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WP Nos.19997 and 22428 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition Nos.19997 and 22428 of 2018
and
Writ Miscellaneous Petition No.23417 of 2018

Annai Anjugam Nagar Residents' Welfare
and Cultural Association
(Regd.No.312/1987)
Urapakkam West
Kancheepuram District – 603 211
Rep., by its Secretary
K.Selvarajan.

.. Petitioner in
both WPs

Versus

- 1.State of Tamil Nadu,
Rep., by its Secretary to Government,
Rural Development Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector
Kancheepuram District
Kancheepuram.
3. The Assistant Director (Panchayats)
Collectorate
Kancheepuram District
Kancheepuram.



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4. The Revenue Divisional Officer
Chengalpattu,
Kancheepuram District.

5. The Block Development Officer (Village Panchayats)
Kattankolathur Panchayat Union,
Kancheepuram District.

6. The Tahsildar
Chengalpattu Taluk
Kancheepuram.

.. Respondents 1 to 6
in both the WPs

7. Haribabu

.. 7th Respondent in
WP.No.19997/2018

WP.No.19997 of 2018: Petition filed under Article 226 of the Constitution of India praying for issuing a Writ of Mandamus, directing the respondents 2 to 6 to take immediate and appropriate action to remove the encroachment already made in the name of “Satchi Vinayagar Kovil” in the public utility space earmarked for Park in the approved lay out of Selvaraj Nagar-II & Extension in Annai Anjugam Nagar, Urapakkam (West), Kancheepuram District, Kancheepuram based on the petitioner's representation dated 26.07.2018, within a time frame fixed by this Court and consequently, directing the respondents 1 to 6 to take all steps to ensure the public utility space earmarked for Park in the approved lay out of Selvaraj Nagar – II & Extension in Anna Anjugam Nagar, Urapakkam (West), Kancheepuram District, Kancheepuram is free from any encroachment in future.

WP.No.22428 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondents to take immediate and appropriate action to remove the encroachments made in the public utility spaces earmarked in the approved lay outs in Annai Anjugam Nagar Area, Urapakkam (West), Kancheepuram District especially the encroachments listed in the petitioner's representations dated 28.05.2018 and continue to protect them from being encroached upon in future, within a time frame fixed by this Court.



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For Petitioner : Mr. C. Rajaguru
For Respondents : Mr. A. Selvendran,
Special Government Pleader for R1 to R6
in both the WPs
No appearance for R7 in WP.No.19997/2018

COMMON ORDER

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

The relief sought in both the writ petitions is to direct the respondent authorities to remove the encroachments made in the public utility spaces earmarked in the approved layouts of Selvaraj Nagar-II & Extension in Annai Anjugam Nagar, Urapakkam (West), Kancheepuram District, Kancheepuram, on the basis of the representations dated 28.05.2018 and 26.07.2018 submitted by the petitioner Association.

2. According to the petitioner Association, Annai Anjugam Nagar is an approved layout formed during the year 1987. As a condition precedent of approval of the layout, the original owner had gifted 10% of the total land to the local body for utilising it for public park, playground, community hall etc. However, the land earmarked for public purpose was sought to be utilised for some other purpose. Hence, the petitioner Association filed WP No. 14456 of 1999 for a mandamus, forbearing the respondent authorities from according



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approval / permission to utilisation of the space earmarked for any other purpose, in Annai Anjugam Nagar, Urappakkam West, Kanchepeuram District, and also obtained an interim order on 26.08.1999. When the said interim order was operating, in the year 2007, an extent of 9 grounds of public utility space in Selvaraj Nagar (Parts I and II) layout in Annai Anjugam Nagar, Urappakkam West was proposed to be handed over to one Sri Guru Raghavendra Brindavana Trust, for their exclusive use. Aggrieved by the same, a resident by name B.Sundarraaj preferred WP.No.24362 of 2007 for a mandamus forbearing the said Trust from grabbing the said public utility space earmarked as park in the layout of Selvaraj Nagar Part I and II, and got an interim order. Thereafter, by an order dated 04.07.2012, WP.No.24362 of 2007 came to be closed. On the other hand, WP.No.14456 of 1999 came to be disposed of, on 29.10.2014, by directing the respondents 2 to 4 therein to conduct survey with the help of Revenue Department and to ascertain as to whether there are any encroachments available as on date and if there are any encroachments found in the space earmarked for public utility, the appropriate authority should initiate action to remove the encroachments in accordance with law, within a period of four months. The petitioner further stated that since the aforesaid order has not been complied with, the petitioner made representation to the respondent authorities requesting to remove the encroachments made in the



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subject lands. Upon receipt of the same, the second respondent, instead of taking action for removal of the same, issued a memo dated 10.04.2015 to the sixth respondent to take appropriate action on the petitioner's representation and file a report. Therefore, the petitioner collected information relating to all the encroachments and submitted a representation dated 28.05.2018 to the second respondent to remove the encroachments and protect the public utility spaces, but the same is pending without any action. In the mean while, during July, 2018, the seventh respondent distributed pamphlets stating that it was proposed to construct *Satchi Vinayagar Temple* in the land earmarked for public purpose and that the *Bhoomi Pooja* was schedule to be held on 03.08.2018. Aggrieved by the same, the petitioner association submitted a representation dated 26.07.2018 to the respondents 1 to 6 to prevent the seventh respondent from in any manner constructing the said temple. However, the representation dated 26.07.2018 has not been considered. Therefore, the present two writ petitions.

