



WP(MD)No.24320 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2022

Pronounced on: 25.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

W.P.(MD)No.24320 of 2022

Kasiraman

... Petitioner

-VS-

1. The District Collector,
Thoothukudi District,
Thoothukudi.
2. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
3. The Deputy Superintendent of Police,
Vilathikulam, Thoothukudi District.
4. The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.
5. The Tahsildar,
Vilathikulam Taluk,
Thoothukudi District.
6. The Inspector of Police
Vilathikulam Police Station,
Thoothukudi District



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7. The Sub Inspector of Police,
Soorangudi Police Station,
Thoothukudi District.

8. Royappan
(Impleaded vide Court order dated 11.11.2022 in
Crl.M.P(MD) No.18897/2022 in WP(MD)No
24320/2022 by SSKJ) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the sixth Respondent to provide adequate police protection for erecting the compound wall around the Petitioner's temple properties by considering the Petitioner's representation dated 12.10.2022.

For Petitioner	:Mr.V.Sathurthiraja for Mr.C.Santhanakumar
For R1 to R7	:Mr.R.Sivakumar Government Advocate(Crl.Side)
For R8	: Mr. D.Nallathampi *****

ORDER

The Petitioner had filed the above Writ Petition to issue a Writ of Mandamus, directing the sixth Respondent to provide adequate Police protection for erecting the compound wall around the Petitioner's temple properties by considering the Petitioner's representation dated 12.10.2022.



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2. The learned Counsel for the Petitioner submitted that when the Church had filed a suit, the same was dismissed. Against which, an appeal was filed. The appeal was also dismissed. Against which, a Second Appeal had been filed. The contention of the Defendant before the suit in the Trial Court in the Second Appeal was upheld against which, the Church had filed Special Leave Petition before the Honourable Supreme Court, which was also dismissed. He further submitted that in the Writ Petition in WP(MD) No.12226 of 2021, the Petitioner had impleaded the Church as party. However, in the present Writ Petition, he had not impleaded the Church as party. Hence, there is a suppression of facts. He further submitted that in the earlier Petition in W.P(MD)No.12226 of 2021, when he had filed the Writ Petition, the Special Leave Petition preferred by the Church against the decree granted in favour of the Petitioner herein in second appeal was pending. Subsequently the Special Leave Petition was dismissed on 01.04.2022. As on today, the Church has no right or title as held by the Hon'ble Supreme Court based on the judgement of the Second Appeal before this Court in S.A.No.277 of 1993. It is the further submission of the learned Counsel for the Petitioner that after the Church having agitated their rights upto Special Leave Petition has now instituted



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fresh suit and it is pending before the Sub Court, Kovilpatti. In which the Petitioner herein had filed a petition Under Order 7 Rule 11 of the Code of Civil Procedure to reject the Plaint, as already first round of litigation ended in favour of the Petitioner herein. Now the Petition is still pending before the Sub Court, Kovilpatti.

3.The learned Government Advocate (Crl.Side) would submit that already there was a communal clash between Hindu Nadar Community and the Christian Nadar Community, based on which, case had been registered. Now, the dispute had arise because of the Church and the Temple. The Petitioner herein seeks to construct compound wall around the Temple, whereas, the Church is disputing to the same by claiming its pathway. Therefore, the Writ Petition was filed earlier by the Petitioner herein seeking diretion from this Court to the Police to keep off from the civil dispute. Subsequently, the subject matter was referred to Revenue Divisional Officer, where the Revenue Divisional Officer has also passed order stating that after the civil dispute ended in finality successful parties shall approach for patta.

4.The learned Counsel for the eighth Respondent submitted that



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the order of the Revenue Divisional Officer is against the Petitioner herein. He ought to have filed an appeal. Instead, he had approached this Court. He had taken contra stand in this Writ Petition stating that the Police has to provide protection to him whereas, in the earlier Writ Petition, he had sought direction from this Court directing the Police to keep off from the issue. Therefore, the Petitioner cannot be permitted to take contra stand and play hot and cold simultaneously before the same forum.

5. On perusal of the typed set furnishd by the learned Counsel for the Petitioner, it is found that this Court in S.A.No.277 of 1993, had reversed the findings given by the Trial Court and the Appellate Court in favour of the Church of South India Trust Association and set aside the judgment passed by the Appellate Court in favour of the Church of South India. As per the judgment in S.A.No.277 of 1993, the Petitioner's possession had been proved. The Revenue Divisional Officer cannot agitate the same, as a further Appellate Tribunal against the findings of this Court in the Second Appeal. The explanation offered by the learned Counsel for the Petitioner in the Writ Petition filed earlier seeking direction against the Police to keep off is justified, when



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the SLP was pending before the Honourable Supreme Court. Now, the judgment in the Second Appeal had been confirmed and the SLP preferred by the Church of South India was dismissed by the Honourable Supreme Court.

6.In the light of the above, the Petitioner need not go before the Revenue Divisional Officer. He can seek patta straightaway on the basis of his claim established in the Second Appeal. Therefore, what had been stated by the learned Counsel for the eighth Respondent is not accepted in the light of the judgment in Second Appeal, which confirmed in the SLP. The contention of the learned Counsel for the eighth Respondent that the Petitioner had already sought relief against the Respondent Police not to interfere and now seeking Police protection is contrary and should not be allowed, also is rejected.

7.After the suit filed by the Church of South India seeking injunction against the defendants, the temple and its trustess, had been negatived in the Second Appeal, once again filing the same suit through a different person had also been considered by this Court in A.S.No..... that a *res judicata* is attracted. Therefore, the apprehension of the



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WEB COPY Petitioner that there will be interference from the Church of South India and its agents is found justified. When the Second Appeal decree is in favour of the Temple and its trustees, the Petitioner can very well seek direction of Police protection.

8.In the light of the above, the objection by the eighth Respondent is rejected. This Petition is allowed. The Petitioner is within his right to protect the Temple by putting up a compound wall, when the claim of the private Respondent that there is a pathway was negated in the light of the evidence available before the Court concerned. Therefore, the Police are duty bound to protect the judgment passed by this Court in the Second Appeal in faovur of the Temple.

9.The District Collector as well as the Superintendent of Police, Thoothukudi, are directed to provide protection to the temple authorities as per law in the light of the judgment in S.A.No.277 of 1993 and confirmed by way of SLP by the Honourable Supreme Court. Also, the Petitioner shall move the District Collector or Appellate Authority for patta in continuation of the order passed in the Second Appeal.



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WEB COPY In the result, the Writ Petition is allowed. No costs.

Index : Yes / No
aav/cmr

25.11.2022

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7. The Sub Inspector of Police,
Soorangudi Police Station,
Thoothukudi District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

aav/cmr

order made in
W.P.(MD)No.24320 of 2022

25.11.2022