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W.P.(MD) No.5893 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD) No.5893 of 2023
and
W.M.P.(MD) No.5477 of 2023**

1.Madhavan

2.S.Sonaimuthu

3.Dhakshinamurthy

... Petitioners

-vs-

1.The District Collector
Office of the District Collector
Madurai District

2.The Commissioner
Madurai Municipal Corporation
Madurai City

3.The Assistant Commissioner
Madurai Municipal Corporation
Madurai South Region
Madurai City

4.The Commissioner
Hindu Religious Charitable and
Endowments Department
Chennai



W.P.(MD) No.5893 of 2023

5.The Joint Commissioner
Hindu Religious Charitable and
Endowments Department
Ellisnagar, Madurai City

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents herein to stop and remove the unauthorised constructions made by the respondents 1 to 3 herein in the Arulmigu Gurunathaswamy temple property comprised in Survey No.103 situated at Chinnaanuppanadi Village, No.29, South Taluk, Madurai City of a total extent of 1 Acre 23 Cents and also 18 Cents on the basis of the petitioner representation dated 24.02.2023.

For Petitioners : Mr.B.Jameel Arasu

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.P.T.Thiraviyam
Government Advocate for R1
Mr.S.Vinayak, Standing Counsel, for R2 & R3
Mr.P.Subbaraj
Special Government Pleader for R4 & R5

ORDER

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

Pursuant to our order dated 17.03.2023, the District Collector, Madurai District and the Commissioner, Madurai Municipal Corporation, are present in Court.



WEB COPY



W.P.(MD) No.5893 of 2023

2. Prayer in this writ petition reads as follows:

“For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly in the nature of a WRIT OF MANDAMUS directing the respondents herein to stop and remove the unauthorised constructions made by the Respondent 1 to 3 herein in the Arulmigu Gurunathaswamy temple property comprised in Survey No.103, situated at Chinnaanuppanadi village, No.29, South Taluk, Madurai City of a total extent of 1 Acres 23 cents and also 18 cents on the basis of the petitioner representation dated 24.2.2023 and pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”

3. The petitioners seek a mandamus armed with a decree of a Civil Court in O.S.No.394 of 1997. The said suit was filed by about thirteen persons in a representative capacity for themselves and for the Temple, namely, Gurunathaswamy Temple, Chinna Anuppanady Village, Madurai. The suit properties were five in number. The present dispute relates to only Item No.4 of the suit schedule, which reads as follows:



W.P.(MD) No.5893 of 2023

WEB COPY

“4) In Madurai District, Madurai Registration District, Madurai South Taluk, Anuppanady Village, the punja lands in S.No.103 having an extent of 1 acre 23 cents (0.50-0 ares) and Oorani.”

4. The claim of the plaintiffs in the suit was that the 26th defendant, namely, the President of Chinna Anuppanadi Panchayat, is attempting to put up a construction by encroaching over Item No.4 in Survey No.103. The President remained *ex parte* in the said suit. The Civil Court, based on the records that were produced before it, granted a decree declaring that the land in Item No.4 belongs to the Temple. The Civil Court also restrained the 26th defendant, namely, the President of Chinna Anuppanadi Panchayat, from putting up any construction in the said property, while granting liberty to the plaintiffs to take appropriate proceedings for eviction of the portion that was found to be encroached upon. The petitioners have now come up with this writ petition stating that Madurai Municipal Corporation is now attempting to put up further construction in the said land.

5. Mr.B.Jameel Arasu, learned counsel appearing for the petitioners, would vehemently contend that once the Civil Court granted a



W.P.(MD) No.5893 of 2023

decree against the President, the Municipal Commissioner, who is the successor to the President cannot act in derogation of the decree.

6. Mr.R.Baskaran, learned Additional Advocate General, appearing for the first respondent, would submit that even in the revenue records, the survey No.103, namely, Item No.4 of the suit schedule property in O.S.No.394 of 1997 has been described as “Oorani” and it does not belong to the Temple.

7. Drawing our attention to the Village A-Register that has been produced by the petitioners, the learned Additional Advocate General would submit that the land in Survey No.103 has been classified as “Government Poromboke Oorani”. Therefore, according to him, the Temple has no title.

8. We find ourselves in a very peculiar situation. There is a decree granted in favour of the plaintiffs / petitioners declaring the title of the Temple and permanent injunction restraining the President of Chinna Anuppanadi Panchayat from putting up further construction has also been granted. The revenue records show that the land in question is classified as “Government Poromboke Oorani”. Hence, it is for the Government to get the *ex parte* decree set aside by any means known to law. Till such time, they shall not put up



W.P.(MD) No.5893 of 2023

any construction in the said property, which would be in violation of the decree granted. The writ petition is, therefore, stands allowed. There will be a mandamus forbearing the Commissioner, Madurai Municipal Corporation, from putting up any further construction in Item No.4 of the suit schedule property, namely, Survey No.103, Chinna Anuppanady Village, Madurai South Taluk, till such time the decree of the Civil Court is in force. It will be open to the Commissioner, Madurai Municipal Corporation, to approach the appropriate Civil Court to have the decree granted in O.S.No.394 of 1997 modified or set aside in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.] [L.V.G., J.]

21.03.2023

(1/2)

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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W.P.(MD) No.5893 of 2023

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Madurai District.
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