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W.P.Nos. 20593 & 23496 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. Nos. 20593 & 23496 of 2018

W.P. No. 20593 of 2018

1. A. Lakshmanan
2. Padmanabhan
3. M. Madhukumari
4. N. Sethu

..Petitioners

Vs.

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 3.
2. The Zonal Officer,
Zone X,
Greater Chennai Corporation,
Kodambakkam, Chennai.



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3. The Executive Officer,
Vilayattu Vinayagar Temple,
T. Nagar, Chennai – 17.

4. The Joint Commissioner,
HR & CE, Nungambakkam,
Chennai – 34.

(R4 suo motu impleaded as per order
dt. 10.08.2018 by NKKJ & SBJ in
W.P. No. 20593 of 2018)

5. The Divisional Manager,
Southern Railways,
Chennai -3.

(R5 impleaded vide order dated 31.01.2019
made in W.M.P. No. 773/2019 in W.P. No.
20593/2018 by CJ & MDJ)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying
for issue of a Writ of Certiorarified Mandamus to call for the records of the
impugned proceedings bearing Ma.A. 10. Na.Ka.No. 6971/2018 dated
27.07.2018 issued by the 2nd respondent to the petitioners and quash the
same and consequently restrain the 2nd respondent or any one acting under
him from illegally evicting the peitioners from their respective shops located
within the premises of Vilayattu Vinayagar Temple, New No. 56A, Old

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No.29A, Old No.1, Ranganathan Street, Railways Border Road, T. Nagar,
Chennai – 17.

For Petitioners	::	Mrs. Hema Sampath, Senior Counsel for Mr.S. Raveekumar
For Respondents	::	Mr.A.C. Manibharathi, Standing Counsel for R1 & R2 Mr.S. Suriya for M/s.A.S. Kailasam Associates for R3 Mr.N.R.R. Arun Natarajan, Standing Counsel for R3 & R4 Mr.P.T. Ramkumar for R5

W.P. No. 23496 of 2018

Arulmigu Vilayattu Vinayagar Temple
rep. by its Executive Officer,
Ranganathan Street,
T. Nagar, Chennai 600 017.

..Petitioner

Vs.

1. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Chennai 600 003.
2. Zonal Officer,
Zone X, Greater
Greater Chennai Corporation,
T.Nagar, Chennai 600 017.



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3. Divisional Railway Manager (Works)
Chennai Division,
Southern Railway, Chennai – 3.

(R3 impleaded vide order dated 31.10.2019 made in
W.M.P. No. 458 of 2019 in W.P. No. 23496/2018
by CJ & MDJ)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying
for issue of a Writ of Certiorarified Mandamus to call for the records of the
2nd respondent which culminated in the impugned order M.A.10.Na.Ka.No.
6971/2018 dated 28.08.2018, quash the same and forbear the respondents
from taking any action against the petitioner Temple and its 4 shops located
at Ranganathan Street, Railway Border Road, T. Nagar, Chennai 600 017.

For Petitioner	::	Mr.S. Surya for M/s.A.S. Kailasam Asso.
For Respondents	::	Mr.A.C. Manibharathi, Standing Counsel for R1 & R2 Mr.P.T. Ramkumar, Standing Counsel for R3

COMMON ORDER

(Made by S. Vaidyanathan,J.)

W.P. No. 20593 of 2018 has been filed by the so-called tenants
of Arulmigu Vilayattu Vinayagar Temple challenging the proceedings

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bearing Ma.A.10. Na.Ka.No. 6971/2018 dated 27.07.2018 issued by the 2nd respondent to the petitioners and quash the same and consequently restrain the 2nd respondent or any one acting under him from illegally evicting the petitioners from their respective shops located within the premises of Vilayattu Vinayagar Temple, New No. 56A, Old No.29A, Old No.1, Ranganathan Street, Railways Border Road, T. Nagar, Chennai – 17.

2. W.P. No. 23496 of 2018 has been filed by the aforesaid Temple challenging the proceedings of the 2nd respondent therein dated 28.08.2018 and forbear the respondents from taking any action against the Temple and its four shops located at Ranganathan Street, Railway Border Road, T. Nagar, Chennai – 17.

3. For the sake of brevity, the petitioner in the respective writ petitions are referred to as “tenants” and “Temple”.



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4. The sum and substance of the issue on hand is that notices dated 27.07.2018 and 28.08.2018 have been issued to the tenants and Temple for removal of encroachment put up by them.

5. According to the tenants, shop Nos 56A/1, 56A/2, 56A/3 and 56A/4, located at Old No.1, Ranganathan Street, Railway Border Road, Vilaiyattu Vinayagar Temple, T. Nagar, Chennai – 17, within the Temple premises, namely, Vilaiyattu Vinayagar Temple, are run by them and they are lawful tenants under the Temple. However, the 2nd respondent Corporation, by means of the impugned proceedings dated 27.07.2018, on the ground that they are encroachers on the road, have asked them to vacate the shops. Hence, W.P. No. 20593 of 2018 has been filed at their instance.

