



W.P.No.4452 of 2020 & W.M.P. No.5268 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.4452 of 2020 &

W.M.P. Nos.5268 of 2020 & 27432 of 2022

A.S. Jahangir

...Petitioner

Vs.

1. The District Collector
Kallakurichi District.
2. Block Development Officer
Ulunthurpet, Kallakurichi District.
3. Sheik Mustak
4. Syed hamed
5. The Tahsildar
Ulundhurpet Taluk
Kallakurichi District.

... Respondents

(R5 impleaded vide Court order dated 10.01.2023 in
WMP No.6885 of 2020)

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st and 2nd respondents to take action against the respondents 3 and 4 who violated the Tamilnadu District Municipality Building Rules 1972 and carrying on illegal construction by considering the complaint given by the petitioner dated 13.12.2019.



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For Petitioners : Dr. A Thiyagarajan, Senior Counsel
for Mr. M. Nallathambi
For R1, R2 & R5 : Ms. R.L. Karthika, Government Advocate
For R3 & R4 : Mr. T. Rajakalifulla, Senior Counsel
for Ms. R. Poornima

ORDER

(Order of the Court was delivered by V.M.VELUMANI, J.)

The petitioner has come out with the present Writ Petition praying to issue a Writ of Mandamus directing the 1st and 2nd respondents to take action against the respondents 3 and 4 who violated the Tamilnadu District Municipality Building Rules 1972 and carrying on illegal construction, by considering the complaint given by the petitioner dated 13.12.2019.

2. Heard the learned Senior Counsel appearing for the petitioner, learned Government Advocate appearing for the respondents 1 and 2 and learned Senior Counsel appearing for the respondents 3 and 4 and perused the entire materials on record.



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3. The case of the petitioner is that he has right to function as a Muthavalli of the private pallivasal situate in survey No.803/5, Mulla Street, Elavanssurkottai Village and Post, Ulundurpet Taluk, Kallakurichi District, and to conduct kasawath. The 3rd respondent and others have purchased the land in S. No.803/2, and started illegally demolishing the existing pallivasal in the possession of the petitioner and started annexing the property along with their property. The respondents 3 and 4 started putting up construction in S. No.803/2 and 5 without obtaining any permission from the 1st respondent. On a complaint given by the petitioner, the 2nd respondent directed the respondents 3 and 4 to put up construction only after getting approval from the 1st respondent. In spite of such direction, the respondents 3 and 4 are proceeding with illegal construction and hence the petitioner has come out with the present petition.

4. Learned Senior Counsel appearing for the respondents 3 and 4 submitted that the petitioner is not a hereditary Muthavalli. Muthavalli is elected by general body every year consisting of 300 worshippers. The building of mosque was in a dilapidated condition and hence the respondents



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3 and 4 have decided to renovate the same after obtaining permission for demolishing the dilapidated portion. Accordingly the respondents 3 and 4 applied to the Pidagam Panchayat for demolition and reconstruction of the Mosque and, by order dated 28.01.2022, planning permission was granted by the Pidagam Panchayat. According to the learned Senior Counsel appearing for the respondents 3 and 4, in view of the renovation of the existing Mosque, there is no necessity for the respondents 3 and 4 to obtain permission from the 1st respondent and hence they started construction as per the approved plan. In order to avoid any technicality, the respondents 3 and 4 have given application to the 1st respondent for renovating the Mosque. This Court, by order dated 26.02.2020 in W.M.P. No.5268 of 2020, had ordered to maintain status quo and the respondents 3 and 4 stopped the construction. It is further contended by him that the petitioner has filed O.S. No.192/2019 for the very same relief now sought for in this Writ Petition. The petitioner has not approached this Court with clean hands as he has suppressed the suit filed by him and prayed for dismissal of the Writ Petition.

5. The contention of the learned Senior Counsel appearing for the



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respondents 3 and 4 is that the relief sought for in the Writ Petition and the suit is one and the same. The respondents 3 and 4 have filed copy of the plaint in O.S. No.192/2019 filed by the petitioner in the typed set of papers filed along with the petition filed by them to vacate the status quo order passed by this Court on 26.02.2020. In the said suit the petitioner has sought for the following reliefs.

- A) declare the pre-existing right of Muthavalliship of the plaintiff over suit Pallivasal.
- B) Consequently restrain the defendants and their men and agents from in anyway preventing the plaintiff from performing and administering the day-to-day affairs of the suit pallivasal as a Muthavalli, by means of a permanent injunction;
- C) restrain the defendants and their men and agents from in anyway putting up further construction in the suit pallivasal, by means of a permanent injunction.

In the Writ Petition the petitioner has sought for a direction to the



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respondents 1 and 2 to take action against the respondents 3 and 4 who violated the Tamil Nadu District Municipality Building Rules 1972/ Tamil Nadu Panchayats Building Rules, 1997. A cursory reading of the affidavit filed in support of this petition shows that the reliefs sought for in the suit and in the Writ Petition are different. Therefore, the contention of the learned Senior Counsel appearing for the respondents 3 and 4 that the petitioner has claimed the very same relief by suppressing the material fact and not approached this Court with clean hands is contrary to the materials on record.

6. It is the case of the petitioner that the respondents 3 and 4 constructed the Mosque without any permission from the 1st respondent. On the other hand it is the case of the respondents 3 and 4 that they have obtained permission for renovating the existing Mosque which is now in a dilapidated condition. Learned Senior Counsel appearing for the respondents 3 and 4 produced order passed by the President, Pidagam Panchayat dated 28.01.2022 granting permission to put up construction. He also relied on the order dated 17.11.2022 passed by the 2nd respondent in



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respect of his contention and submitted that the respondents 3 and 4 has put up the construction only as per the approved plan and also sought for permission from the 1st respondent and the same is pending with the 1st respondent.

7. Considering the above submission of the learned Senior Counsel appearing for the petitioner as well as learned Senior Counsel appearing for the respondents 3 and 4, the respondents 3 and 4 are directed to give a fresh application to the 1st respondent enclosing all the documents relied on by them before this Court within two (2) weeks from the date of receipt of a copy of this order and on receipt of such application, the 1st respondent is directed to consider the same, after giving opportunity to the petitioner as well as the respondents 3 and 4 and pass orders on merits, within a period of 12 weeks thereafter. Till such time, the order of status quo ordered by this Court will continue. It is open to the petitioner, respondents 3 and 4 to produce relevant documents to substantiate their case.

8. With the above directions, the Writ Petition is disposed of. No



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costs. Consequently connected miscellaneous petitions are closed.

(V.M.V.,J.)

(R.H.,J.)

10.01.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The District Collector
Kallakurichi District.
2. Block Development Officer
Ulunthurpet, Kallakurichi District.



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V.M.VELUMANI, J.
and
R. HEMALATHA, J.
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10.01.2023