



W.P.(MD)No.13200 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM

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

W.P.(MD)No.13200 of 2023
and
W.M.P(MD)No.11160 of 2023

T.Vani Jeyaraman

: Petitioner

Vs.

- 1.The District Collector,
Tenkasi District.
- 2.The Revenue Divisional Officer,
Sankarankovil,
Tenkasi District.
- 3.The Tahsildar,
Sivagiri Taluk Office,
Sivagiri-627 757,
Tenkasi District.
- 4.The Executive Officer,
Sivagiri Town Panchayat,
Sivagiri-627 757,
Tenkasi District.



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5.The Sub Inspector of Police,
Sivagiri Police Station,
Sivagiri-627 757,
Tenkasi District.

6.P.Murugan

7.Auto G.Abimanyu

: Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 5 to remove the encroachment made by the respondents 6 and 7 in the poramboke land in Survey No.627/2799, Periyar Kadai Bazaar Part-II, Sivagiri Kaspas, Sivagiri Town Panchayat, Tenkasi District by considering the order passed by this Court in W.P.(MD)no.26956 of 2022, dated 30.11.2022 and the petitioner's representation dated 31.03.2023.

For Petitioner	: Mr.N.Saravanan
For R1 to R4	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.M.Lingadurai Special Government Pleader
For R5	: Mr.M.Veeranthiran Government Advocate (Crl. Side)
For R6 & R7	: Mr.M.Senthil Kumaraiah



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ORDER

(order of the Court was made by S.S.Sundar, J.)

The prayer in the Writ Petition is for issuance of a Writ of Mandamus directing the respondent 1 to 5 to remove the encroachment made by the respondents 6 and 7 in the poramboke land in Survey No.627/2799, Periyar Kadai Bazaar Part-II, Sivagiri Kaspas, Sivagiri Town Panchayat, Tenkasi District, by considering the order passed by this Court in W.P.(MD)No.26956 of 2022. Earlier, one Chinnachamy, who also belongs to the same community of the petitioner filed Public Interest Litigation in W.P.(MD)No.26956 of 2022 for issuance of Writ of Mandamus directing the respondents 1 to 4 to remove the encroachment made by the respondents 6 and 7. The respondents 6 and 7 are common in both the writ petitions. The earlier writ petition was disposed of by this Court by order dated 30.11.2022 in the following lines:

“....4.Considering the limited scope of the prayer now sought for by the petitioner, without expressing any opinion on the claim made by the petitioner, this Writ Petition is disposed of with a direction to the respondents 1 to 5, to consider the representation of the petitioner dated



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19.11.2022, if not considered earlier and if there is any encroachment as claimed by the petitioner, appropriate action shall be taken for removal of the same, after affording sufficient opportunity of hearing to the petitioner, respondents 6 and 7 and all other parties concerned and also by following due process of law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.”

2. Based on the general direction issued by this Court, the subsequent writ petition in W.P.(MD)No.13200 of 2023 is filed by one Vani Jeyaraman who is also resident of the same village. The petitioner in the writ petition claimed himself as the President of Hindu Devendrakula Vellalar Samuthayam in Sivagiri. It is the specific case of the petitioner that the land in S.No.627/2799, is a Government Poromboke land, which is situated in Sivagiri Kaspas, Sivagiri Town Panchayat, and that a temple called 'Sree Periyapiratti Amman Temple, is situated in the land. The dispute is in respect of the vacant land kept in front of the said temple to be used by the villagers in connection with the temple affairs and other offerings made in the temple.



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3. Stating that the respondents 5 and 6 started putting up a construction of building, which is meant for commercial shops, the petitioner submitted a representation to the official respondents to stop the construction which is an encroachment of a public property. Since this Court earlier has given directions to the official respondents to remove the encroachment if any found by them, the petitioner has come by way of the present writ petition.

4. When the writ petition came up for admission, this Court *prima facie* found that the official respondents have not complied with the directions passed in the earlier writ petition in W.P.(MD)No.26956 of 2022. Therefore, the *suo-motu* contempt is taken up and notice was issued to the respondents.

5. The learned Additional Advocate General appearing for the respondents 1 to 4, on instructions, produced before this Court, the Revenue Register Records and the representations and decisions taken by the official respondents. It is also brought to the notice of this Court that



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a peace committee meeting was convened between two communities of the same village, but nothing was resolved and no final decision was taken. However, the parties are advised to go before the Civil Court to establish their rights. It is, in the meanwhile, notice under Sections 182(1), 313, 339 and 340 of Tamil Nadu District Municipalities Act, 1920, were issued by the Executive Officer of the local body, Sivagiri Town Panchayat directing the President of Sivagiri Paraiyar Community to remove the encroachment in the property within a period of eight weeks. However, another writ petition is also filed by the President of the Hindu Parayar Maha Sabai in W.P.(MD)No.1617 of 2023 to approve the building plan submitted by them in connection with the building put up by them in the same survey number. That writ petition is not clubbed and that it is pending.

6. From the overall circumstances, this Court finds that the disputed property in S.No.627 of 2799 is classified as a Natham. Since there is a temple, this Court presumed that the said land is a communal land, which was meant for the people who are living in the village. Therefore, it is a property that is required as an appurtenance to the



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temple. This property being actually classified as Natham, the same does not vest with the Government unless it can be dealt with as a communal land. Since the property in S.No.627/2799 is a land, in which, a temple is constructed, the property cannot be treated as a poramboke or a public property, in which, the Government can claim the ownership. It appears that two communities in the same village are claiming right over the temple. It is represented that a suit is also filed on behalf of the Parayar Community People of Sivagiri Town Panchayat for declaration and consequential injunction in respect of the temple. The petitioner in W.P.(MD)No.13200 of 2023 is not a party to the said suit. However, the community which the petitioner is representing in the writ petition is a party. Therefore, it is open to the second respondent, the petitioner in W.P.(MD)No.13200 of 2023 to implead himself as a party to the said suit.

7. The learned counsel appearing for the private respondents in W.P.(MD)No.13200 of 2023 states that the temple is an exclusive temple belonging to Parayar Community. However, he also say that nobody is prevented from worshipping the deity. When a temple permits every individual to worship as a matter of right, then the character of temple



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cannot be anything except public temple or a religious institution that satisfy the definition of religious institutions in terms of Section 6(18) of the Hindu Religious and Charitable Endowments Act.

8. Having regard to the facts narrated above, this Court is inclined to dispose of this Writ Petition in the following lines:

(i) It is open to the respondents 6 and 7 or any other community to go before the authorities in terms of Sections 63(a) of the Hindu Religious and Charitable Endowments Act, to get a declaration as to the status of the temple, whether it is a private or public temple;

(ii) Depending upon the materials produced before the Deputy/Joint Commissioner of HR & CE passing final decision in the application, the petitioner or private respondents or any other community may be permitted to exercise the right to administer the temple or to carryout day to day administration of the temple under the direct supervision of H.R. & C.E. Department;



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(iii) In view of the serious dispute between two communities, the HR & CE Department shall be in control of the overall administration of the temple known as Periyapiratti Amman Temple in Sivagiri as if the temple is a public temple. No individual belonging to any community shall claim any right over the administration of the temple till the *lis* is decided by passing an order in the application either by the petitioner or by the private respondents, who are claiming exclusive right over the temple under Section 63(a) of HR & CE Department. The application if any filed shall be disposal of on merits after hearing all the persons interested within a period of 12 weeks from the date of such application.

No costs. Consequently, connected miscellaneous petition is closed.

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

24.07.2023

(1/2)

NCC : Yes / No

Index:Yes/No

Internet:Yes/No

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