3. Upon notice, the fifth respondent filed a detailed counter affidavit in WP.No.22428 of 2018, wherein, it is *inter alia* stated that earlier, the petitioner filed WP No. 14456 of 1999 before this Court for similar relief. In that writ petition, on behalf of the official respondents, a counter affidavit was



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filed stating that there is no encroachment in the layout in Annai Anjugam Nagar, but there are encroachments in M.G. Nagar, II Extension. In the light of the same, a direction was issued by the Division Bench of this Court on 29.10.2014 in WP No. 14456 of 1999 to conduct a survey and ascertain whether there are any encroachments made in the space earmarked for public utility and if there are any encroachments, it shall be removed in accordance with law. It is further stated in paragraph nos.9 and 10, as follows:

“9.I submit that community hall, school, shop site etc., are retained by the developer/ promoter of the layout. Those lands does not come under the purview of open space reservation land (OSR land) and further it is submitted that only park, roads and other reserved areas are gifted to local body and these areas are maintained by the local body.

10.I humbly submit that as far as the eviction process in respect of park and other reserved areas which are gifted to the local body, a notice u/s 131 (2) of Tamil Nadu Panchayat Act 1994 was issued by the 5th respondent through his proceedings Na.Ka.No.3/14/Vu.Vu. Dated 28.06.2019. This respondent is now taking necessary steps to remove the encroachment which are under the control of this respondent, as such the notice u/s 131(2) of Tamil Nadu Panchayat Act 1994 dated 28.06.2019 issued to encroachers.”

Stating so, the fifth respondent sought appropriate direction to proceed further in the writ petition.

4. The seventh respondent also filed a counter affidavit in WP No.19997 of 2018 stating that in the land comprised in Survey No.46/1B, a church was already constructed. In the land in Survey No.46/2, a Park was constructed by the Management of C.S.I. Church at Selvaraj Nagar,



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Urapakkam. In the land in Survey No.45/3, a Marriage hall had been constructed and the same is used for commercial purpose. That apart, a mosque was constructed in the land in Survey No.7/2A in Suresh Nagar and R.C. Church was constructed in Survey Nos. 4/2, 3 and 4, which were earmarked for park. However, the petitioner did not question the construction of Church, Marriage Hall or mosque for oblique reasons, but filed the present writ petition against the act of the seventh respondent in constructing the temple. Further, the temple in question has been constructed during the year 2006 and it was not constructed during the pendency of the writ petition, as alleged. The house tax receipt dated 12.08.2006 issued in the name of the temple would indicate that the temple is in existence from 2006. Even the name of the street where the temple has been constructed is "*Satchi Vinayagar Street*" and this was named as such in the year 1994 at the time of according approval. It is also stated that the temple is in existence only in Selvaraj Nagar and not in Annai Anjugam Nagar, as projected by the petitioner. Except the petitioner, no one had objected to the construction of the temple. Therefore, the seventh respondent prayed for dismissal of the writ petition.

5. We have heard the learned counsel for the petitioner as well as the learned Special Government Pleader for the respondents 1 to 6 and also perused the materials placed on record.



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6. It could be seen from the pleadings that earlier, the petitioner Association filed WP No.14456 of 1999 for the very same relief as sought in this writ petition. The said writ petition was disposed of by the Division Bench of this court, on 29.10.2014, the relevant portion of which reads as follows:

"5.It is relevant to extract paragraph No.6 of the counter affidavit:

6.I respectfully submit that on verification it is found that there is no encroachment in layouts in Annai Anjugam Nagar. Only in M.G.Nagar II Extension, there are encroachments and it is submitted that after due and proper survey and with the help of Revenue Department it is found that there are encroachment and I undertake that the encroachments will be removed in accordance with law and I further undertake that no encroachment will be made in future by anybody.

6.The above undertaking given by the third respondent is recorded. In the light of the above undertaking given by the third respondent in paragraph No.6 of the counter affidavit, this writ petition is disposed of, with a direction to the respondents 2 to 4 to conduct survey with the help of Revenue Department and to ascertain as to whether there are any encroachments available as on date and if there are any encroachments found in the space earmarked for public utility, the appropriate authority is directed to initiate action to remove the encroachments in accordance with law. The above said exercise shall be commenced and completed within a period of four months from the date of receipt of a copy of this order. "

Subsequently, a notice dated 28.06.2019 has been issued under Section 131 (2) of the Tamil Nadu Village Panchayat Act, 1994. However, till date, the said order has not been complied with. At this juncture, the learned Special Government Pleader appearing for the respondent authorities submitted that reasonable time may be given to conduct survey and take appropriate action, in accordance with law, in the light of the aforesaid order of this court dated

29.10.2014.

<https://www.mhc.tn.gov.in/judis>



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7. Therefore, this Court, without going into the merits of the case, directs the respondent authorities to comply with the order of this court, dated 29.10.2014 passed in WP.No.14456 of 1999 by conducting survey and proceeding further, with regard to removal of encroachments in the subject lands, after affording an opportunity of hearing to the petitioner, seventh respondent and other parties concerned and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

8. With the above direction, both the Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

List the matter after twelve weeks under the caption 'For Reporting Compliance'.

(R.M.D., J) (M.S.Q., J)
15.02.2023

ay/rsh
Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation: Yes / No



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WP Nos.19997 and 22428 of 2018

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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To

1. Secretary to Government,
State of Tamil Nadu,
Rural Development Department,
Fort St.George, Chennai - 600 009.
2. The District Collector
Kancheepuram District
Kancheepuram.
3. The Assistant Director (Panchayats)
Collectorate
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