



W.P.(MD)No.4871 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.06.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.4871 of 2017

and

W.M.P.(MD)Nos.4141 of 2017 & 13730 of 2018

V.D.M.R.M.M.Annamalai

... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Additional Director of Town Panchayat,
Sivagangai District,
Sivagangai.

3.The Executive Officer,
Puduvayal Town Panchayat,
Puduvayal,
Karaikudi District,
Sivagangai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the third respondent in Na.Ka.NO. 396/2016/A2, dated 17.02.2017 and quash the same.



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For Petitioner	: Mr.S.Madhavan
For R1 & R2	: Mr.M.Prakash Additional Government Pleader
For R3	: Mr.S.Bharathi

ORDER

Heard the learned counsel on either side.

2. The petitioner had put up construction on the banks of Pillaiyar Kovil Oorani in Puduvayal. Approval was obtained from the third respondent in the year 2014. The said approval stood cancelled by the impugned order dated 17.02.2017 passed by the third respondent. Challenging the same, this writ petition has been filed.

3. The primary ground on which the cancellation order has been passed is that construction has come up on a water body. The petitioner's counsel draws my attention to the order dated 18.12.2015 passed by the Hon'ble Division Bench in W.P.(MD)No.8425 of 2015. The said Writ Petition was filed by one Abubakkar Siddiq. The petitioner's counsel produced photographs indicating that one J.J.Restaurant was put up in



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front of the petitioner's construction and that it clearly constitutes an encroachment. The encroacher was the petitioner in the aforesaid writ petition. The third respondent herein was shown as the fifth respondent in the said writ petition. The Hon'ble Division Bench dismissed the writ petition after observing that he had been set up by the panchayat board and that Public Interest Litigation lacks *bona fides*. The writ petitioner herein was held entitled to title over the water body. It was noted by the Hon'ble Division Bench that a temple will stand on a different footing and therefore Section 14(A) which was introduced by Tamil Nadu Act 26 of 1948 cannot come in the way.

4. The petitioner's counsel has produced convincing materials before this Court that the water body had already been compounded only to prevent encroachment. To raise revenue for the temple, the commercial building is sought to be put up.

5. From the photographs, one can note that the construction is only on the banks of the water body. The tank bed area is intact. The petitioner who is managing the temple has not un-authorizedly put up



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any construction. They moved the local body and the local body issued proceedings dated 29.09.2014 and 11.11.2014. The local body which consciously granted approval in favour of the petitioner cannot on its own cancel the same. I have already found that the primary ground on which the cancellation order rests is not sustainable.

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

24.06.2022

Index : Yes / No
Internet : Yes/ No
rmi

To

- 1.The District Collector,
Sivagangai District,
Sivagangai.
- 2.The Additional Director of Town Panchayat,
Sivagangai District,
Sivagangai.



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G.R.SWAMINATHAN,J.

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