



CRP(NPD)(MD)No.1428 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.08.2022

PRONOUNCED ON : 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Sundara Dhas

... Petitioner

Vs

1.R.C.Bishop
Kanyakumari District at Nagercoil,
Head Office at
Nagercoil Asaripallam Road,
Nagercoil, Nagercoil Village,
Agateeswaram Taluk,
Kanyakumari District.

2.Reverent Father Christhudhass,
Vattavilai,
Vadalivilai,
Kappikadu Post,
Kunnathoor Village,
Vilavancode Taluk,
Kanyakumari District.



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3.The President,
Vilathurai Panchayat,
Office at Kappikadu Post,
Kunnathoor Village,
Vilavancode Taluk,
Kanyakumari District.

4.The District Collector,
Kanyakumari.

... Respondents

(The fourth respondent is *suo motu* impleaded vide Court order dated 11.08.2022, made in CRP NPD(MD) No.1428 of 2017 by BPJ)

Prayer: Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed in E.P.No.6 of 2012 in O.S.No.442 of 2002, dated 04.10.2016, on the file of the Principal District Munsif, Kuzhithurai, Kanyakumari District.

For Petitioner	: Mr.D.Saravanan
For R2	: Mr.Xavier Rajini
For R4	: Mr.G.V.Vairam Santhosh
	Additional Government Pleader
For R1 and R3	: No appearance

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned Principal District Munsif,



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Kuzhithurai, Kanyakumari District, in E.P.No.6 of 2012 in O.S.No.442 of 2002, dated 04.10.2016.

2.The petitioner claiming to be the President of Hindu Dharma Vidya Peedam filed the above suit in O.S.No.442 of 2002, before the Principal District Munsif Court, Kuzhithurai, seeking the relief of permanent injunction against the respondents 1 & 2. The suit was decreed on 03.03.2005, forbearing the respondents from constructing a Church in the suit schedule property, without obtaining prior permission from the District Collector concerned. The respondents have not filed any appeal as against the Judgment and Decree passed in O.S.No.442 of 2002, dated 03.03.2005 and the same becomes final. With a relief of removing the Church constructed in the suit schedule property, the petitioner filed an Interlocutory Application in E.P.No.6 of 2012, under Order XXI, Rule 35 and 36 of Civil Procedure Code, that the respondents had illegally constructed the



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Church in the suit schedule property, in violation of the Decree and in disobedience of the order of the Court. The Executing Court dismissed the said application on the ground that the petitioner failed to prove that the respondents constructed the Church after passing of the decree in O.S.No.442 of 2002. Aggrieved over the same, the present Civil Revision Petition is filed.

2.1.The learned counsel appearing for the petitioner submits that the petitioner as a President of Hindu Dharma Vidya Peedam and in the representative capacity filed the above suit in O.S.No.442 of 2002 for the relief of permanent injunction as against the respondents 1 & 2. According to the learned counsel for the petitioner, in and around Kunnathur Village, there are 10 Hindu ancient Temples and some of the Temples are administered by HR & CE Department. In the year 1983, Kanyakumari District witnessed a communal clash between two religious groups, during the festival of



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Bhagavathi Amman Temple at Mandaikadu. Therefore, the Government constituted a Commission headed by a retired Judge of High Court and he also submitted a report to the Government, which was accepted by the Government, under G.O.Ms.No.916, dated 29.04.1986. As per the report, in order to avoid the communal clashes in future, there should be a safe distance between the existing places of worship and another place of worship of different faith. The learned counsel further submits that as per Rule 4 (3) of Tamil Nadu Panchayat Building Rules, 1970, no place of worship shall be constructed without prior permission of the District Collector and after the incident of communal clash in the year 1983, the District Collector, Kanyakumari has also issued a circular on 18.08.1982 to all the local bodies, referring the Rule 6 of Tamil Nadu District Municipalities Building Rules 1972, that no building planning permission is to be granted to any new place of worship within 1km from the existing place of worship and necessary permission has to be obtained from the District



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Collector. However, the respondents put up a shed in Re-Survey No. 214/32 and attempted to construct a Church. Hence, the petitioner approached the learned District Munsif, Kuzhithurai in O.S.No.442 of 2002, seeking for a relief of permanent injunction against these respondents and the trial Court has also decreed the suit, forbearing the respondents from constructing the Church without prior permission from the District Collector.

