



WP (MD) No. 13025 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.11.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 13025 of 2017
and
WMP (MD) Nos. 10090 & 10091 of 2017

Rockfort Welfare Association
(Regd. No. 106/2012)
represented by its Secretary
R. Sundararajan
No.10/15, West Street
Malaikottai, Tiruchirapalli - 620 002
Tiruchirapalli District

.. Petitioner

Versus

1. Union of India
represented by its Secretary
Ministry of Environment and Forests
New Delhi - 110 001
2. State of Tamil Nadu
represented by the Secretary
Tourism and Culture
Fort St. George, Chennai - 600 009
3. The Director General
Archaeological Survey of India
Janpath, New Delhi



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4. The Superintendent of Archaeology
Archaeological Survey of India
Chennai Circle
Fort St. George, Chennai - 9
5. The Conservation Assistant
Archaeological Survey of India
Trichy Sub-Circle
Main Guard Gate
Tiruchirapalli - 02
6. The Joint Commissioner
Hindu Religious and Charitable Endowments
Ammamandapam Road
Ammamandapam, Srirangam
Tiruchirapalli - 06
7. The District Collector
Tiruchirapalli District
Tiruchirapalli
8. The Commissioner
Tiruchirapalli Corporation
Tiruchirapalli - 01
Tiruchirapalli District
9. The Revenue Divisional Officer
Tiruchirapalli
Tiruchirapalli District
10. The Tahsildar
Tiruchirapalli Taluk
Tiruchirapalli District
11. Mr. M. Roshan
Son of Manavala Pillai
No.1, West Street
Malaikottai
Tiruchirapalli -02
Tiruchirapalli District



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12. Arulmighu Thayumanaswamy Thirukovil
represented by its Executive Officer/
Assistant Commissioner
Malaikottai, Tiruchirapalli - 2
(12th respondent was impleaded as per the order
dated 11.06.2018 made in WMP (MD)No. 11160 of 2018)

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the Respondent Nos. 6 and 7 to remove the construction at Door No. 33-A, Mahavidhvan Meenakshi Sundaram Pillai Street (Pasumadam), West Street, Rock Fort, Tiruchirapalli - 02 undertaken by the 11th respondent within the protected area of the Ancient Monument of Pallava Cave Temple at Rock Fort Temple, Malaikottai, Tiruchirapalli, Tiruchirapalli District, within the time stipulated by this Court.

For Petitioner : Mr. T. Lajapathi Roy

For Respondents : Mr. R. Murugappan for R1 and 3 to 5
Mr. P. Subbaraj
Special Government Pleader for RR2, 6, 7, 9 & 10
Mr. R. Baskar
Standing Counsel for R8
M/s. J. Anandhavalli for R11
Mr. M. Saravanan for R12

ORDER

[Order of the Court was made by **R. MAHADEVAN, J.**]

The petitioner is the Secretary of Rock Fort Welfare Association, Tiruchirappalli. He has filed this writ petition for issuance of a Writ of Mandamus directing the Respondents 6 and 7 to remove the construction at Door No. 33-A, Mahavidhvan Meenakshi Sundaram Pillai Street (Pasumadam), West Street, Rock Fort, Tiruchirapalli, undertaken by the 11th



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respondent within the protected area of the Ancient Monument of Pallava Cave Temple at Rock Fort, Malaikottai, Tiruchirapalli, within a time frame to be stipulated by this Court.

2. According to the petitioner, Pallava Cave Temple is a notified ancient monument and is in existence from 6th Century A.D. It is further stated that the cave bears the relics of Buddha, Lord Vinayaka etc. and there are two caves believed to be leading to Tanjore and Thiruverambur. The inscription of Tamil Brahmi Scripts and Vattezhuthu is also found in the caves. The Rock Fort Temple is an iconic symbol of the Tiruchirapalli City and it was built by Nayaks of Madurai in a spectacular style on a rock with a height of 237 feet from the ground. The panoramic view of the city from the temple is striking particularly at sunset. Before the Nayaks, it was the Pallavas who carved small cave temples on the Southern side of the rock.

3. The grievance projected by the petitioner is that the 11th respondent is one of the joint owners of M/s. Sarathas Textile Showroom at No.45, NSB Road, Tiruchirapalli and he started to put up a huge construction very close to the pallava cave temple by digging the earth upto a depth of 15 feet. For the purpose of such construction, concrete pillars were erected by laying the foundation. The construction work went on round the clock



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ignoring the vociferous protest of the people at large. The petitioner therefore submitted a representation to the respondent authorities, but no action was taken thereof. However, due to the continued protest undertaken by the public, the 11th respondent stopped the construction with the car shed. It is further stated by the petitioner that if the building is permitted to be constructed by the 11th respondent, the entire monument will be blocked from public view. With an intent to protect and safeguard the ancient monument, the petitioner is before this court with the present writ petition as a Public Interest Litigation.

