



W.P.(MD)No.1269 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	29.08.2023
Date of Pronouncement	14.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD)No.1269 of 2023
and
W.M.P.(MD)Nos.1177 and 1178 of 2023

Shri Pathikali Amman Kovil
Represented through its President,
Subramania Puram Village, Vembar,
Vilathikulam Taluk,
Tuticorin District.

: Petitioner/Petitioner

Vs.

- 1.The Revenue Divisional Officer,
The Office of DRO,
Kovilpatti, Thoothukudi District.
- 2.The Tahsildhar,
Vilathikulam,
Thoothukudi District.
- 3.The Inspector of Police,
Soorangudi Police Station,
Vilathikulam,
Thoothukudi.
- 4.The Village Administrative Officer,
Vembar Village, Thoothukudi.
- 5.The President,
Vembar Villag,
Thoothukudi.



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6.The Church of South India,
Thoothukudi-Nazareth Diocese,
Represented through its Secretary,
Vembar, Thoothukudi.

7.The Correspondent,
TDTA Primary School,
Vembar, Vilathikulam Taluk,
Thoothukudi.

8.S.Marimuthu Samy : Respondents/Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in Na.Ka.No.A2/14581/2022, dated 09.01.2023 and to quash the same as arbitrary and ultravires and thereby, directing the respondents not to disturb the petitioner's peaceful possession and enjoyment of the petitioner's property.

For petitioner : Mr.B.Saravanan
Senior Counsel
for Mr.V.Shathurthi Raja

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.J.Ashok
Additional Government Pleader for R1 to R4

Mr.M.Sarangan for R5

No Appearance for R6 & R7

Mr.Sricharan Rangarajan
Senior Counsel
for Mr.S.Vishnuvardhan for R8



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ORDER

D.BHARATHA CHAKRAVARTHY, J.

A. The Writ Petition & The Impugned Order:

Shri Pathirakali Amman Kovil represented through its President Vembar, Subramaniapuram Village, Vilathikulam Taluk, Tuticorin District has come up with this writ petition challenging the order of the Revenue Divisional Officer, Kovilpatti, Thoothukudi District, dated 09.01.2023.

1.1 By the said order, the Revenue Divisional Officer/first respondent herein, had ordered that survey No.328/14 admeasuring 206 sq.m land in Vembar Village to be continued in the village accounts as “Natham Cirkar Poramboku Theru” until final orders are passed in O.S.Nos.57 of 2020 and 60 of 2020 which are pending before the Sub Court and Principal District Munsif, Vilathikulam respectively. The first respondent further ordered that no party should in any manner encroach or interfere with the said site and the said site should be used only as pathway. The said order further ordered that no parties can install any lights or festoons in the said site. The impugned order further ordered that the Tahsildar, Vilathikulam, the Block Development Officer, Vilathikulam and the Inspector of Police,



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Vembar should continue their vigil to ensure the above and that if any of the parties violate the above directions, criminal proceedings be taken against them.

1.2. The above order came to be passed on account of a direction of the Hon'ble Division Bench of this Court in W.P.(MD)No.28490 of 2022. One S.Marimuthu Samy had filed a Public Interest Litigation to ensure that the public pathway to access TDTA Primary School, St. Thomair Church and Karuppasamy Temple in S.No.328/14 be maintained and be accessed by the general public. In the said writ petition, the following order was passed:

“8. In view of the above, we direct the 4th respondent to consider the representation of the petitioner dated 09.12.2022 and pass appropriate orders on its own merits and in accordance with law, after affording sufficient opportunity to all the parties concerned, as early as possible, preferably, within a period of three weeks from the date of receipt of a copy of this order.”

B. The Previous Litigations:

2. The said piece of land in S.No.328/14 has a checkered history. The land admittedly comes within the residential portion of the Vembar Village and as such is classified as 'Natham'. However, in the Natham Settlement,



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Adangal Register curiously, the same is mentioned as 'Cirkar Poramboke (Government Poramboke)' and in column No.12, name of the owner it is mentioned as 'Theru (street)' and in column No.13 remarks it is mentioned as 'Pathirakali Amman Kovil Nirvagam'.

