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W.P.No.33362 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.33362 of 2014

and

MP Nos.1 to 3 of 2014

Sri.Trinethra Dasabuja Anjeneyar Seva Trust
Rep. By its President S.Parthasarathy
391/1A, Paper Mill Colony Road,
Anjaneya Koil Stop, Kaveri R.S, Erode 7.

... Petitioner

Vs.

1.The Secretary to Government
Housing and Urban Development Department,
Secretariat, Chennai – 9.

2.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nandhanam,
Chennai – 600 035.

3.The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board, Erode,
Commercial Complex, Gandhiji Road,
Erode.

4.C.Madheswaran

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in his proceedings in L.A.1/165/08 dated 11.11.2014 and quash the same and consequently forbear the respondents herein from interfering with the peaceful possession administration of the petitioner temple.

For Petitioner : Mr.V.P.K.Gowtham

For Respondent-1 : Mr.S.Ravichandran,
Additional Government Pleader.

For Respondents-2 and 3 : Mr.D.Veerasekaran,
Standing Counsel for TNHB.

For Respondent-4 : Mr.S.Thangavel

ORDER

The present writ petition has been filed to quash the order dated 11.11.2014 passed by the third respondent informing the petitioner-Trust that they cannot claim title or ownership in respect of the subject property, which belongs to the Tamil Nadu Housing Board.

2. Mr.S.Parthasarathy, S/o.P.N.Sundararajan, who is the



resident of Tamil Nadu Housing Board Colony, Pallipalayam, Erode, filed sworn affidavit on behalf of Sri Thrinethrathasapuja Anjaneyar Seva Trust in his capacity as the President of the petitioner-Trust.

3. The writ petitioner states that in Survey Nos.388/1A and 391/1 in Pallipalayam Village, Tiruchengode Taluk, Namakkal District, a temple, namely, Kongu Thirupathi for worshipping the Deities Anjaneyar, Venkatesa Perumal and Panchamuga Vinayagar is situated and managed by the petitioner-Trust, namely, Sri Trinethra Dasabuja Anjaneyar Seva Trust. The writ petitioner-Trust was registered under the Tamil Nadu Societies Registration Act on 31.10.2007 and therefore, the petitioner-Trust is a Society.

4. The Trust/Society was registered for the effective management of the said temple and performance of daily poojas, kumbabishekam etc. The public at large are visiting the temple and therefore the petitioner-Trust requested the respondents to protect the temple from the outsiders.



5. The petitioner has stated that the temple was constructed in Survey Nos.388/1A and 391/1 in Pallipalayam Village, Tiruchengode Taluk, Namakkal District, which belongs to the respondent-Department.

6. The petitioner filed Civil Suit in OS No.274 of 1999 on the file of the District Munsif Court, Tiruchengode to restrain the third respondent from interfering with the management of the temple and to grant injunction. The injunction was granted and the third respondent asked the petitioner-Trust to withdraw the suit. The suit was dismissed as withdrawn on 01.09.2005.

7. The petitioner-Trust made several representations to the respondents to regularise the temple and allot the land to the petitioner-Trust on concessional rate.

8. The respondents passed an order fixing the total amount of Rs.18,77,825/- and the petitioner was not in a position to pay such a huge amount.



9. The subject matter was placed before the High Level Committee for consideration and approval. The petitioner received communication from the Chairman of the respondent-Board dated 30.10.2009 vide Board's Resolution No.9.04. The Board had accepted the recommendations of the High Level Committee to allot the land on collection of the present market value to the petitioner-Trust and the Board's Resolution was sent to the Government for approval.

10. The first respondent-Government sent a reply to the petitioner-Trust stating that the allocation rights of the Government has been ceased and all the remaining unsold portions of the land were converted as shares belonging to the Tamil Nadu Housing Board represented by the second respondent. The subsequent representations submitted by the petitioner went in vain. The respondents did not allot the land by regularising the occupation of the petitioner-Trust and the temple constructions. Since there is no allotment order made by the respondent-Board, the fourth respondent is frequently threatening the petitioner-Trust. Thus the petitioner-Trust is constrained to move the present writ petition.



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11. The counter-affidavit filed by the third respondent reveals that the lands in question and the other lands measuring about 117 acres were acquired by the Government of Tamil Nadu Housing Board Department under Land Acquisition Act in the year 1981 and the Award was passed in the year 1987 and the lands were handed over to the Tamil Nadu Housing Board of Salem Housing Unit Office on 12.06.1987. Either from the date of acquisition or at the time of handing over the said land, there was no temple or deity at all in the land in question. Actually, the Scheme for development of the site was approved by the Director of Town and Country Planning/Chennai in 1114/1994.