2.2.The learned counsel appearing for the petitioner further submits that the respondents, who are the parties to the suit in O.S.No. 442 of 2002, without challenging the judgment and decree dated 03.03.2005, approached the District Collector, Kanyakumari District at Nagercoil to grant permission to construct RC Church in R.S.No. 214/32 of Kunnathur Village, Vilavankode Taluk. The said application of the second respondent was rejected by the District Collector by his proceedings in Roc.No.C3/22524/2005, dated 28.12.2005 and the said



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order was also challenged by the petitioner in WP(MD) No.2081 of 2007 and the same was dismissed by this Court on 12.08.2011. He further submits that the petitioner has also filed the Writ Petition before this Court in WP(MD) No.10347 of 2006, for issuance of a writ in the nature of Mandamus, to direct the District Collector, Kanyakumari District to initiate action for demolition of construction put up by the fifth and sixth respondents therein, in RS.No. 214/32 that the building was constructed without prior approval of the District Collector. The said writ petition was also dismissed by this Court by order dated 03.08.2011 that in exercise of jurisdiction under Article 226 of Constitution of India, this Court cannot issue any direction for execution of the decree and observed that the District Collector has the jurisdiction to demolish the Church raised by the respondents 5 & 6 under 4(3) of the Tamil Nadu Panchayats Building Rules 1997 and the authorities can exercise their statutory powers to demolish the unauthorised construction. Liberty was also granted to the petitioner to



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get civil Court decree executed. Since the authorities have not acted upon as per Rules, this petitioner has filed the above Execution petition before the Executing Court and the Court without considering the decree passed by the trial Court and the order passed by the District Collector simply dismissed the E.P.No.6 of 2012 that the Church building was constructed prior to the date of decree. Hence, the learned counsel prays that the order of the Executing Court in E.P.No.6 of 2012 in O.S.No.442 of 2002 has to be set aside.

3. When this Civil Revision Petition was taken up for hearing on 08.07.2022, 13.07.2022, 28.07.2022, 04.08.2022, 05.08.2022, it was adjourned periodically at request of either side counsel for one reason or another. On 11.08.2022, when this Civil Revision Petition was again taken up for hearing, Mr.N.GA.Natraj, learned counsel appearing for the respondents 1 & 2 submits that the matter has become infructuous. When this Court has sought for an



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explanation how the learned counsel for the respondents 1 & 2 is pleading that the issue has become infructuous, the learned counsel sought time and thereafter reported that he is not having any instructions and hence he is going to withdraw the Vakalat. However, he has not filed any memo to that effect. Though the learned counsel for the respondents 1 & 2 submits that the memo was filed on 04.08.2022, it was filed only on 12.08.2022. On 18.08.2022, Mr.Xavier Rajini, learned counsel reported that he is filing Vakalat for the respondents 1 & 2 and requested for short accommodation and at his request, it was adjourned to 22.08.2022. On the next date of hearing, Mr.Xavier Rajini, the learned counsel reported that the first respondent Diocese is now bifurcated and the then Paris Priest of the Church is now transferred and at present one Francis Jeffry, another Paris Priest is looking after the Church and he has to file necessary application to substitute the said Francis Jeffry in the place of the then Paris Priest. Since this Court feels that the conduct of the respondents in taking



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several adjournments in short span of time and changing counsels appears to be the delay tactics, this Court directed the Registry to receive Vakalat filed on behalf of the second respondent and also directed the Registry to print the name of the counsel Mr.Xavier Rajini and the name of the first respondent in the cause list, by order dated 23.08.2022. It was once again adjourned to 25.08.2022. On that day, the learned counsel appearing for the second respondent sought for an adjournment that the copy of the Judgment and Decree is not available with him. At his request, this petition was ordered to be posted on 30.08.2022.

4. On 30.08.2022, the learned counsel appearing for the second respondent submits that as per Article 135 of the Limitation Act, the Execution Proceedings ought to have been filed in the year 2008. However, it was filed only in the year 2012 and therefore, the present Execution Petition is not maintainable. To substantiate his case,

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the learned Counsel has referred to Section 39 of the Specific Relief Act, 1963 and Article 135 of the Limitation Act. He further submits that even assuming that the Execution Petition is maintainable, the Execution Petition in E.P.No.6 of 2012 filed under Order 21 Rules 35 and 36 of Civil Procedure Code is not maintainable. This aspect has been discussed by the trial Court in detail. According to the learned counsel, the church was constructed in the year 1980 itself, which has been clearly indicated in the written statement as well as in the Commissioner's report. The respondent has not violated any orders and the EP was rightly dismissed and therefore, there is no need to interfere with the order of the Executing Court.