2.1. Under the said circumstances, the Church of South India and its management/devotees as well as the petitioner's temple and its management and its devotees started claiming exclusive title in respect of the same leading to filing of the suit in O.S.No.56 of 1988 on the file of the District Munsif, Kovilpatti to declare that the said property belong to the Church of South India Trust and for a consequential injunction. The suit was decreed by the trial Court and the decree was confirmed by the Subordinate Judge, Thoothukudi in A.S.No.141 of 1989. However, upon second appeal by the defendants in S.A.No.277 of 1993, this Court found that the plaintiffs have not established their title. The plaintiffs were not in possession of the property. The defendants have proved better title than the plaintiffs vide Ex.B.1 patta granted by the then Zaminthar in the name of the temple. By other documents, this court also held that the defendants had proved their possession. Accordingly, the suit stood dismissed and the issue was decided in favour of the defendants in the suit namely, the trustees and devotees of the temple. The matter was carried on to the



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Hon'ble Supreme Court of India by the Church of South India by way of S.L.P(Civil)No.13998 of 1998 and by an order dated 02.09.1998, the same was dismissed.

2.2. Thereafter, once again one Devagnanam and Yovan for themselves and representing the Christian Community residing in the Vembar Village once again filed O.S.No.48 of 1999 on the file of the District Munsif cum Judicial Magistrate, Vilathikulam against the persons claiming to represent the temple. The suit prayer was to permanently restrain the defendants from in any manner interfering with the peaceful enjoyment of the above property. The defendants in the suit made a counter claim and sought for an injunction against the plaintiffs in the suit. In the result, by a judgment and decree dated 08.10.2003, the suit filed by the plaintiffs was dismissed for default and the counter claim filed by the defendants was decreed with costs.

2.3. Yet again, the Pastorate Chairman, Vembar Pastorate, CSI St. Thomas Church Complex, Vembar Village, filed O.S.No.25 of 2014 on the file of the II Additional District Court, Thoothukudi, in which, the Church of South India and two others were also the plaintiffs 2 to 4 again for the declaration of the properties mentioned in the schedule which included the



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present property in S.No.328/14 as serial No.5 as belonging to the plaintiffs and for recovery of possession. The further prayer in the said suit is for a declaration against the defendants 7 to 11 in the said suit, namely, the Tahsildar, Villathikulam, Revenue Divisional Officer, Kovilpatti, the District Revenue Officer, Thoothukudi and the Government of Tamil Nadu praying that their classification of the properties as 'Natham" is null and void and for a consequential injunction to permit the plaintiffs and other persons to use the said property as pathway.

2.4. The said suit was originally rejected by an order in I.A.No.97 of 2015 holding that the suit is hit by the principles of *res judicata*. However, on appeal this Court in A.S.(MD)No.191 of 2018 remanded back the matter holding that in the instant case, it is necessary to let in evidence and mark the documents so as to decide the issue. Accordingly, after evidence, the II Additional District Judge, Thoothukudi, by a judgment and decree dated 05.02.2019 dismissed the said suit. Feeling aggrieved, the plaintiffs again filed A.S.(MD)No.107 of 2019 and by a judgment dated 18.12.2019, the learned Single Judge of this Court dismissed the appeal confirming the judgment and decree of the trial Court.

2.5. Even thereafter, by clearly refusing to accept the lawful



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judgments and decrees repeatedly passed by the Courts of law, the individuals did not permit the petitioner temple to enjoy the property by putting up of compound wall. Therefore, the petitioner temple was constrained to approach this Court by way of W.P.(MD)No.12226 of 2021 forbearing the police authorities from interfering with the civil rights of the petitioner to put up a compound wall. In the said writ petition, the District Collector, Tuticorin, Tahsildar Villathikulam Taluk were also parties apart from the Church of South India and the plaintiff in the second suit namely, Royappan. In the said writ petition, it is clearly recorded that the matter was within the domain of a civil dispute between the petitioner and the private respondents and therefore, the police will keep off and will not take any action against the temple for putting up of compound wall.