4. The learned counsel appearing for the petitioner invited the attention of this Court to Section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and contended that no person, either an owner or occupier of a protected area, shall construct any building within the protected area or carry out any mining, quarrying, excavating, blasting or any operation of like nature or utilise any part thereof in any other manner without the permission of the Central Government. In the present case, the 11th respondent had put up the construction very close to the monument leaving little or no space in between, thereby violating the provisions of the said Act. Further, Section 18 (1) of the said Act specifically states that the use of the protected area or any part thereof for the purpose of cultivation, if cultivation does not involve any digging of not more than 0.5



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meter of soil from the surface. In the present case, for the purpose of putting up construction, the 11th respondent dug 15 feet for laying concrete pillars to ensure a strong foundation and thereby attempted to erase or dismantle the ancient monument.

5. The learned counsel for the petitioner also submitted that earlier, one Chinna Kacharayar along with his family resided in the subject property and he was driven out for the purpose of leasing out the said property to the 11th respondent for huge amount. Further, the information obtained by the petitioner through RTI disclosed that Archaeological Survey Department has not granted any building planning permission in favour of the 11th respondent. It is also submitted that earlier, the petitioner filed WP (MD) No. 11163 of 2012 before this Court and it was disposed of on 28.09.2016 in which the statement of the Joint Commissioner of HR & CE Department was recorded to the effect that the 11th respondent has violated the conditions of lease and made constructions in the protected area. It was further recorded in the said order that the Joint Commissioner of HR & CE Department has already issued a notice to take action against the 11th respondent. According to the learned counsel for the petitioner, despite such observations made by this Court in the earlier writ petition, no further action was taken against the 11th respondent.

The petitioner has therefore submitted a representation on 16.11.2016 to the



official respondents, which was not considered. Stating so, the learned counsel prayed that appropriate direction be issued to the official respondents to take action against the 11th respondent and to remove the constructions made by him in the protected area.

6. Denying the averments made in the writ petition, the sixth respondent / Joint Commissioner of HR & CE Department, Tiruchirapalli filed a counter affidavit, wherein, it was *inter alia* stated that the petitioner has filed this writ petition with malafide intent to harass the respondents and they have not approached this court with clean hands and are guilty of *suppressio veri* and *suggestion falsi*. According to the sixth respondent, the property in question was earlier leased out by the Executive Officer of the temple to one Chinna Kancharayar. However, the said tenant had sub-let the premises to one Saravanan, Thiagarajan and others by violating the lease conditions. Therefore, action was taken under Section 78 of the HR & CE Act and the tenant as well as the sub-tenants were evicted. Thereafter, the Executive Officer of the temple granted lease of the property in favour of the 11th respondent herein. When it was noticed that the 11th respondent was making some construction, the Executive Officer of the temple, by proceedings dated 16.04.2012, directed the 11th respondent to stop any construction work and accordingly the 11th respondent stopped further construction work and is also



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strictly following the instructions given to him. It is at this stage that WP (MD) No.11163 of 2012 was filed with the same prayer, as sought for in the present writ petition and this court, by order dated 28.09.2016 only observed that it is open to the Joint Commissioner, HR & CE Department to take appropriate action if it is required. The counter affidavit of the sixth respondent further proceeds to state that the Executive Officer of the Temple filed a report dated 31.01.2017 stating that no permanent structure was built up and only temporary tinned roof has been put up on concrete pillars; and that, by reason of such structure put up by the 11th respondent, no damage has been caused to the ancient site and the same was also confirmed by the sixth respondent by conducting physical inspection. It is further stated that the temple has leased out 30 items of properties in the locality to different tenants and there are a lot of concrete structures put up by third parties. The sixth respondent also stated that the entire stretch of Malaikottai Street runs to a length of 2 kilometer in the protected site and there are more than 1000 concrete house buildings put up and they are contiguous with each other. The temple is totally depending on the rental income from the tenants which are used for performance of poojas on festivals, maintenance of the temple, salary to the employees etc. In any event, the structure put up by the 11th respondent is not a hindrance either to the appearance of the monumental site or to have a free access of the same.

Therefore, the sixth respondent prayed for dismissal of the writ petition.