5. This Court considered the rival submissions made and also perused the materials placed on record.



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6.The petitioner as a President of Hindu Dharma Vidya Peedam, Kanyakumari District filed the above suit in O.S.No.442 of 2002, as against the respondents 1 to 3 herein, seeking for the relief of permanent injunction, restraining them from constructing a Church in the suit schedule property in Re Survey.No.214/32. The said suit was decreed on 03.03.2005, granting the relief of restraining the respondents from raising any construction/Church in the suit schedule property without prior permission of the District Collector concerned, as envisaged under Rule 4(3) of the Tamil Nadu Panchayat Building Rules. The respondents have not challenged the Judgment and Decree of the Civil Court in O.S.No.442 of 2002, dated, 03.03.2005 and it becomes final. The petitioner filed an Interlocutory Application in E.P.No.6 of 2012 in O.S.No.442 of 2002, before the Principal District Munsif, Kuzhithurai, under Order XXI, Rule 35 and 36 of Civil Procedure Code, for the relief of removing the Church constructed in the suit schedule property. According to the petitioner, the respondents



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had illegally constructed the Church in the suit schedule property, in violation of the Decree and in disobedience of the order of the Court. In support of his application, the petitioner himself was examined as PW 1 and the Judgment passed in O.S.No.442 of 2002 was marked as Ex.P.1 and the proceedings of the District Collector, Kanyakumari District was marked as Ex.P2. The Executing Court has held that those two documents did not prove that the respondents constructed the Church illegally, after passing of the decree in O.S.No.442 of 2002. The relevant portion of the order passed by the Executing Court is extracted as under:-

“9.Moreover, from the PW 1 cross, it is evident that even during at the time of filing of O.S.No.442 of 2002, there was a shed/prayer room in the suit schedule property. Further, he has deposed that the building alleged to be constructed by the respondent was constructed after seven years of the passing of the Judgment and he alleged to have raised objection regarding the same before the District Collector. But no such document has been filed



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to substantiate tha the respondent has raised building and therefore he made the alleged objection to the District Collector. Non filing of the objection filed before the District Collector would raise adverse inference against the petitioner. Moreover, even in the E.P.schedule property the petitioner has described as prayer Hall in the description of property. But it is the case of the respondent/defendant that there was no construction in the suit schedule property after passing of the decree in O.S.No.442 of 2002 and there was already a prayer room in the suit schedule property and the same was shown by the Commissioner in his Commissioner Report. From the submissions put forth by either side, the only point to be decided is whether the respondent/defendant constructed Church in the suit schedule property after passing of the decree in O.S.No.442 of 2002. Apart from the prayer hall that is admitted to be available in the suit schedule property, no evidence to establish the construction of Church in the suit schedule property after passing of decree in the suit.”



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7.The respondents have approached this Court by way of filing a Writ Petition in W.P.(MD) No.39617 of 2005, to issue a writ of Mandamus to forbear the respondents therein from in any manner interfering or obstructing the construction of “The Christ the King Church, Udavilai in R.S.no.212/26 of Kunnathur Village, Kanyakumari District.” The said Writ petition was allowed by this Court on 09.12.2005. Referring the order of this Court in W.P.(MD) No.39617 of 2005, dated 09.12.2005, the respondents herein approached the District Collector, Kanyakumari District at Nagercoil seeking permission for construction of R.C.Church and the District Collector by his proceedings, dated 28.12.2005, has passed the following order.

“Based on the report of the Superintendent of Police and Revenue Divisional Officers, it was resolved to conduct joint inspection of police and Revenue officials to make a final decision regarding the grant of permission for worshipping places in the disputed sites. A special meeting was also conducted with Revenue and police officials on 22.11.2005 and a detailed discussion



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was held in connection with the files relating to worshipping places.

In order to take a final decision in respect of this case, I have inspected the site in R.S.No.214/32 along with the Superintendent of Police on 22.12.2005. My personal assessment reveal that there is strong opposition from Hindus side to construct a R.C.Church in R.S.No.214/32. Taking into consideration of Law and Order problem likely to arise in that area between the two communities, the request for granting permission for the construction of a Church in R.S.No.214/32 is rejected.

The Hon'ble High Court, Madras in its order dated 09.12.2005 in W.P.No.39617/2005 in W.P.M.P.Nos. 42458 and 42459 of 2005 have issued orders not to interfere with the construction of a Church in R.S.No. 212/26 of Kunnathur Village. Accordingly, the orders of the Hon'ble High Court, Madras is being complied with.”