2.6. In the meanwhile, again the CSI diocese and other persons carried the matter to the Hon'ble Supreme Court of India by way of a Special Leave Petition against the judgment and decree in the third suit in S.L.P(Civil) No.2175 of 2022 and the judgment and decree was confirmed by the Hon'ble Supreme Court of India by holding that there was no ground to interfere with the order passed by this Court and dismissed the special leave petition.



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2.7. Thereafter, on behalf of the temple, one Kasimaran, filed W.P. (MD)No.24320 of 2022 and after considering all the above, this Court had also directed the District Collector, Thoothukudi as well as the Superintendent of Police, Tirunelveli to provide protection to the temple authorities to erect the compound wall.

2.8. It is at this juncture, that the writ petition mentioned *supra* in W.P.(MD)No.28490 of 2022 was filed as if it is a Public Interest Litigation and this Court without going into the merits directed the respondents to consider the representation and pass orders. Pursuant to which, the impugned order referred above, dated 09.01.2023 was passed.

C. The Submissions:

3. Heard *Mr.B.Saravanan*, the learned Senior Counsel appearing on behalf of the petitioner and *Mr.R.Baskaran*, the learned Additional Advocate General assisted by *Mr.J.Ashok*, learned Additional Government Pleader appearing on behalf of the respondents 1 to 4 and *Mr.M.Sarangan*, the learned counsel appearing on behalf of the fifth respondent and *Mr.Sricharan Rangarajan*, the learned Senior Counsel representing *Mr.S.Vishnu Vardhan*, learned counsel appearing on behalf of the eighth



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respondent.

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3.1. *Mr.B.Saravanan*, the learned Senior Counsel appearing on behalf of the petitioner, taking this Court in detail through the above earlier proceedings would submit that when the matter has been repeatedly concluded inter parties by the civil Court, just because two fresh suits are filed, which are nothing but an abuse of process of law, the impugned order is passed as if the matter is pending before the civil court and the temple authorities cannot interfere with the land pending the civil suit. He would submit that in the said frivolous suit, there is no interim order was passed.

3.2. *Mr.R.Baskaran*, the learned Additional Advocate General would submit that in view of the earlier decree passed in the civil suits, the Government is not claiming any title or that the property is a public street. However, the impugned order is passed by the first respondent, only because the two other civil suits are pending and therefore, only pending the civil suits, to preserve the nature of the property, that too on the directions of this Court, the impugned order is passed.

3.3. *Mr.Sricharan Rangarajan*, the learned Senior Counsel appearing on behalf of the eighth respondent would submit that the eighth respondent



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was only a whistle blower. He has no authority to comment upon the *inter se* disputes of title between the Church of South India and its devotees and the temple and its devotees. But however, it can be seen that the school was established even before the church and that the general public are using the extent as pathway for access not only to the church but to the school and the other buildings.

D.The Discussion & Findings:

4. We have considered the rival submissions made on either side and perused the material records of the case. In this case, admittedly the subject matter land in S. No. 328/14 comes within the residential portion of the Village and is clasified as 'Natham'. Even within the natham lands, if a particular piece of land is used for the communal purposes, such as street etc., it shall vest with the Government. The Adangal extract under the Natham Land Tax Scheme mentions this as a pathway, even though it is the admitted case of the parties that the land in question is classified as 'Natham'. Only in that context, in the third round of litigation started by O.S.No.25 of 2014, the Tahsildar, Revenue Divisional Officer, District Revenue Officer and the Government were added as a party and a specific relief to declare that the classification of the land in question as 'Natham' as



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null and void was prayed for. When the suit has been dismissed and the matter having been carried up to the Hon'ble Supreme Court of India and ended in the dismissal of the suit, there can be no quarrel or claim over the said classification. The judgment and decree in the above suit is binding even on the official respondents. Even thereafter, in two rounds of writ petitions, namely, W.P.(MD)No.12226 of 2021 and thereafter, W.P.(MD)No. 24320 of 2022, the land in question was very much claimed to be a private land. The official respondents never resisted the writ petition on the ground that the land in question is a communal purpose land or a public pathway.