12. In the said Scheme and as per the layout approved, some areas have been earmarked under saleable area for public purposes such as shops, school, community hall, fire service, police station, temple etc. Though the suit property is earmarked for temple purpose, it is a saleable area. Further to sell the public saleable premises, the respondents have to give wide publications to call for the tenders both open and closed and sell it



in public auction to the highest bidder and confirm the same after getting approval from the Board. Knowing this, the petitioner-Trust and other Trustees have registered the Society in the name and style of 'Sri Anjali Anjaneyar Trust'. They have developed by constructing buildings, and erection of many idols such as Anjaneyar, Venkatesa Permal etc., by the allottees and the public. Since the revenue towards the cost of the plots was not realised to the second and third respondents, a police complaint was lodged by the Executive Engineer, Erode Housing Unit on 12.11.1999 to vacate the temple site. A criminal case in Crime No.171 of 1999 was registered on the file of Pallipalayam Police Station against Anjali Anjaneyar Trust and others. Thereafter civil suit was filed in OS No.274 of 1999 and it was dismissed as withdrawn on 01.09.2005. At that stage, the present writ petitioner Mr.S.Parthasarathy has formed a Trust by name 'Sri Thrinethra Daspuja Anjaneyar Seva Trust' and registered it on 31.10.2007. Thus the petitioner has encroached the property belonging to the Tamil Nadu Housing Board.

13. The issue commenced only after 1999 when the present writ petitioner along with three others tried to construct the temple building



and it was stopped by police action. There is no evidence to prove that any temple was in existence either at the time of acquisition of land by the Government or at the time of handing over the land to the Tamil Nadu Housing Board.

14. An Agenda was prepared by the Board to capitalise the site value of Rs.18,77,825/- and to inform the petitioner-Trust about the capitalised cost of the land and allotment order may be issued after collecting the above land cost. It is to be clearly mentioned in the said order that the temple was ordered to be sold in public auction in Board Memo No.RC.Allot/3.3/57815/04 dated 30.09.2004, wherein the upset price for public auction of the temple site on that date was fixed as Rs.18,77,825/-. The writ petitioner requested to give the land on concessional rate and the matter was referred to the High Level Committee.

15. The Resolution passed by the High Level Committee was forwarded to the Government and the Government has not taken any decision to allot the land to the petitioner or to anybody. The Tamil Nadu Housing Board has formulated a policy regarding fixing the cost of the



temple sites in Board's Resolution No.9.03 dated 30.12.2013 and it has been resolved as follows:-

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“In respect of the land marked as temple and encroached and utilised only as a place of worship may be fixed land cost adopting the land value at the ruling rate or the guideline value, which is higher and on the acceptance of the encroacher, the site may be allotted.

16. The High Level Committee is not competent to finalise any matter of allotment. It is only an Advisory Committee constituted to give recommendations for sensitive issues to the Tamil Nadu Housing Board. The document dated 31.10.2009 submitted by the writ petitioner is only an official document of correspondence and resolution of the Tamil Nadu Housing Board. It is not a communication sent to the writ petitioner. The writ petitioner is illegally in occupation of the property belonging to the Tamil Nadu Housing Board and therefore, the petitioner is not entitled to take contradictory stand as per his own whims and fancies.



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17. The fourth respondent, who is the private person, filed counter-affidavit admitting the fact that more than 100 acres from three villages in Tiruchengode Taluk, Namakkal District were acquired for the benefit of the Tamil Nadu Housing Board. The Tamil Nadu Housing Board has earmarked 10% of the total areas as common site. The fourth respondent states that even prior to the acquisition of land, one Mr.Sivaraman and his close relatives had installed a Vinayagar deity in an open space of a portion of Survey No.391 and it is called as 'Arulmighu Panchamuga Vinayagar Temple'.

18. The fourth respondent also states that the residents of the Tamil Nadu Housing Board Colony had constructed two more temples namely, 'Arulmighu Venkatesa Perumal Temple' and 'Arulmighu Padmavathi Thayaar Temple' in the site earmarked as temple site for the worship of the residents of the said Colony and the said temples are commonly known as 'Kongu Tirupathi Temple' in that locality. The fourth respondent states that the Tamil Nadu Housing Board Colony residents



contributed for the construction of the temple and the petitioner is mis-representing and suppressing the true facts and therefore, the writ petitioner-Trust is not entitled for any relief and the present writ petition is to be dismissed.

19. The petitioner though named as 'Sri Trinethra Daspuja Anjaneyar Seva Trust', which is registered under the Tamil Nadu Societies Registration Act, 1975. Sri Trinethra Daspuja Anjaneyar Seva Trust was a registered Society of the year 1998. Pertinently the land was acquired in the year 1981. Thus long after the acquisition of land by the Government and handover the same to the Tamil Nadu Housing Board, the petitioner-Society was registered and the temple was constructed. However, the petitioner-Trust namely 'Sri Thrinethrathasapuja Anjaneyar Seva Trust' was registered on 31.10.2007. The Deed of Trust was executed setting out the purpose and objects.