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8. Thereafter, the order of the learned single judge was challenged in W.A(MD) No.65 of 2006 and in the writ appeal, the respondents have withdrawn the writ petition. Subsequently, the order of the District Collector, Kanyakumari, dated 28.12.2005 was challenged by this second respondent in WP(MD)No.2081 of 2007 and the same was dismissed by this Court in the following terms:-

“22. The reason for challenge to the impugned order passed by the learned District Collector is that the construction of the Church was carried on under the orders of this Court, therefore, the District Collector should have granted the permission.

23. This contention is mis-conceived. It is well settled law, that any benefit taken under the order of the Court, on the reversal of the decision, results in status quo ante. The petitioner, had chosen to withdraw the writ petition and a specific order was passed by Hon'ble Division Bench, setting aside the order of the Hon'ble Single Judge. It was therefore obligatory on the part of the petitioner to restore status quo ante to the one existing before passing of the order in the writ



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petition. Instead of doing so, the petitioners chose to approach the District Collector and thereafter filed the present writ petition and obtained interim direction.

24.The ground of the petitioner that as the construction is complete, therefore, the permission should have been granted, cannot be sustained. The petitioner cannot be allowed to play hide and seek with the Court, by getting interim order, and thereafter withdraw the writ petition. Thereafter, instead of restoring status quo ante, the petitioner filed the writ petition and enjoyed interim order, but has chosen to be absent at the time of final hearing.

25.The exercise of discretion by the District Collector in view of the peculiar facts and circumstances of the case, does not call for interference by this Court.

9.The petitioner herein has filed WP(MD) No.10347 of 2006 for a Mandamus directing the District Collector, Kanyakumari to initiate action for demolition of the construction put up in S.No.214/32,



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inspite of rejection of planning permission issued by the District Collector, Kanyakumari in proceedings dated 28.12.2005. This Court, by its order dated 03.08.2011 dismissed the writ petition, that this Court in exercise of jurisdiction under Article 226 of the Constitution of India, cannot issue a direction for execution of the Civil Court decree. However, granted liberty to the petitioner to get the decree executed under Order XXI Rule 32 of Civil Procedure Code. Accordingly, this petitioner has filed the above Execution Proceedings in E.P.No.6 of 2012 and the same was dismissed by the Executing Court.

10.It is well settled legal position that an Executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Civil Procedure Code. It has no jurisdiction to modify a decree. Here, in the present case on hand, the Executing Court,



instead of executing the decree of the Civil Court, gone to an extent of observing that no evidence has been produced by the petitioner herein to establish that the construction of Church in the suit schedule property was after passing of the Decree. At this juncture, it is appropriate to refer the following citations, wherein, the similar issues have been dealt with by the Honourable Apex Court.

- *In the landmark judgment of Rameshwar Dass Gupta Vs. State of U.P. and another, the Honourable Apex Court observed as follows:-*

4.It is well settled legal position that an executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under CPC.

...It is true that the High Court normally exercises its revisional jurisdiction, under Section 115 of CPC, but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order



passed by the High Court in interfering with and setting aside the order directing payment of interest.

- *Recently, the Kerala High Court in **Ezhupunna Panchayat Pattikajaathi Service Sahakarana Sanghom Ltd and Ors**, reiterated the above principles and held as follows:-*

10. Thus, it is settled that an Execution Court can hear and decide on questions pertaining to the execution of decree and cannot go beyond the decree to decide upon the merits of case.

11. The objective of Section 47 is to prohibit multiplicity of proceedings, when the issues can be decided by the Executing Court itself. The main principle is that all questions relating to the execution, discharge or satisfaction of the decree has to be determined in the execution proceeding and not by a separate suit.

11. In view of the above, this Civil Revision Petition is allowed. The fair and decreetal order passed by the learned Principal



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District Munsif, Kuzhithurai, Kanyakumari District in E.P.No.6 of 2012 in O.S.No.442 of 2002, dated 04.10.2016 is hereby set aside. The matter is remitted back to the Executing Court and the executing Court shall pass necessary orders as per the Civil Court Decree in O.S.No.442 of 2002, within a period of three months from the date of receipt of a copy of this order. No costs.

20.02.2023

Index : Yes / No.

Internet : Yes / No.

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To

The Principal District Munsif, Kuzhithurai, Kanyakumari District.



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B.PUGALENDHI, J.

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Pre-delivery Order made in
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