



WEB COPY



WP No.14622 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

and

THE HONOURABLE MS. JUSTICE P.T. ASHA

Writ Petition No. 14622 of 2017

and

W.M.P. No.15854 of 2017

A. Subburathinam
President, Managing Committee
Sri Dharmasastha Temple
Muniyappan Kovil Street
Kugalur Village
Gobichettipalayam Taluk
Erode District

.. Petitioner

Versus

1. The District Collector
Office of the District Collector
Erode.
2. The Sub-Collector
Office of the Sub-Collector
Gobichettipalayam
Erode District.
3. The Revenue Divisional Officer
Office of the Revenue Divisional Officer
Gobichettipalayam, Erode District.
4. Kugalur Town Panchayat
Rep. By its Executive Officer
Panchayat Office



WP No.14622 of 2017

Kugalur
Gobichettipalayam Taluk
Erode District

5. M.A. Devaraj

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuing a Writ of Certiorari, calling for the records of the fourth respondent pertaining to his proceedings in Na.Ka.No.153/2017/A1 dated 24.05.2017 and to quash the same.

For Petitioner : Mr. G.K. Muthukumar
For Respondents : Mr. A. Selvendran
Special Government Pleader for R1 to R3

No appearance for R5

ORDER

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

The President and Managing Trustee of Sri Dharmasastha Temple, Kugalur Village, Gobichettipalayam Taluk, Erode District, has filed this writ petition, aggrieved by the notice dated 24.05.2017 issued by the fourth respondent, calling upon them to remove the encroachments made in the lands comprised in Survey No. 651/1 as well as Survey No. 651/2, which are classified as *Kuttai Poromboke* and *Natham Pathway* respectively in the revenue records, within fifteen days, failing which such encroachments will be removed by the Town Panchayat.



WP No.14622 of 2017

2. In the affidavit filed in support of the writ petition, it is stated by the petitioner that Sri Dharmasastha Thirukoil situated in Kugalur, Gobichettipalayam, Erode District was established in the year 1983 and it is worshipped by about 200 worshippers on a daily basis. The temple was managed by Shri. G.S. Ramamoorthy from the year 1983 till his death in the year 2002. Thereafter, the temple has been managed by Mr. K.K. Ramaswamy till 2015 and now the petitioner is taking care of the affairs of the temple. It is further stated that the temple was constructed in the land comprised in Survey No. 651/2 which was purchased by a registered sale deed dated 19.04.1991 from one V. Prakasam. On the Eastern side of the temple, there is a pathway measuring 12 feet which provides access to the temple. There is also a vacant land adjoining the temple and it was purchased by Pongiammal through a sale deed dated 27.03.2003. The temple is also utilising the said vacant land and proposed to construct a *bajanai madam*. While so, the fifth respondent filed a writ petition in WP No. 33717 of 2015 before this Court making a false claim over the pathway leading to the temple. The fifth respondent also filed a suit in O.S. No. 20 of 2016 on the file of the District Munsif Court, Gobichettipalayam. On notice, the petitioner has filed the written statement in the suit and it is pending. At this stage, the fourth respondent issued the impugned notice stating that the lands in Survey Nos. 651/1 and 651/2 have



WP No.14622 of 2017

been encroached upon by the petitioner. Aggrieved by the same, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner would contend that the lands comprised in Survey Nos. 651/1 and 651/2 are classified as "*Gramanatham*" in the revenue records, while so, the fourth respondent has no jurisdiction to issue the impugned notice at all. The lands comprised in Survey Nos. 651/1 and 651/2 are having a larger extent in which the petitioner temple is in occupation of land measuring 2.5 cents only. The fourth respondent, while directing the petitioner to vacate and handover the vacant possession of the lands in Survey Nos. 651/1 and 651/2, did not issue similar notice to the other occupants in the very same land. Even otherwise, the invocation of the provisions contained under the Land Encroachment Act by the fourth respondent is not proper. If at all, it is for the revenue authorities to initiate action under the provisions of the said Act. Therefore, it is submitted by the learned counsel for the petitioner that the impugned notice has been issued by the fourth respondent in an arbitrary manner, without affording an opportunity of hearing to the petitioner and he prayed for allowing this writ petition.



WP No.14622 of 2017

4. The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the fifth respondent herein has filed WP No. 33717 of 2015 in which the writ petitioner-temple was arrayed as sixth respondent. In the writ petition No. 33717 of 2015, a counter affidavit has been filed by the District Collector, Erode stating that the sixth respondent (writ petitioner herein) has encroached the natham poromboke land comprised in Survey No. 651/2 and started construction of a Bajanai Madam as an extension of the temple in S.F. No. 651/3. It was further stated in the counter affidavit that the land in S.F. No.651/1 is classified as Government Kulam Poromboke (pond poromboke) and S.F. No. 651/2 is stated as Natham Poromboke. By considering the averments in the counter affidavit, this Court passed an order on 11.04.2017 in WP No. 33717 of 2015 directing the official respondents therein to proceed further in accordance with law. In the light of the directions issued by this Court, the notice dated 24.05.2017, which is impugned in this writ petition, has been issued by the fourth respondent. When the petitioner temple is in occupation of lands in Survey Nos. 651/1 and 651/2 which are classified as Kuttai Poromboke and Natham pathway respectively, they have no manner of right to file the present writ petition. The learned Special Government Pleader therefore prayed for dismissal of the writ petition.



WP No.14622 of 2017

5. We have heard the learned counsel for the petitioner as well as the learned Special Government Pleader for the respondents and perused the records.

6. At the outset, it must be noted that the notice dated 24.05.2017, which is impugned in this writ petition, has not been issued by invoking the provisions of The Tamil Nadu Land Encroachments Act. On the other hand, it was issued to the petitioner pursuant to the order dated 11.04.2017 passed by this Court in WP No. 33717 of 2015 filed by the fifth respondent herein. The petitioner herein is also one of the parties to the writ petition No. 33717 of 2015 filed by the fifth respondent herein. At the same time, it is to be seen that by the notice dated 24.05.2017, the petitioner was called upon to remove the encroachments within 15 days without giving him an opportunity to put forth his submissions and there is a violation of principles of natural justice. In such view of the matter, the petitioner is directed to treat the notice dated 24.05.2017 as a show cause notice and submit his explanation to the same within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation, the fourth respondent is directed to consider it and pass orders on merits and in accordance with law, after affording an



WP No.14622 of 2017

opportunity of hearing to the petitioner, fifth respondent and others concerned,
within a period of eight weeks thereafter.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J) (P.T.A., J)

06.02.2023

(1/4)

ay/rsh

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

Copy to

1. The District Collector
Office of the District Collector
Erode.
2. The Sub-Collector
Office of the Sub-Collector
Gobichettipalayam
Erode District.
3. The Revenue Divisional Officer
Office of the Revenue Divisional Officer
Gobichettipalayam, Erode District.
4. Kugalur Town Panchayat,
Rep. By its Executive Officer,
Panchayat Office,
Kugalur,
Gobichettipalayam Taluk
Erode District



WEB COPY



WP No.14622 of 2017

R. MAHADEVAN, J
and
P.T. ASHA, J

ay/rsh

WP No.14622 of 2017

06.02.2023
(1/4)