20. Mr.S.Parthasarathy and his wife Mrs.P.Shakila are the Board of Trustees along with three other Trustees, namely, Mr.R.Balaji, Mr.G.Vijaya Raghavan and Mr.R.Vasudevan Battachar. The petitioner-



Trust themselves have categorically admitted the fact that the temple was constructed in Survey Nos.388/1A and 391/1 in Pallipalayam Village, Tiruchengode Taluk, Namakkal District, which belonged to the Tamil Nadu Housing Board. The petitioner-Trust have further admitted that there is no allotment order issued by the Tamil Nadu Housing Board allotting the subject land in favour of the petitioner-Trust. There is no further permission granted by the respondents to the petitioner-Trust for construction of temple.

21. Thus the land, which belongs to the Tamil Nadu Housing Board, was encroached by the petitioner-Trust and the petitioner-Trust have constructed a temple by abusing the religious sentiments of the people of that area and is attempting to grab the land, which belongs to the Housing Board. Emotional exploitation by few individuals under the protection of public sentiments, at no circumstances, be encouraged by the Courts. Such persons are to be construed as Anti Social Elements, since they abused and exploited the religious sentiments of the people at large. Every religious activities are to be conducted in accordance with law and by the Authority of Law.



22. Article 26 of the Constitution of India speaks about the 'Freedom to Manage Religious Affairs'. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to administer such property in accordance with law. Therefore, the Constitution emphatically speaks that management of religious affairs are to be administered in accordance with law. Article 26 of the Constitution is a fundamental right of citizen and the freedom extended to manage the religious affairs. However, all such affairs must be in accordance with law is the restriction imposed under the Constitution. Thus the illegality in religious activities at no circumstances be accepted and such illegalities are liable for action under law.

23. In the present case, no doubt the petitioner-Trust have got a right to profess their religion by constructing temple for worship. However, such religious practices must be done in accordance with law and encroachment of land belonging to the Housing Board and construction of temple without proper building permission or otherwise, cannot be approved by the High Court, which is directly in violation of the restriction contemplated on the fundamental right to manage the religious affairs under



the Constitution. Under the cover of religious sentiments, no person can be allowed to commit or continue any illegality or unconstitutionality. The rights of all citizen are to be protected. Every citizen has got fundamental right to profess any religion of his/her choice. While professing their choice of religion, such citizen are bound to administer the affairs of such religious activities in accordance with law.

24. As far as the petitioner-Trust is concerned, they have encroached the land that belongs to the Tamil Nadu Housing Board and has constructed the temple illegally in the encroached land. The Tamil Nadu Housing Board Authorities are unable to evict the petitioner-Trust, since they have invoked religious sentiments of the people of that locality. In order to sustain their encroachments and illegal constructions under the cover of sentiments, the petitioner-Trust is attempting to escape from the clutches of law. If an ordinary citizen encroaches the land, which belongs to the Housing Board, the Authorities would have evicted them by following the procedures as contemplated under the Act and the Rules.

25. In the present case, the Housing Board had informed the



land cost to the petitioner asking them to pay the said land cost for allotment of the subject land in favour of the petitioner. The land cost of Rs.18,77,825/- was fixed and communicated to the petitioner-Trust, which was also not paid by them. Contrarily, the petitioner-Trust is prolonging the matter one way or the other, initially by instituting suit and thereafter by filing writ petition without accepting the land cost and seeking regularisation without making any payment.

26. The petitioner-Trust has to take decision either to pay the land cost and secure the allotment from the hands of the Tamil Nadu Housing Board or to hand over possession of the land to the Tamil Nadu Housing Board, to enable them to deal with the subject property in accordance with law.

27. In the present case, the temple has already been constructed by the petitioner-Trust illegally. Therefore, the Authorities are bound to deal with the property in accordance with law and since the petitioner has violated not only the constitutional provisions but also committed an illegal act of encroachment by putting up illegal construction in the land belonging



to the Tamil Nadu Housing Board.

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28. In view of the facts and circumstances, the following orders are passed:-

(1) The relief as such sought for in the present writ petition is rejected.

(2) The respondent / Tamil Nadu Housing Board is directed to evict the writ petitioner and take possession of the subject land within a period of two (2) weeks from the date of receipt of a copy of this order.

(3) On taking possession the respondent / Tamil Nadu Housing Board shall fix the higher value as per the guidelines issued by the Tamil Nadu Housing Board and thereafter, issue notification for conducting public auction by following the procedures as contemplated. All eligible persons may be permitted to participate in the public auction, which is to be conducted by following the procedures. The highest bidder in the public auction shall be permitted to deposit the bid amount and thereafter, the Tamil Nadu Housing Board shall execute the sale deed in favour of the highest bidder.

(4) If there is no successful bidder for the up-set price fixed,



then the Tamil Nadu Housing Board shall take a decision and hand over the temple to the department of Hindu Religious and Charitable Endowments Department, who in turn shall administer the same under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

29. With the abovesaid directions, the present writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

27-03-2023

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Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No



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