6. The case of the Temple is that it was originally on Ranganathan Street and during 1992, there was a proposal by Southern Railway to demolish the existing Overbridge and to erect the Over Bridge at a slightly different location adjoining the Railway Station. As the Temple existed at the place where the new Overbridge was proposed to be constructed, the



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Southern Railway wanted the Temple to be shifted and relocated during the construction of the new Overbridge and agreed in writing that the Temple would be constructed afresh after the construction of the new Overbridge. The correspondence between the Southern Railway and the respondents is evidenced by letters dated 04.08.1992, 13.08.1992 and 17.08.1992. It was also agreed between the Southern Railway and the respondents in W.P. No. 23496 of 2018 that lands belonging to the Corporation would be given to Southern Railway and lands belonging to Southern Railway would be given to Corporation of Chennai and accordingly, land in Survey No. 5496/1 which was Government Road Poramboke, was given to the Railways and land in Eswaran Koil Street was given by the Railways to the Corporation of Chennai and the same was also evidenced by Resolution No. 765/1993 dated 03.03.1993 of the Council of Corporation. Therefore, in effect, the land which is the subject matter of W.P. No. 23496 of 2018 was given to the Railways after due sanction by the Collector in exchange of the land belonging to the Railways on Madley Road, which was given to the Corporation. Therefore, according to the Temple, the Corporation never had and has no rights whatsoever in respect of the said land. Moreover,



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after the construction of the new Over Bridge, the Temple was relocated to the present position under the new Over Bridge and there are four shops belonging to the Temple, situated adjacent to the Temple itself under the new Over Bridge from 1993 onwards. According to the Temple, the occupants of all the shops belonging to the Temple have recognised the Temple as the landlord and have been paying rents for the past 30 years. While so, in 1985, the respondents in the said writ petition stating that the said shops were encroachments on the road, tried to evict the tenants from the Temple premises. One of the tenants, by name, Alagesan, filed O.S. No. 5018/1985 for a permanent injunction, which was decreed by judgment and decree dated 24.07.1986 restraining the respondents from interfering with the peaceful possession and enjoyment of the said Alagesan. Again, in 2009, when the respondent Corporation tried to forcibly evict Alagesan's son, Lakshmanan, the 1st petitioner in W.P. No. 20593 of 2018, he filed O.S. No. 3748/2009 before the XVIII Assistant City Civil Court for a declaration, injunction and other reliefs. By judgment and decree dated 28.03.2013, it was held that the suit property belongs to the Temple and that the plaintiff therein/1st petitioner in W.P. No. 20593 of 2018 was a lawful tenant under



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the Temple. It was also held that when the plaintiff had proved that the shop was only within the Temple premises and was not on the road, then the onus was on the Corporation to prove that there was encroachment. Further, it was observed that except a bare denial, no other documents were produced by the Corporation and no evidence was let in to show that the encroachments were hindrance to pedestrians. It was further held that as the suit property was within the Temple premises and encroachments by the plaintiff were not proved by the Corporation, the plaintiff was entitled to get the relief of permanent injunction against the Corporation and accordingly, the suit was decreed. According to the Temple, the said judgment and decree had become final as the same had not been challenged by the respondents in the said writ petition. Though the tenants were regularly paying rents, suddenly notices dated 27.07.2018 were issued to the tenants as though their shops were encroachments on the Corporation Road and another notice dated 28.08.2018 was issued to the Temple stating that the Temple itself was an encroachment. Hence, W.P. No. 23496 of 2018 was filed by the Temple.



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7. The Temple, being the 3rd respondent in W.P. No. 20593 of 2018 has filed its counter in the said writ petition, supporting the stand of the petitioners therein/tenants.

8. The Corporation has filed counter in W.P. No. 23496 of 2018 stating that as per the Extract from Town Survey Land Register, it was found that the land in S.No. 5496/1, Block No.126, T. Nagar Revenue Village at Ranganathan Street junction of Railway Border Road comes under the classification of Sarkar land and usage of the said land is being classified as Road. It was further stated that the Special Officer, Greater Chennai Corporation, had passed a resolution vide Resolution No. 430/2018 dated 07.06.2018 by sanctioning for the construction of skywalk connecting the Railway Foot Over Bridge to T. Nagar Bus Terminus and also sanctioning the request of the Railway Authorities for the construction of staircase and Escalator and also for removal of the encroachment at the junction of the Railway Border Road and Ranganathan Street. It is also stated that the Temple is maintained by the Hindu Religious and Charitable Endowments Department, and therefore, a letter dated 14.08.2018 has been

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addressed to the Commissioner, Hindu Religious and Charitable Endowments Department requesting to remove the Temple in the interest of the common public at the Railway Boarder Road Junction of Ranganathan Street and 4 numbers of shops allotted by them for facilitating the Railway Authorities to construct the Escalator and staircase at the Railway Border Road. Further a notice under Section 220 read with Section 222 Chennai City Municipal Corporation Act, 1919 dated 27.07.2018 has been served to the tenants under the Temple and also a notice under Section 220 read with 222 Chennai City Municipal Corporation Act 1919 dated 28.08.2018 has been served to the Temple. The Corporation has also initiated action and removed other encroachments, namely, 22 numbers of shops in the Railway Border Road on 28.08.2018 with the help of Railway Protection Force, Tamil Nadu Police Department and TANGEDCO except the Temple and the tenants (4 numbers of shops) at the Railway Border Road junction of Ranganathan Street.