4.1. In that view of the matter, the *lis* in respect of the nature of the land is settled beyond any scope for re-agitation. The land in question is a private property in which the Government has no predominant title or interest. The contesting private parties also claimed rival title all along and having lost are taking umbrage under the general order directing to consider the representation. Merely because two fresh suits are filed, that does not undo the earlier conclusions and decree of the civil Court. As a matter of fact, we find that the matter is repeatedly agitated by the parties. It is a matter of public policy that a decision in respect of a *lis* has to be given a finality and that when the Courts pronounce on a particular issue, the parties have no other option than to accept the same.



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4.2. *Res judicata* and finality of judgment are legal principles that serve as matters of public policy. *Res judicata*, which means "a matter already judged," is a doctrine that prevents parties from re-litigating the same issue that has already been decided by a Court. It promotes the finality of judgments and ensures that there is an end to litigation. The principle of *res judicata* is based on the idea that once a matter has been adjudicated and a final judgment has been rendered, it should not be reopened or challenged again. Similarly, the concept of finality of judgment emphasizes the importance of bringing legal disputes to a conclusion. It recognizes that once a judgment has been pronounced by a court, it should be considered final and binding on the parties involved. This principle prevents parties from continuously litigating the same issue and promotes the stability and certainty of the legal system.

4.3. The principles of estoppel, *res judicata* and finality of judgment are considered matters of public policy because they serve important societal interests. They contribute to the efficient administration of justice by preventing the wastage of judicial resources on repetitive litigation. Additionally, they promote the fairness and integrity of the legal system by ensuring that parties abide by the decisions of the courts and accept the



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finality of judgments. These principles will extend even in respect of the impugned order passed pursuant to the general direction of this Court in an ostensible public interest litigation. In this regard, useful reference can be made to the Judgment of the Hon'ble Supreme Court of India in **Hope Plantations Ltd. v. Taluk Land Board**¹, more specifically to paragraph 26 which reads as follows :

“26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also

¹ (1999) 5 SCC 590



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operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

(emphasis supplied)

4.4. We find that the property in question is found and concluded as the property of the petitioner temple by competent Courts of law. The petitioner temple is entitled to enjoy the same in any manner whatsoever as it may deem fit including putting up of a compound wall or otherwise. Merely because some third parties have once again started to re-agitate the matters by way of civil suits and the third parties filed public interest litigations, the same cannot have the effect of reopening a concluded *lis*. The repeated re-litigations before the Civil Court or before this Court in the guise of public interest litigations are nothing but sheer abuse of process of law. Therefore, the writ petition is bound to succeed.

E. The Result:

5. In the result,

(i) The Writ Petition stands allowed and the impugned order passed by the first respondent bearing Na.Ka.No.A2/14581/2022, dated 09.01.2023 is



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quashed;

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(ii) The respondents herein or any person(s) claiming through them cannot disturb the petitioner's peaceful possession and enjoyment of the property in question;

(iii) As already directed by this Court in the earlier writ petition in W.P. No.24320 of 2022, due protection has to be provided to the petitioner in the event of constructing a compound wall and the third respondent, namely, the Inspector of Police, Soorangudi Police Station shall provide due protection in case such endeavour is made by the petitioner;

(iv) The District Collector as well as the second respondent and the Deputy Superintendent of Police shall also ensure that by physical might any person whomsoever cannot try to upturn the civil rights which are determined by Courts of law up to the Hon'ble Supreme Court of India;

(v) No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R.,J.) (D.B.C.,J)

14.09.2023

NCC : Yes / No

Index:Yes/No

Index:Yes/No



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To

- 1.The Revenue Divisional Officer,
The Office of DRO,
Kovilpatti, Thoothukudi District.
- 2.The Tahsildhar,
Vilathikulam,
Thoothukudi District.
- 3.The Inspector of Police,
Soorangudi Police Station,
Vilathikulam,
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Vembar Village, Thoothukudi.

Copy to

- 1.The District Collector,
Thoothukudi District.
- 2.The Deputy Superintendent of Police,
Thoothukudi District.



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S.S.SUNDAR, J.
AND
D.BHARATHA CHAKRAVARTHY,J.

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Pre-Delivery Order made in
W.P.(MD)No.1269 of 2023
and
W.M.P.(MD)Nos.1177 and 1178 of 2023

14.09.2023