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7. The contesting 11th respondent filed a counter affidavit, wherein, it is *inter alia* stated that the site which is under his occupation and the temporary shed put up by him, do not fall within the declared protected area of the Pallava caves at all. According to him, he is one of the Partners of Sarathas Textiles Showroom and the petitioner's intention is to tarnish his image by filing the present writ petition. There are numerous other permanent buildings adjacent to the Pallava caves, which are also re-constructed periodically. However, the petitioner has chosen to project the 11th respondent alone as the one, who violates the lease conditions and causes damage to the protected site. The counter affidavit further proceeds to state that the 11th respondent has not put up any permanent building or structure that would jeopardise the protected monument, but put up only a temporary shed for the purpose of storage and it does not affect the view of the cave in any manner. Whereas, the petitioner has casually filed the present writ petition without understanding the scope of protected area, prohibited area and regulated area. The nature of structure as it exists in the subject matter of the land, does not come within the definition of 'construction' as defined under Section 4 (dc) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

Even though the 11th respondent had erected pillars in the subject matter of



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the land, they were not in the manner as alleged by the petitioner. It is also stated that the 11th respondent is an authorised occupant of the subject land by way of lease from December 2011 and has been regularly paying the lease rent to the 12th respondent and has not violated any of the terms of the lease. Thus, according to the 11th respondent, the writ petition filed by the petitioner will have to be dismissed, as not maintainable.

8. The 12th respondent / Executive Officer of Arulmigu Thayumana Swamy Thirukoil, filed a detailed counter affidavit *inter alia* stating that the subject property is a tin sheeted temporary shed bearing Door No.39A of Mahavidhwan Meenakshisundaram Pillai Street and is being used by the 11th respondent as a godown. When several superstructures abutting the Pallava cave temple are in existence, it is not known as to why the petitioner has filed this writ petition to take action only against the 11th respondent alone. The rental income received by the 12th respondent temple is a major source of income, which is being utilised for performing poojas to the deity, maintenance of the temple and payment of salary to employees. Denying the allegation raised by the petitioner that general public have conducted an agitation against the construction put up by the 11th respondent, the 12th respondent stated that there was no such agitation having been conducted by any one and the petitioner appears to have deliberately targeted the 11th



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respondent by filing writ petitions. By producing the particulars of the lands owned by the temple within Trichy City, name and other details of tenants and the nature and period of lease, the 12th respondent in its counter affidavit stated that the 11th respondent is a statutory tenant under the 12th respondent and is regularly paying the lease rent without any default; and he put up only a temporary tin sheeted roof supported by concrete pillars, which in no way jeopardises the ancient protected site. The 12th respondent therefore stated that the writ petition is liable to be dismissed as devoid of merits.

9. Heard the learned counsel appearing for all the parties and perused the materials placed before this court.

10. In this public interest litigation, the petitioner sought a direction to the official respondents to remove the superstructure put up by the 11th respondent, in the protected area of the ancient monument of Pallava Cave Temple, by stating that the entire monument will be blocked from the public view. On the other hand, it is the case of the respondents that the 11th respondent is a lessee under the 12th respondent and he put up only a temporary tin sheeted roof, using it as godown; and the superstructure so put up by the 11th respondent did not cause any prejudice to the protected monument. Therefore, according to the respondents, the writ petition filed by



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the petitioner, to gain cheap popularity and wreck personal vengeance against the 11th respondent, cannot be permitted to be maintained in the nature of public interest litigation.

11. At the outset, be it noted, the court has time and again reiterated that the historical and archaeological monuments, which stand as testimony to cultural, artistic, traditional and natural heritage of this land, have to be preserved and passed on to the future generations; and it is the duty of the Government to ensure that appropriate action is taken to protect such monuments or sites.

12. Admittedly, the Pallava cave temple at Tiruchirapalli is a protected ancient monument under the maintenance of the Archaeological Survey of India. On appreciation of the above factual scenario, it is evident that the 11th respondent has put up a shed by tin sheets on the concrete pillars, for storage purpose. According to the petitioner, such construction put up by the 11th respondent has the tendency of affecting the protected site, whereas the respondents stated that such construction does not cause any hindrance to the appearance or free access to the cave temple. Irrespective of the rival contentions, this court is of the view that the respondents 4 and 5, are the competent authorities under the Ancient Monuments and Archaeological Sites



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and Remains Act, 1958, to state, whether the construction put up by the 11th respondent in the protected site, would jeopardise the visibility of and access to the temple and if so, remove the same, but they have not expressed any opinion with regard to the claim of the petitioner, in their representation dated 16.11.2016, till date. Therefore, it would be just and appropriate to direct those respondents to file their report, after conducting inspection and as per law.

13. Accordingly, this court directs the respondents 4 and 5 to consider the representation of the petitioner dated 16.11.2016, conduct inspection in the presence of the petitioner as well as 11th respondent and file a report, on merits and in accordance with law, to the official respondents, within a period of four weeks from the date of receipt of a copy of this order. If the report discloses that the construction put up by the 11th respondent would cause prejudice to the cave temple, the official respondents shall take necessary action for removal, after following due process of law, within a period of eight weeks thereafter. It is open to the petitioner as well as the 11th respondent to submit documentary evidence in support of their respective claims before the authority concerned at the time of enquiry.



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14. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are is closed.

(R.M.D., J.) (J.S.N.P., J.)

17.11.2022

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Index : Yes / No

Internet : Yes / No

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