9. The Railways have filed a counter stating that the entire land in T.S. No. 5496/1 does not belong to them as stated by the Temple. Only an



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area of 235.17 sq.m. was handed over to Railway for the purpose of construction of Foot Over Bridge. According to the Railways, the exchange of land was between the Corporation and the Railways and the Temple cannot take advantage of these land exchange proceedings. It is further stated that the 3rd respondent in W.P. No. 20593/2018/Temple has not been authorised by the Railway Administration or given any licence/permission to construct the Temple in T.S. No. 5496/1 at any point of time. It is further stated that in O.S. No. 3748 of 2009 filed by A. Lakshmanan, the 1st petitioner in W.P. No. 20593 of 2018, the Railway Administration has not been made as a party and in the schedule of property in the said suit, the survey number of the property has not been mentioned. It is further stated by the Railway Administration that at the time of construction of new Foot Over Bridge, it was only advised to relocate the Temple and no written consent or permission was given to construct Temple in T.S. No. 5496/1, which is a Government Poramboke land. By letter dated 28.05.1993, the Railways stated that it is agreeable to shift the existing Temple to new location as required and agreed to by the Corporation and HR & CE Departments. Neither any document has been filed by the Temple to show



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that valid licence/permission has been obtained from Government Authorities to construct the Temple in T.S. No. 5496/1 nor any document to prove their title. Besides, pursuant to the communication dated 04.02.2019 sent by the Section Engineer (Works), Saidapet, Southern Railways to the Tahsildar, Guindy Taluk to make necessary arrangements to provide survey number of land in which Vinayagar Temple and Street Shops are located, the Tahsildar, by reply dated 08.02.2019, has stated that Survey No. 5496/1 is a road and that the Vinayagar Temple and other shops are encroachments on the said road.

10. Heard both parties.

11. As per the extract from Town Survey Land register, it is very clear that the land in Survey No. 5496/1, Block No. 126, T. Nagar Revenue Village at Ranganathan Street Junction of Railway Border Road is a poramboke land and it is classified as Road. The sketch produced also clearly shows that the Temple and the tenants have encroached upon the road. Though it has been vehemently contended on behalf of the Temple that the respondent Corporation has not given any opportunity to submit its



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explanation, we are not inclined to accept the same. The Temple, which was a party to the suit in O.S. No. 3748 of 2009, should have produced documents in the said suit itself in support of its claim and cannot put forth such a stand at this stage, when all the documents are before this Court to show that T.S. No. 5496/1 is a poramboke land and it is classified as a road. We are of the view that it is a clear case of encroachment.

12. Though Mrs. Hema Sampath, learned senior counsel for the tenants and Temple would submit that the land may belong to the Government, but it does not belong to the Corporation and the Government is not a party, it is a fact that there is encroachment and no one has any right to squat on the property, which is a busy thoroughfare and we are of the view that the encroachment needs to be removed. Even in the suit filed in O.S. No. 3748 of 2009, the survey number has not been mentioned and the suit filed also appears to be a collusive one between the Temple and the tenants. Therefore, we are not inclined to accept the same.



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13. These writ petitions are pending before this Court for more than 5 years. Since the Temple has no valid title, it is a clear case of encroachment. When there is an encroachment, in the considered opinion of this Court, the same has got to be removed. A direction is issued to the Temple Authorities to shift the deities to another place within 15 days from the date of receipt of a copy of this order without causing any damage to them failing which as per the internal communication dated 08.02.2019, it is for the Railway Administration to take action. After identification of a proper place for construction of temple and after completion of construction of temple, the deities can be shifted to the newly constructed temple as per the customary procedure. Since the Temple itself has been ordered to be removed, there is no other option for the tenants, who, under the guise of paying rents to the Temple, are taking shelter in occupying Government land illegally, which is nothing but an attempt to encroach upon Government land. Once the Temple itself has no title or valid documents, the claim of tenancy and receipt of rents by the Temple can merely be construed as an absurdity and wisecrack.



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14. Though it is a fit case to impose costs on the Temple Authorities and tenants for their venture to squat on the Government property, thereby curtailing implementation of a public welfare scheme to come into effect, we refrain to do so for the present.

15. With the above directions, these writ petitions stand dismissed.

No costs.

nv

(S.V.N.J.) (K.R.S.J.)
21.08.2023

To

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 3.
2. The Zonal Officer,
Zone X,
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3. The Executive Officer,
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4. The Joint Commissioner,
HR & CE, Nungambakkam,
Chennai – 34.

5. The Divisional Manager,
Southern Railways,
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S. VAIDYANATHAN,J.

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