acceded to.

11. Registry to show the name of counsel for respondents (State Counsel and Private Counsel) in the next listing.

12. List in the Admission Board i.e., motion list tomorrow.

13. List on 03.02.2022.'

3. To be noted, short forms and short references used in the previous proceedings dated 02.02.2022 will continue to be used in the instant order also (obviously for the sake of convenience and clarity). To be noted, the aforementioned proceedings of this Court dated 02.02.2022 shall be read as an integral part and parcel of this order.

4. Pursuant to paragraph 10 of the aforementioned earlier proceedings, learned Special Government Pleader submits that he has got instructions from the third respondent and as per his instructions, said land admeasuring 7.36 sq.mts or thereabouts i.e., 79.22 sq.ft was subject matter of a permission but that permission which was originally given on 07.08.2015 was for one year, thereafter there was one more permission but that also elapsed on 11.06.2020. Thereafter there has been no further permission. In this view of the matter, the occupation of said land by the writ petitioner and others (as of today) is without permission. Be that as it may, learned State Counsel, on instructions submits that adjacent lands belonging to said temple i.e., *inter alia* said property have been encroached upon. This has triggered the communication dated 27.11.2021 from the second respondent, is learned Counsel's say.

5. As regards the submission of learned counsel for petitioner that his simple prayer is that writ petitioner should not be dispossessed de hors due process of law (captured in paragraph 29 of earlier proceedings) it was submitted by learned State Counsel that it may not be restricted to Section 78 of TN HR&CE Act alone as remedy is available under Section 79-B of TN HR&CE Act also.

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20/12/2021
20/12/2021

இந்திய சமய அறநிலையத்துறை

அலுவலர்
செருமங்குருகாள் இ.ஆர்.
ஆணையர்
சென்னை-34.

செருமங்குருகாள் இ.ஆர்.
செருமங்குருகாள் இ.ஆர்.
இந்திய சமய அறநிலையத்துறை

நா.அ.நா. 56758/2021/ய.ச. நா. 17.12.2021

அ.அ.அ.

பொருள்: இந்திய சமய அறநிலையத்துறை - திருவள்ளூர் -
அறநிலையத்துறைக்குச் சொந்தமான சொத்துக்களை
ஆக்கிரமிப்பு செய்துள்ளதாக வீது குறிப்பிடும் நடவடிக்கை
மேற்கொள்ளுதல் - தொடர்பு.

பரணை
1. தமிழ்நாடு சட்டம் 29/2021
2. தமிழ்நாடு அரசாங்கம் நா.அ.நா. 56758/2021/ய.ச. நா. 17.12.2021
3. ஆணையர் உத்தரவு 5129/2021/ய.ச. நா. 26.10.2021

அறநிலையத்துறைக்குச் சொந்தமான சொத்துக்களில் சட்டப்படிபாண்ட உரிமை
இல்லாமல் ஆக்கிரமிப்பு செய்துள்ளதாக வீது ஆணையரின் அடுத்தது மூலமாக
புகாரின் (Complaint) பேரில் குற்றமீடும் நடவடிக்கை மேற்கொள்ள சட்டப்படி 79 (B)
(3)யில் வழிவகை செய்யப்பட்டிருந்தது. ஆனால் நடவடிக்கை தாமதமாகி வருவது
மட்டுமே புகார் செய்தது என்பது தயக்கம் இல்லாதது. 1973ம் ஆண்டில் இந்திய
குற்றமீடும் நடவடிக்கை சட்டத்தில் குற்றம் செய்தவர்களுக்கு தீவிர தண்டனை
அளித்த தீர்மானம் நபரும் ஆக்கிரமிப்பாளர் வீது அடுத்தது மூலமாக புகாரின்
சம்பந்தப்பட்ட வசம் அதிகாரிக்கு அளிக்கும் வகையில் சட்டப்படி 79 (B) (3)ல்
உரிய திருத்தங்கள் மேற்கொள்ளப்பட்டு பரணைக்குறிப்பிட்ட சட்டம்
பயன்படுத்தப்பட்டு வருவது உறுதிப்படுத்தப்பட்டுள்ளது. 20ம் அணுவில் தமிழ்நாடு
அரசாங்கம் வெளியிடப்பட்டு அது நடைமுறைக்கு வரும் வரையில் குறிப்பிட்ட
அணுவில் அறநிலைய அலுவலர்களுக்குச் சொந்தப்பட்டுள்ளது.

