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W.P.Nos.21245 of 2017
and 4440 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.21245 of 2017 and 4440 of 2018
& W.M.P.No.5445 of 2018

S.P.S.Nathan @ Amutheeswaranathan

... Petitioner
in WP.No.21245/2017

S.Natarajan

... Petitioner
in WP.No.4440 of 2018

Vs.

1.The District Collector and Special Officer,
Sri Dharbaranyeswaraswamy Devasthanam,
Sri Saneeshwara Bhagavan Temple,
Tirunallar - 609 607.
Puduchery State.

2.The Executive Officer,
Sri Dharbaranyeswaraswamy Devasthanam,
Sri Saneeshwara Bhagavan Temple
Tirunallar - 609 607.
Puduchery State.

3.The Superintendent Engineer,
Public Works Department and
Temple Town Scheme,
Tirunallar - 609 607.
Puduchery State.

... Respondents
in WP.No.21245 of 2017



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- 1.The Commissioner,
Commune Panchayat,
Tirunallar, Karaikal.
- 2.The Executive Officer,
Sri Dharbaranyeswaraswamy Devasthanam,
Thirunallar, Karaikal.
- 3.S.P.Natham

... Respondents
in WP.No.4440 of 2018

WP.No.21245 of 2017: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing the respondents to consider and pass appropriate orders on the petitioner's representation dated 23.05.2017 for removal of encroachments in and around the two ponds (Theerthams) viz., Poyyakulam Theertham and Yamuna Theertham situated in Sri Dharbaranyeswaraswamy Devasthanam, Sri Saneeshwara Bhagavan Temple, Tirunallar - 609 607, Puduchery State within a time frame as stipulated by this Court.

WP.No.4440 of 2018: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records relating to the proceedings viz., notice dated 23.02.2018 bearing Ref.No.EO/SDSD/TNR/2018/74 of the second respondent and quash the same.

For petitioners : Mr.R.Kamaraj (WP.No.21245 of 2017)
Mr.R.Thamaraiselvan
(WP.No.4440 of 2018)

For respondents : Mr.V.Vasanthakumar
Additional Government Pleader
(Pondicherry)
Mr.R.Kamaraj



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(R3 in WP.No.4440 of 2018)

COMMON ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

Since the issues involved in both the writ petitions are interlinked and inter connected, they are heard together and are disposed of by this common order.

2.The case projected in the writ petitions is as follows:

2.1. The petitioner in WP.No.21245 of 2017 is a hereditary trustee of Sri Dharbaranyeswaraswamy Devasthanam, Sri Saneeshwara Bhagavan Temple, Tirunallar, Puducherry State. In the said temple, two ponds (Theerthams) viz., Poyyakulam Theertham and Yama Theertham are situated. Since the ponds have not been renovated for several years, the second respondent decided to do the same by spending crores of rupees. Accordingly, they started the renovation work, but without clearing the encroachments made therein. Therefore, the petitioner made a representation dated 23.05.2017 to the respondents 1 and 2 to remove the encroachments made in and around the said two ponds, after conducting survey as per the Old French Government records and thereafter, commence the renovation work. However, no action has been taken on the same. Therefore, the petitioner has preferred WP.No.21245 of 2017 to issue a writ of mandamus to the respondents to consider his representation and pass appropriate orders, in this regard.



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2.2. According to the petitioner in WP.No.4440 of 2018, he is residing in a portion of the property in R.S.No.154/3 and also running a tea stall, for more than two decades, after obtaining approval from the local authorities and getting necessary license for the same. The said property was given by the temple authorities to the petitioner's wife's maternal grandfather K.Rangasamy, for the services rendered by him. After his demise, the petitioner and his wife are in continuous possession and enjoyment of the said property, without any objection. While so, the petitioner replaced the roof by RCC sheet and put up a temporary structure for the purpose of convenience and safety and got it assessed to the property tax in his name. While so, the third respondent filed WP.No.21245 of 2017 for a mandamus to the respondent authorities for removal of encroachment in the interest of Agathiyar Theertham / Poyya kulam and in the said writ petition, the petitioner was not impleaded as party respondent. However, a show cause notice dated 28.08.2017 came to be issued alleging that he had encroached the property at the northern side of the Agathiyar Theertham / Poyyakulam in R.S.No.154/3 of the Thirunallar Revenue village, to which, the petitioner filed his reply denying the allegations made therein and he also filed a civil suit in O.S.No.446 of 2017 on the file of the Principal District Munsif, Karaikal and the same is pending. Subsequently, the second respondent issued another notice dated 23.02.2018 to the petitioner, directing him to vacate the possession and



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hand over the same to the temple. Aggrieved by the same, the petitioner has preferred the writ petition viz., WP.No.4440 of 2018 to quash the said notice.

3.The learned counsel for the petitioners made their submissions reiterating the averments made in the respective writ petitions.

4.On the other hand, the learned Additional Government Pleader appearing for the respondent authorities drew the attention of this court to the status report filed by the Executive Officer of the temple, wherein, in paragraph no.4, it is stated as follows:

"It is further submitted to state that there is no encroachment found in the site of Yama Theertham as it was stated in the previous counter, the said Yama Theertham is free from encroachment and the rejuvenation work is nearing completion. The encroachment is only in the Poyya Kulam / Agathiyar Theertham in R.S.No.154/3 of Thirunallaru Revenue Village found only one encroachment by one Thiru.Nadarajan S/o.Sellappan of Main Road, Thirunallar by erecting a Tea stall and a thatched house. The said encroachment area is required by the Thirunallar Temple Town Development Authorities (i.e.) Public Works Department, Karaikal at the stage of completion of the Agathiyar Theertham rejuvenation project. Necessary steps have been taken legally to remove the encroachment from the said site."

Thus, according to the learned counsel, the encroachment would be removed by the authorities concerned, after following due process of law, within a time to be stipulated by this court.



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5.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel appearing for all the parties, this court, without going into the merits of the case, directs the respondent authorities to conduct enquiry with regard to the claim made by the respective petitioners and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to all the parties concerned, within a period of eight weeks from the date of receipt of a copy of this order. It is needless to state that if there is any encroachment in the temple land, the same shall be removed after following due process of law.

6.With the aforesaid directions, both the writ petitions stand disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
02.02.2023

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Speaking Order

Internet : Yes.

Index : Yes/No



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