



W.P.(MD)No.7928 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7928 of 2019

and

W.M.P.(MD)Nos.6271 & 18301 of 2019

and

W.M.P.(MD)No.985 of 2020

1.Thangavel Naicker (Died)

2.T.Santha

3.T.Paulpandian

4.T.Rajapandian

... Petitioners

(Petitioners 2 to 4 are impleaded by this Court vide order dated 01.07.2022 made in W.M.P.(MD)No.8812 of 2022)

Vs.

1.The District Collector,
Madurai District.

2.The Revenue Divisional Officer,
Usilampatti,
Madurai District.

3.The Tahsildar,
Peraiyur Taluk,
Madurai District.



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4.The Executive Officer,
Elumalai Town Panchayat,
Peraiyur Taluk,
Madurai District.

5.The President,
Elumalai Town Panchayat,
Peraiyur Taluk,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent made in Na.Ka.No. 38737/2015/J2, dated 01.03.2019 and quash the same and consequently, direct the respondents to pass appropriate orders in the light of the documents standing in the name of the temple as early as 1864 thereby recognizing the petitioner's legitimate right and enjoyment of the property in Survey No.448/2 to the extent of 0.90.5 H.A. in Elumalai Village, Peraiyur Taluk, Madurai District.

For Petitioners	: Mr.M.Mahaboob Athiff for Mr.P.Sivachandran
For R1 to R3	: Mr.K.Balasubramani Special Government Pleader
For R4	: Mr.A.Thiagarajan
For R5	: no appearance



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ORDER

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The writ petitioner is a hereditary trustee of the denominational temple. The petitioner seeks protection of the land comprised in Survey No.448/2 in Elumalai Village, Peraiyur Taluk to the extent of 0.90.5H.A.

2. The respondents took the stand that since the said land has been classified as sarkar poramboke in the revenue records, they are entitled to lay road across the petition mentioned land. The petitioner therefore filed W.P.(MD)No.13166 of 2015. By order dated 27.11.2017, the said writ petition was disposed of by directing the District Collector to consider the petitioner's claim and pass suitable orders. Pursuant thereto, the impugned order dated 01.03.2019 came to be passed rejecting the petitioner's request. Questioning the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition as well as the materials enclosed in the typed set of papers and also the additional typed set of papers. He called upon this Court to quash the impugned order and allow the writ petition as prayed for.



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4. Per contra, the learned Special Government Pleader appearing for the respondents submitted that admittedly in the revenue records, the petition mentioned property has been classified as sarkar poramboke. While conceding the existence of the temple, he pointed out that by laying a road on the small portion of the petition mentioned land, the temple will not be put to any kind of hardship. He also stated that the impugned action was taken only because of the objection raised by the members of the locality. He submitted that the impugned order is well reasoned and that it does not call for any interference. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. I am more than satisfied that the petitioner temple has been in existence even prior for more than a century. In the typed set of papers, the extracts from the 'A' register have been enclosed. In Column No.12, the existence of the temple had been clearly noted. More than anything



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else, in the earlier round of litigation, a counter affidavit was filed admitting that land comprised in Survey No.448/2 measuring an extent of 2.24 acres solely belongs to Perumal Kovil and it has been classified as Government Poramboke. It is relevant to note that the counter affidavit filed by the then Tahsildhar was not only on his behalf but also on behalf of the District Collector, Madurai District.

7. Thus, having taken such a clear and definite stand in favour of the temple in the earlier round of litigation, I fail to understand as to how a contra stand was taken in the impugned order. By availing the provisions of Right to Information Act, the petitioner has obtained records from the board of revenue. They have also been enclosed in the additional typed set of papers. It is seen therefrom that Survey No.448/2 belongs to Perumal kovil Mandapam. I am thus more than satisfied that the petition mentioned property has always been treated as belonging to the petitioner temple. It is not open to the respondents to casually interfere with the said right.



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8. As pointed out by the learned counsel appearing for the petitioner, a denominational temple enjoys certain fundamental rights under Article 26 of the Constitution of India. He also would state that even though the right to property may have ceased to be a fundamental right, it is nevertheless a constitutional right under Article 300A of the Constitution of India. The impugned order has been passed without taking note of the relevant materials. Merely because in Column Nos.3 & 4, it has been mentioned as sarkar and poramboke, that would not automatically mean that the property in question would not belong to the temple. The expression 'poramboke' has been considered by the Madras High Court in the decisions reported in ***(1971) 1 MLJ 190 (N.S.Kuppuswamy Odayar vs. The Panchayat Narthangudi)*** and ***2006-3-L.W.368 (Thiruvengkada Gounder (died) and three others Vs. Ammaiappan 2 Kothandaraman)***. The expression 'poramboke' is normally misconstrued. It only means that the property would fall outside the tax assessment net.



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9. In this view of the matter, the impugned order is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN,J.

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