



W.P.(MD) No.4945 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.4945 of 2020

Arulmighu Thirukutralanatha Swamy Temple
Rep. by its Executive Officer,
Courtalam,
Tirunelveli District.

... Petitioner

Vs.

- 1.The District Collector,
Tenkasi District,
Tenkasi.
- 2.The Director,
Directorate of Panchayat,
7th and 8th Floor,
Santhome High Court,
Raja Annamalaipuram,
Chennai-600028.
- 3.The Revenue Divisional Officer,
Tenkasi,
Tirunelveli District.
- 4.Assistant Director of Panchayat,
Perumalpuram,
Tirunelveli.



W.P.(MD) No.4945of 2020

5. The Executive Officer,
Courtallam Special Grade Town Panchayat,
Courtallam,
Tirunelveli District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the first Respondent to take suitable action against the 5th respondent directing him to handover the possession and administration of the buildings and land at Survey Nos.482/45 and 482/48, Courtallam Village, Tenkasi Taluk, Tenkasi District.

For Petitioner : Mr.P.Thiyagarajan

For Respondent : Mr.Veerakathiravan
Additional Advocate General
Assisted by
Mr.JohnRajadurai
Government Advocate for R1 to R4
Mr.P.Mahendran for R5

ORDER

The instant case involves a Government body refusing to comply with the decree of a civil Court.



W.P.(MD) No.4945of 2020

WEB COPY

2. The facts are briefly set out herein below:-

The petitioner temple was constructed as early as in 1700 AD by Chokkampatty Zamindars. The land and buildings in temple is situated in Survey Nos.482/45 and 482/48 in Courtallam Village, Tenkasi. The properties were acquired by the Government and the Government carried out the Kattalai and maintained the temple and the buildings. Thereafter, the properties were handed over to the District Board for its management. After the board was abolished, the properties are in the hands of the fourth respondent herein. On 26.03.1958, the then Township Committee had passed a resolution to carry out the Kattalai properly. However, they have failed to carry out the same. Since the Kattalai were not being performed, the petitioner temple had filed a petition before the Deputy Commissioner, HR&CE Department, Madurai, with regard to the mismanagment of the properties. The petition later transferred to the file of the Deputy Commissioner, HR&CE Department, Tirunelveli and was dismissed. However, the Deputy Commissioner, HR&CE Department, Tirunelveli had *suo motu* initiated the proceedings in O.A.No.51 of 1977 under Section 63(G) of HR&CE Act (hereinafter



W.P.(MD) No.4945of 2020

called as 'the Act') to consider whether there are any grounds for allocation of the trust properties in respect of the circular and religious aspects of the trust. By order dated 22.01.1987, the Deputy Commissioner had allowed the application and declared that the property in Survey Nos.485/45 and 485/48 are religious charities to be performed for the Arulmigu Thirukutralanathaswamy Temple, Courtallam and the Executive Officer of the temple was directed to take over the administration from the Township Committee of Courtallam with immediate effect.

(ii) This order was challenged by the Executive Officer of the Township Committee before the Commissioner, HR&CE Department, Chennai, in A.P.No.79 of 1987. By order, dated 17.01.1991, the appeal filed by the Executive Officer was dismissed. Thereafter, the fourth respondent had filed O.S.No.165 of 1993 on the file of the Principal Sub Court, Tenkasi, claiming that there was no ground to interfere with the management of the temple with respect to the properties in dispute and declaration that the Chokkampatti Chatram is religious in nature. The



W.P.(MD) No.4945of 2020

petitioner had contested the suit claiming that the property comprised in Survey No.482 in Courtallam Village is a minor inam granted to the petitioner's temple by the Chokkampatti Zamindar to perform various Kattalais and Mandakapadies for the petitioner temple. He had built a temple therein for Sri Gomathi and Sri Sankaramoorthy Easwaran and installed Vinayagar and Subramaniam deities and had also constructed a Chatram for the pilgrims and a building called Valangaipuli Vilas for conducting 6th day festival in the Tamil months of Margazhi, Chithrai, and Ippasi.

(iii) The statutory suit in O.S.No.165 of 1993 was also dismissed by judgment and decree, dated 20.12.1999, against which, an appeal in A.S.No.989 of 2003 on the file of this Court was filed and ultimately, by judgment and decree, dated 07.09.2018, the appeal suit was also dismissed. Therefore, by reason of these orders, the fifth respondent was liable to hand over the management and administration of the property to the petitioner temple. Despite receiving the judgement and decree, the fifth respondent had not come forward to hand over vacant possession.



W.P.(MD) No.4945of 2020

WEB COPY

The petitioner, therefore, sent a letter, dated 12.04.2019, to the fifth respondent calling upon them to hand over possession and administration along with accounts with reference to the properties and the buildings in Survey Nos.482/45 and 482/48 in Courtallam Village. The fifth respondent had sent a reply dated 07.05.2019 disputing the disposal of A.S.No.989 of 2003 and contending that action would be taken only after receipt of the orders of the Hon'ble High Court. In pursuance of the said communication, the petitioner had sent a letter to the District Collector, Tirunelveli, to take suitable action and to direct the fifth respondent to hand over the possession. Despite the instruction of the District Collector, the fifth respondent refused to hand over the possession, constraining the petitioner to move this Court.

3. The learned counsel appearing for the petitioner would submit that despite the fifth respondent having lost in all the fora, they are still refusing to hand over the properties to the temple. Further, the Kattalais are also not being performed.



W.P.(MD) No.4945of 2020

WEB COPY

4. The learned Additional Advocate General would vehemently submit that the petitioner had, instead of filing a execution proceeding, moved this Court under Article 226 of the constitution of India. That apart, the Government of Tamilnadu is not a party to the proceedings.

5. Heard the learned counsel appearing on either side.

6. The decree that has been passed in favour of the petitioner herein is in a statutory suit filed under Section 70 of the Act and therefore, an execution would not lie, as contemplated under Order 21 of the Code of Civil Procedure. The proprieties even according to the respondents had been handed over to the fourth respondent, who has filed the statutory suit challenging the order passed by the Deputy Commissioner and confirmed by the Commissioner, HR&CE Department. Therefore, the arguments of the learned Additional Advocate General cannot be countenanced. The right of the petitioner has been established throughout and despite obtaining orders confirming their rights as early in the year 1987, to-date the petitioner has not been



W.P.(MD) No.4945of 2020

able to take possession of the property. Since there is no merit in the defence of the respondents, this Writ Petition is allowed and the third respondent shall effect the mutation of the revenue records in the name of the petitioner in pursuant to the civil decree obtained by them and the fifth respondent, who is now in occupation of the premises, shall vacate and hand over the vacant possession of the property within three months from the date of receipt of a copy of this order. If the fifth respondent does not vacate the premises, the first respondent shall ensure that the property is vacated and handed over. No costs.

21.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp



WEB COPY



W.P.(MD) No.4945of 2020

To

- 1.The District Collector,
Tenkasi District,
Tenkasi.
- 2.The Director,
Directorate of Panchayat,
7th and 8th Floor,
Santhome High Court,
Raja Annamalaipuram,
Chennai-600028.
- 3.The Revenue Divisional Officer,
Tenkasi,
Tirunelveli District.
- 4.Assistant Director of Panchayat,
Perumalpuram,
Tirunelveli.



WEB COPY



W.P.(MD) No.4945of 2020

P.T.ASHA, J.

cp

W.P.(MD) No. 4945 of 2020

Dated:21.06.2023