2. எனவே அறநிலையத்துறைக்குச் சொந்தமான சொத்துக்களில்
சட்டப்படிபாண்ட உரிமை இல்லாதவர்கள் தீவிர நடவடிக்கை
மேற்கொள்ளும் ஆக்கிரமிப்பு செய்து அனுபவித்து வரும் நபர்கள் வீது இந்திய
குற்றமீடும் நடவடிக்கை சட்டத்தின்படி நடவடிக்கை மேற்கொள்ள தொடர்பு
எனவே நிறைவேற்றம் முடிவாக புகார் அனுப்பி அளித்த சம்பந்தப்பட்ட
அறநிலையத்துறை அலுவலர்கள் அங்கு தக்க நடவடிக்கை மேற்கொள்ள
அறிவுறுத்தப்படுகிறது.

3. இந்திய குற்றமீடும் நடவடிக்கை சட்டத்தின் படி தீவிர நடவடிக்கை குறித்து
அறிந்த தீவிர நடவடிக்கை புகார் அனுப்பி அளித்த வழிவகை செய்யப்பட்டுள்ளது.
எனவே அறநிலையத்துறைக்குச் சொந்தமான சொத்துக்களை சட்டப்படிபாண்ட
உரிமையின்றி அனுபவித்து வரும் நபர்களை கண்டறிந்து தீவிரமாக நடவடிக்கை



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விதிப்புணர்வுடன் செயல்பட்டு விவரம் ஆக்கிரமிப்புதாரர்கள் மீது காலம் நிலையத்தில் (கா) மனு அளித்திட்டு வேண்டியபடி அறிவுறுத்தப்படுகிறது. மேலும் ஆக்கிரமிப்புதாரர்களுக்கெதிராக ஒன்றியம் காவல் நிலையத்தில் அளிக்கப்படும் புனர் மனு மீதான விசாரணைக்கு தேவையான ஆவணங்களை மூழுமையான ஒத்துழைப்பையும் காவல்துறைக்கு வழங்கி வேண்டியபடி தீர்மானத்தில் நிர்வாகிகளை அறிவுறுத்தப்படுகிறது.

4. இதன் மூலம் அனைத்து திருத்தியில் நிர்வாகிகளுக்கும் அனுப்பி- இணை ஆணையர் மற்றும் உதவி ஆணையர்களை அறிவுறுத்தப்படுகிறது.

ஓம்/- செ.குமாருருபரன்

ஆணையர்

உருஉபய

கண்காணிப்பாளர்

உதவி

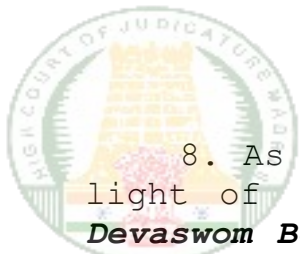
2. அனைத்து தலைமையிட அலுவலர்கள்

3. அனைத்து தலைமையிட கண்காணிப்பாளர்கள்

4. மின்

6. Learned counsel for Second respondent, adverting to paragraph 8 of the earlier proceedings submits that as against the sweet stall, fruit shop, juice centre and workshop, as it is the case of the writ petitioner that writ petitioner has not indulged in any subletting, it may be left open to the second respondent to initiate proceedings *inter alia* in accordance with the TN HR&CE Act by issue of independent notices. This is a matter which goes without saying and it is obvious. It is left open to the second respondent to proceed within the legal perimeter of TN HR&CE Act.

7. The above answers the anxiety of the writ petitioner qua dispossession *de hors* due process of law. It is made clear that if proceedings under Sections 78 and 79-B of TN HR&CE Act is initiated, the rights of the writ petitioner to defend the same within the perimeter of TN HR&CE Act is protected.



8. As this Court is *parens patriae* qua temple properties in the light of **A.A.Gopalakrishnan's** case [**A.A.Gopalakrishnan v. Cochin Devaswom Board and Ors.**,] reported in **(2007) 7 SCC 482**, this Court conscious of the fact that a directive is being given in a mandamus filed by the writ petitioner who is an alleged encroacher, issues a directive in its *parens patriae* jurisdiction to the effect that the second respondent and the first respondent will do well to commence proceedings *inter alia* under Sections 78 and 79-B of TN HR&CE Act and or other provisions within the legal perimeter of TN HR&CE Act as expeditiously as their business would permit. The proceedings so commenced shall also be concluded as expeditiously as their business would permit.

9. Captioned writ petition is disposed of in the aforesaid manner. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Assistant Commissioner, H.R& C.E,
Chidambara nagar,
Thoothukudi.
- 2.The Executive Officer,
Arulmigu Poovananatha swamy temple,
Kovilpatti, Thoothukudi District.
- 3.The Divisional Engineer,
Highways (Construction and Maintenance)
Ettayapuram road,
Sundaravelpuram West, KTC Nagar,
Thoothukudi and District.



4.The Inspector of Police,
East police station,
Kovilpatti,
Thoothukudi District.

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-4117[F] dated
04/02/2022)

+1 CC to M/s.SPL.GP (SR-4235[F] dated 04/02/2022)

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and W.M.P. (MD)No.1707 of 2022
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RD(15.02.2022) 8P 7C