



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

and

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.11333 of 2022

WEB COPY

M.Chokkalingam

.. Petitioner

Vs.

1.The Revenue Divisional Officer,
Sivagangai, Sivagangai District.

2.The Inspector of Police,
Thiruppachetti Police Station,
Sivagangai District.

3.Sethupillai

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the 1st respondent to remove the unlawful obstruction/inconvenience made by the 3rd respondent, near the North side Entrance of the Arulmigu "Sri Malaimandala Srinivasa Perumal Temple, situated in Survey No.177/8, West side of the Thiruppachetti to Padamathur Road, Thiruppachetti, Sivagangai District.

For Petitioner : Mr.R.Murugappan

For R1 & R2 : Mr.N.Satheesh Kumar

Additional Government Pleader

ORDER

(Order of the Court was made by S.S.SUNDAR.J.,)

This writ petition is filed for issuance of a Writ of Mandamus directing the first respondent to remove the unlawful obstruction/inconvenience made by the third respondent, near the North side Entrance of the Arulmigu "Sri Malaimandala Srinivasa Perumal Temple, situated in Survey No.177/8, West side of the Thiruppachetti to Padamathur Road, Thiruppachetti, Sivagangai District.

2.Heard Mr.R.Murugappan, learned counsel appearing for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the respondents 1 and 2.

3.The petitioner is a resident of Thiruppachetti and worshipper of the Temple called "Sri Malaimandala Srinivasa Perumal Temple"situated in Survey No.177/8.



4.It is the case of the petitioner that the entrance of the Temple near the North Side to reach the Temple from the main road, is encroached by the third respondent and has caused obstruction, inconvenience and nuisance to the general public and devotees. Therefore, the petitioner has sent a representation on 12.05.2022 to the respondents 1 and 2, to initiate action against the third respondent for removal of unlawful obstruction, by exercising power under Section 133 Cr.P.C. Since the respondents 1 and 2 have not initiated any action under Section 133 Cr.P.C., for removal of unlawful obstruction, the above writ petition is filed.

5.Section 133 of the Criminal Procedure Code, reads as follows:

"133. Conditional order for removal of nuisance.-

(1)Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this of behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a)that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b)that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c)that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or

(d)that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e)that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f)that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent,

substance, tank, well or excavation, or owning



or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the Order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

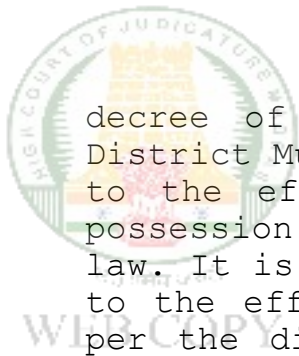
(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation- A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes."

Since a public place is defined as one, which includes any property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purpose, the learned counsel appearing for the petitioner would state that the place in front of the Temple, which is classified as Sarkar poramboke, can be treated as a public place and action under Section 133 of Cr.P.C., is warranted.

6.The learned Additional Government Pleader appearing for the official respondents submitted that earlier the third respondent has filed a suit and obtained an order of injunction as against the official respondents and therefore, the respondents filed a petition before the Civil Court for vacating the same. However, the learned counsel appearing for the petitioner has produced a copy of the plaint in O.S.No.138 of 2011 before this Court as well as the judgment and decree passed in A.S.No.2 of 2015 by the Sub-Court, Sivagangai.

7.From the documents furnished by the learned counsel appearing for the petitioner, it appears that earlier, the third respondent has filed a civil suit against the State and trustees of the Temple and obtained a decree of injunction and restraining the defendants in the suit from interfering with the peaceful possession and enjoyment of the third respondent. However, on appeal preferred by the defendants 3 and 4, before the Sub-Court, Sivagangai, the



decree of the trial Court passed in O.S.No.138 of 2011 by the District Munsif Court, was set aside and the injunction was modified to the effect that the defendants shall not interfere with the possession of the third respondent otherwise than by due process of law. It is seen that further direction was issued by the Civil Court to the effect that the second defendant should hold an enquiry as per the direction of this Court issued in W.P(MD)No.9344 of 2011 dated 22.08.2011.

8.The learned counsel appearing for the petitioner submitted that the direction in the writ petition was referred to in the judgment of the lower appellate Court and the nature of direction to the second defendant was to remove the encroachment of the third respondent. It is seen that the third respondent approached the civil Court only after getting the order of this Court in the writ petition. From the judgment in A.S.No.2 of 2015 before the Sub-Court, Sivagangai, dated 14.11.2018, this Court is of the view that the Civil Court has accepted the fact that the third respondent is an encroacher of the Government poramboke land. Therefore, Tahsildar concerned as directed by this Court earlier in the writ petition, has got power.

9.Since the Tahsildar/Revenue Divisional Officer is the competent to initiate proceedings to remove the unlawful obstruction / nuisance caused by any one in any public place in terms of Section 133 of Cr.P.C., this Court, without expressing any opinion on the merits of the petitioner's claim, direct the Revenue Divisional Officer or the Tahsildar concerned, to take appropriate action either under Section 133 of Cr.P.C., or under the provision of the Land Encroachment Act, as the case may be, to remove the encroachment made by the third respondent, after following due process of law. It is made clear that the third respondent shall be put on notice, before taking action under the Land Encroachment Act or under Section 133 of Cr.P.C. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

With these directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

Ns



To

1.The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.

2.The Inspector of Police,
Thiruppachetti Police Station,
Sivagangai District.

+1 CC to M/s.R. MURUGAPPAN, Advocate (SR-25621[F] dated
14/06/2022)

+1 CC to M/s.SPL.GP (SR-25908[F] dated 15/06/2022)

W.P. (MD) .No.11333 of 2022
13.06.2022

nsn(CO)

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