



C.R.P. No.4697 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.4697 of 2017

and

C.M.P.No.22096 of 2017

and

C.M.P.No.8016 of 2023

Mr. Sheik Fareed

.. Petitioner

vs.

1. The Commandant,
Officers Training Academy,
St. Thomas Mount,
Chennai – 600 016.

2. The Defence Estate Officer,
Madras Circle,
No.306, Anna Salai,
Teynampet,
Chennai – 600 018.

3. The Station Commander,
Fort St. George,
Chennai – 600 009

..Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the Judgement and Decree dated 16.03.2017 passed by the Principal Subordinate Judge, Chengalpattu, in Wakf O.P.No.1 of 2015.



C.R.P. No.4697 of 2023

For Petitioner : Mr. A. Ilaya Perumal

For Respondents : Mr.K.S.Jeyaganeshan
(For R1 to R3)

ORDER

The plaintiff in Wakf O.P.No.1 of 2015, on the file of the Principal Subordinate Judge, Chengalpattu, is the Civil Revision Petitioner.

2. There exists a Dargah in the name of M/s.Hazarath Syed Sha Ali Masthan Chaman Sha Ali Zindhey Masthan Madarsha-e-Sha Ali Masthan Wakf. According to the civil revision petitioner, this is a surveyed and notified Wakf. The Dargah is situated within the St.Thomas Mount Cantonment. The Dargah bears GLR No.339 (B-3 Defence Land) and GLR No.336 (A-1 Defence Land).

3. This Dargah is a famous one. It has been in existence for several decades, records show that it has been in existence even before this country attained independence. It is situated on the busy G.S.T Road. It is surrounded by the Government property on the southern and all the three sides by A1(defence land). The only access to the Dargah is through a pathway from the G.S.T Road. The Dargah is situated over an



C.R.P. No.4697 of 2023

extent of 524 sq ft. The cause of action for the suit was that the plaintiff claimed it is entitled to an order of injunction to an extent of 6 grounds and 801 sq ft.

4. The Government of India, the Commandant, Officers' Training Academy and Defence Estate Officer, Teynampet, took a stand that insofar as the lands are concerned, it belongs to the first respondent / the Commandant, Officer Training Academy, St. Thomas Mount, Chennai – 600 016. The defence authorities had taken a stand that, as early as on 1936, the Dargah would be maintained as it is. It was stated that it had been so protected in order to give access to the members of the Defence forces of Islamic Persuasion.

5. Taking note of this stand, the learned Wakf Tribunal dismissed the suit. Against which the present revision has been filed.

6. When the revision came up for the final disposal, I requested Mr.K.S.Jeyaganeshan, learned counsel for the respondents to verify from his clients, whether they would be agreeable to protect the Dargah as it stands today and also to grant ingress and egress from the G.S.T Road for



C.R.P. No.4697 of 2023

those, who come to worship or offer prayers at the Dargah.

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7. On instructions, Mr. K.S.Jeyaganeshan, learned counsel for the respondents has filed a memo together with a plan.

8. As per the memo and the plan, the stand of the respondents is that the orange marked area, which is the Dargah situated in Survey GLR No.339 (B-3 Defence Land) will not be disturbed. The respondents/defendants are also agreeable to give access to the members of the public to visit the Dargah from the G.S.T. Road. The defendants state that apart from Dargah, which is situated in Survey GLR No.339 (B-3 Defence Land), the remaining portion is a B3 land belonging to the Government of India. The defendants are very clear in so far as the remaining area marked yellow in the plan in its entirety as A1 (Defence Land).

9. The suit for Permanent Injunction cannot be maintained as against the true owner and therefore, the constructions that have been made, apart from the Survey GLR.No.339 (B-3 Defence Land), are unauthorised.



C.R.P. No.4697 of 2023

WEB COPY 10. Mr.A.Ilaya Perumal, learned counsel appearing for the plaintiff/petitioner would state that the construction had been made after securing permission from the Chief Executive Officer, Cantt Board, St.Thomas Mount and therefore they are not encroachments or unauthorized. Permission to put up an additional construction does not mean that the Dargha becomes the owner of the property. Dargha is a Wakf within the meaning of the Wakf Act but to claim a right as a Wakf, on areas apart from the Dargha itself, I feel he is pushing the case a bit too high. Suffice to say that it is for the purpose of disposing of the suit that statements made by the defendants be recorded. The suit is partly decreed in the following terms:

1. The defendants/respondents will not interfere with the Dargha situated in Survey GLR No.339, which is a B-3 Defence Land.
2. The defendants/respondents will give access to those who want to offer prayers or worship at the Dargha, abutting the G.S.T. Road to an extent of approximately about 25 meters from the G.S.T. Road to the Dargha Shrine.
3. With respect to the other areas surrounding the Dargha, the suit shall stand dismissed.



C.R.P. No.4697 of 2023

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4. The other constructions, which have been put up, will be removed by the defendants by following due process of law.

11. The memo and plan, which has been filed along with the memo shall form a part of the decree.

12. It is made clear that the worshippers will not be entitled to use the premises for the purpose of parking of two wheelers and four wheelers.

13. Accordingly, the Civil Revision Petition stands partly allowed in the terms set forth above. No costs. Consequently, connected miscellaneous petitions are closed.

14.08.2023

Index: Yes/No

Neutral Citation: Yes/No

kak/mac

To:

1. The Principal Subordinate Judge,
Chengalpattu.



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C.R.P. No.4697 of 2023

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C.R.P. No.4697 of 2023

V. LAKSHMINARAYANAN, J.

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C.R.P.No.4697 of 2017

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