



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Twenty Sixth day of May Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR
and

The Hon`ble Mr.Justice R.VIJAYAKUMAR

WMP(MD) No.7468 of 2022

IN

WP(MD) No.10420 of 2022

KUMARESAN T

... PETITIONER

Vs

1 THE DISTRICT COLLECTOR
KANYAKUMARI DISTRICT,
OFFICE OF COLLECTORATE,
KANYAKUMARI DISTRICT.

2 THE SUB COLLECTOR
PADMANABAPURAM REVENUE DIVISION,
OFFICE AT THUKALAI,
KANYAKUMARI DISTRICT.

3 THE TAHSILDHAR
KALKULAM TALUK
OFFICE AT THUKALAI,
KANYAKUMARI DISTRICT.

4 THE SUB INSPECTOR OF POLICE
ASARIPALLAM POLICE STATION,
ASARIPALLAM,
KALKULAM TALUK
KANYAKUMARI DISTRICT.

5 GURUZ KARMAL

... RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to grant an interim order of DIRECTION directing the 4th Respondent to Stop the proposed mass arranged by the 5th Respondent on 29.05.2022 hillock in S.No.467, Alloor 'B' Village, Kalkulam taluk, Kanyakumar District pending disposal of the above Writ petition.

Prayer in WP(MD). 10420/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ Petition filed under Article 226 of the Constitution of India, praying this court to issue WRIT OF MANDAMUS or directing the 1 to 4 Respondents not to

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permit any gathering or religious activity or any construction in the property in S.No.467, Alloor 'B' Village, Kalkulam Taluk, Kanyakumari District which is a hill encroached by the 5th Respondent by consider the representation dated 21.04.2022.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVELU, Senior Counsel for M/S.PONSENTHILKUMARAN.S, Advocate for the petitioner and of Mr.S.SHAJI BINO, Special Government Pleader on behalf of the Respondents 1 to 4, the Court made the following order:-

[Order of the Court was made by R.SURESH KUMAR,J.]

When this writ petition came up for hearing yesterday i.e., 25.05.2022, after hearing the learned Senior Counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents 1 to 4, we passed the following order:-

'The petitioner has moved this writ petition as a Public Interest Litigation on the alleged reason that in the land in question that is, at Survey No.467, Alloor B Village, Kalkulam Taluk, Kanyakumari District, which is a hillock area, there is a poramboke land, wherein, in the recent past, the 5th respondent and his group of people started making permanent structure/construction, for which, concrete pillars have been erected for doing some religious activities.

2. At this stage, the petitioner, after having approached the respondents, that is, the revenue and police people which triggered the revenue people to initiate a proceeding under Section 107 Cr.P.C., which is also pending, has come before this Court, seeking to issue a Writ of Mandamus, directing the respondents 1 to 4 not to permit any gathering or religious activity or any construction in the property in Survey No.467, Alloor B Village, Kalkulam Taluk, Kanyakumari District.

3. Heard Mr.V.Kathirvelu, learned Senior Counsel appearing for Mr.S.Ponsenthilkumaran, learned counsel for the petitioner, who would submit that since it is a Government poramboke land, it cannot be utilised unauthorisedly for making any permanent structure/construction like the one now has been intended by the 5th respondent. Therefore, the petitioner has moved this writ petition for taking appropriate action against the 5th respondent or any other person who wants to encroach upon the property and make any illegal construction.



4. Heard Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents 1 to 4, who after taking notice and on instructions would submit that though some construction has been started, after noticing the same that the land in question belongs to the Government, the revenue department has already taken the steps to prevent any further construction and put up a warning board there, where it has been declared that the land belongs to the Government and therefore, no construction/activities shall be permitted and any violation will be viewed seriously and police action will be taken against them.

5. He would also submit that already Section 107 Cr.P.C., proceeding has been initiated which is pending consideration. He would further submit on instructions that no further activities including religious activities would be permitted in the disputed site as proposed by the 5th respondent.

6. Though such a submission has been made by the learned Special Government Pleader appearing for the respondents 1 to 4, we are of the view that unless the stand of the revenue as well as the police with regard to the aforesaid issue is made clear before this Court, by filing an affidavit to that effect, the statement made by both sides cannot be evaluated in proper perspective.

7. In that view of the matter, we direct the learned Special Government Pleader to get a written affidavit from the respondents 2 and 4. To file such an affidavit, post the matter on 26.05.2022.'

2.Pursuant to the said order, today when the case is taken up for hearing, Mr.S.Shaji Bino, learned Special Government Pleader produced an affidavit filed by the Sub Inspector of Police, Asaripallam Police Station i.e., fourth respondent, where *inter alia* the Sub Inspector has stated as follows:-

3.I respectfully submit that the A-Party/5th Respondent group in the proceedings in the 107 proceedings/5th Respondent group encroached the hill area in survey No.467 and constructed the religious building incomplete stageillegally without obtaining any permission.

4.I respectfully submit that the proposed prayer scheduled on 29.05.2022 by the A-Party/5th Respondent group is illegal and the Revenue authorities also informed that they will not allow A-Party/5th Respondent group proceed with the proposed prayer as scheduled on 29.05.2022.



5.I respectfully submit that the police will not grant any permission for conducting prayer in the survey No.467 as proposed to be scheduled on 29.05.2022.

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6.I respectfully submit that I hereby respectfully filed this affidavit before this Hon'ble Court as per the direction of this Hon'ble Court dated 25.05.2022.

3.Insofar as the affidavit to be filed by the Revenue Authorities is concerned, the learned Special Government Pleader has submitted that the Sub Collector/second respondent is on leave. Therefore, on his behalf, the third respondent/Tahsildar has given instructions through special messenger, who has given instant instructions to the learned Special Government Pleader that the Revenue has already taken a decision not to permit any further construction in the disputed site by the fifth respondent or any other third parties and also it was decided by the Revenue to take necessary steps in accordance with law to remove such illegal construction in the disputed site at earliest. Further, suitable direction would be given to the Police authority not to permit any religious activity in the disputed site on any date, apart from the proposed date given by the fifth respondent.

4.The said submission made by the learned Special Government Pleader on instructions received from the third respondent is taken on record.

5.In view of the aforesaid stand taken by the respondent especially the Revenue people as well as the Police, by recording the said statement, this Court is inclined to grant a direction to all the respondents herein to strictly comply with the said stand taken by the Revenue and Police Department, which was reflected in the affidavit filed by the fourth respondent as well as the submissions made by the learned Special Government Pleader on the basis of the instructions given by the Revenue Department.

6.With these observations and directions, this Writ Miscellaneous Petition is disposed of. However, it is open to the fifth respondent, on receipt of the notice, to file counter in the main writ petition as well as to file the vacate stay petition against this order, if he is so advised.

sd/-

26/05/2022

/ TRUE COPY /

28/05/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE DISTRICT COLLECTOR
KANYAKUMARI DISTRICT,
OFFICE OF COLLECTORATE,
KANYAKUMARI DISTRICT.

2 THE SUB COLLECTOR
PADMANABAPURAM REVENUE DIVISION,
OFFICE AT THUKALAI,
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4 THE SUB INSPECTOR OF POLICE
ASARIPALLAM POLICE STATION,
ASARIPALLAM,
KALKULAM TALUK
KANYAKUMARI DISTRICT.

+1 CC to M/s.PONSENTHILKUMARAN.S, Advocate (SR-5072[I] dated
27/05/2022)

ORDER
IN
WMP (MD) No.7468 of 2022
IN
WP (MD) No.10420 of 2022
Date :26/05/2022

SS/VR/SAR:IV/28.05.2022 : 5P/6C