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W.P.No.13004 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.13004 of 2024

Arulmigu Vengeeswarar Alagar Perumal
& Nagathamman Thirukoil
Represented by its Executive Officer
having office at temple Premises
Sarvamangala Colony
Aruna Colony, Vadapalani, Chennai - 26

... Petitioner

Vs.

1. The Commissioner
Greater Corporation of Chennai
Rippon Buildings, Chennai – 600 002
2. The Assistant Engineer
130th Award, Zone-10, N.117
NSK Salai, Kodambakkam
Chennai - 600 024

3. Mr. Karthick

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing 1 – 2 respondents to pull down the superstructure illegally constructed by the 3rd respondent upon petitioner temple property in Door No.61, Sadapettai Road, Vadapalani, Chennai – 600 026, measuring to an extent of 2142 sq.ft.

For Petitioner : Mr.S.Vijayaganesh
For Respondents : Mr.D.B.R.Prabhu
Standing counsel for R1 and R2

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned writ petition has been filed by Executive Officer of a temple {to be noted, temple has erroneously been described as writ petitioner} under the control and management of 'Tamil Nadu Hindu Religious and Charitable Endowments Department' [hereinafter 'TN HR & CE Department' for the sake of brevity] and it is governed by 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1958' [hereinafter 'TN HR & CE Act' for the sake of brevity].



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2. Complaint of the writ petitioner is that the third respondent has allegedly put up a construction [superstructure i.e., brick and mortar structure] illegally in temple land i.e., 'land admeasuring 2142 sq.ft or thereabouts at Door No.61, Sadapettai Road, Vadapalani, Chennai – 600 026' {hereinafter 'said land' for the sake of convenience}.

3. Learned counsel for writ petitioner submits that on an earlier occasion, a Public Interest Litigation by a public spirited person being W.P.No.14031 of 2018 was filed and another Hon'ble Division Bench of this Court passed an order regarding encroachment qua a tank belonging to the 'Arulmigu Vengeeswarar Alagar Perumal & Nagathamman Thirukoil' [hereinafter 'said temple' for the sake of brevity and clarity]. To be noted, the Executive Officer of said temple is the writ petitioner herein.

4. We find that the earlier order of the Hon'ble Division Bench has been carried to Hon'ble Supreme Court by way of Special Leave Petition (Civil) Diary No(s). 29078 of 2018 and Hon'ble Supreme Court on 04.09.2019 has passed the following order:

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ITEM NO.10 COURT NO.8 SECTION XII
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
SPECIAL LEAVE PETITION (CIVIL) Diary No(s) - 29078/2018
(Arising out of impugned final judgment and order dated 18-06-2018
in WP No. 14031/2018 passed by the High Court Of Judicature At
Madras)
SRI VENKATESWARAR ALAGAR PERUMAL AND
MAHATHANAN KOIL DEVASTHANAM REP. BY
ITS HEREDITARY TRUSTEE P. CHANUNDESMART Petitioner(s)
VERSUS
J. NEMANRAJ & ANR. Respondent(s)
(FOR ADMISSION and I.R. and IA No.118238/2018-EXEMPTION FROM FILING
C/O OF THE IMPUGNED JUDGMENT and IA No.118237/2018-PERMISSION TO
FILE SLP)
Date : 04-08-2018 This petition was called on for hearing today.
CORAM : HON'BLE MR. JUSTICE S.A. ROBBE
HON'BLE MR. JUSTICE L. KAGESWARA RAO
For Petitioner(s) Mr. R. Baxant, Sr. Adv.
Mr. G. PRAHMANAND, Adv.
Mr. G. Balaji, ACR
Mr. Shiva Vijaya Kumar, Adv.
For Respondent(s)
UPON hearing the counsel the Court made the following
O R D E R
Permission to file the special leave petition is granted.
Issue notice.
In the meantime, status quo, as it exists today, shall be
maintained by the parties.
[INDU KUMARI POKHRIYAL]
ASSISTANT REGISTRAR
[JAY KUMAR-II]
CLERK MASTER (SH)



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5. Learned counsel very fairly submits that the alleged illegal construction is also in land which forms part of the earlier proceedings.

Therefore, it is clear that Hon'ble Supreme Court is in seizin of the matter including 'said land' which is subject matter of captioned writ petition.

6. Hon'ble Supreme Court has made an order of *status-quo* and we are informed that the same is operating. This means that it is for the writ petitioner to move Hon'ble Supreme Court. Learned counsel points out that remedy is available *inter alia* under Section 78 of TN HR & CE Act.

7. In the light of Hon'ble Supreme Court being in seizin of the matter, it would only be appropriate that the writ petitioner moves the Hon'ble Supreme Court in this regard. To be noted, this is a matter of judicial discipline in the hierarchy of Courts.

8. Faced with the above situation, learned counsel has made an endorsement in the case file and a scanned production of the same is as follows:



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with a liberty to approach the
Hon'ble Apex Court in SLP no. 29078/18^(D)
This writ petition may be dismissed
as not pressed;
S/Amir Khan
19/6/2006
Counsel for Petitioner.

9. In the light of the narrative thus far, captioned writ petition is disposed of as closed/withdrawn albeit preserving all the rights and contentions of the writ petitioner to be canvassed in the Hon'ble Supreme Court and/or be governed by any further orders that may be made by Hon'ble Supreme Court. Though obvious, for the purpose of specificity, we make it clear that we have not expressed any view or opinion on the merits of the matter. Though obvious, for the purpose of specificity we make it clear that this also means that all rights of R3 and other respondents stand



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preserved without being impacted in any manner by this proceedings or withdrawal of captioned WP.

Captioned writ petition disposed of as closed/withdrawn albeit with preservation of rights of the writ petitioner and respondents in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

14.06.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

gpa

To

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