



W.P. No. 16580 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

AND

THE HON'BLE MRS. JUSTICE K. GOVIDARAJAN THILAKAVADI

W.P. No. 16580 of 2024

&

W.M.P. No. 18191 of 2024

V. Vijayabaskar

..Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Uthama Gandhi Road, Nungambakkam,
Chennai – 34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Nagapattinam District.



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3. The Executive Officer,
Karpakanathaswamy Temple,
Karpakanatharakulam,
Thiruthuraipoondi Taluk,
Thiruvarur District.
4. P.Shanmugavel
5. The District Collector,
Collectorate,
Tiruvarur District,
Tiruvarur.
6. The Revenue Divisional Officer,
RDO Office, Mannargudi.
7. The Commissioner of Municipality
Thiruthuraipoondi Municipality,
Thiruthuraipoondi and Post,
Tiruvarur District.

(R5 to R7 suo impleaded by order dated
25.06.2024 in W.P. No. 16580 of 2024
by MSJ & KGTJ)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying
for issue of a Writ of Mandamus forbearing respondents 1 to 3 from taking
coercive action against the petitioner occupation in S.No. 168/3 to an extent
of 200 sq.ft, Karpanakanatharakulam, Thiruthuraipoondi Taluk, Thiruvarur
District without following due process of law.

For Petitioner :: Mr.G. Mohammed Aseef



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For Respondents :: Mr.S. Ravichandran,
Additional Government Pleader
For R1 & R2
Mr.K.M. Subramanian for R4
Mr.A. Selvendran,
Special Government Pleader for
R5 to R7

ORDER

(Made by M. SUNDAR,J.)

Captioned 'Writ Petition' ['WP' for the sake of brevity] pertains to land admeasuring 200 sq.ft or thereabouts comprised in 'S.No. 168/3 in Karpanakanatharakulam, Thiruthuraipoondi Taluk, Thiruvarur District' (hereinafter 'said land' for the sake of brevity, convenience and clarity).

2. Mr.G. Mohammed Aseef, learned counsel for writ petitioner, who is before us, adverting to paragraph No.3 of the writ affidavit reiterated that said land belongs to a temple, namely, 'Karpakanathaswamy Temple' (hereinafter 'said temple' for the sake of convenience and clarity). To be noted, the positive averment in this regard in paragraph No.3 of the writ affidavit reads as follows:

'.....The above mentioned land is a temple land i.e.,



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Karpakanathaswamy Temple.'

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3. The complaint of the writ petitioner in the case on hand is that the 'Tamil Nadu Hindu Religious and Charitable Endowments Department' ('TN HR & CE Dept.' for the sake of brevity, convenience and clarity) has fixed 30.06.2024 as the final date for eviction while proceedings under Section 78 of ' Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1989)' [hereinafter ' TN HR & CE Act' for the sake of brevity, convenience and clarity] is underway.

4. Issue notice.

5. Mr. S. Ravichandran, learned Additional Government Pleader (TN HR & CE Dept.) accepts notice for respondents 1 to 3 and Mr.K.M. Subramanian (Enrolment No. MS 980/87, Madras High Court Advocates' Association, High Court, Madras) having office at No.152, Thambu Chetty Street, Parrys, Chennai accepts notice for 4th respondent (private respondent).



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6. Owing to the limited scope of captioned WP, the main WP is taken up with the consent of counsel on both sides.

7. From the submissions made, we find that writ petitioner and 4th respondent live in the neighbourhood. 4th respondent had earlier filed a WP in W.P. No 24729 of 2022 with a prayer to direct the revenue officials i.e., District Collector, Thiruvarur District, Revenue Divisional Officer, Mannargudi and Commissioner of Municipality, Thiruthuraipoondi Municipality to remove the encroachment stated to have been made by writ petitioner in the said land. This writ petition came to be disposed of by another Hon'ble Division Bench in and by order dated 22.11.2022 and a scanned reproduction of the same is as follows:



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W.P.No.24729 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P.No.24729 of 2022
and W.M.P.No.23667 of 2022

1 P.Shanmughavel ... Petitioner

Vs.

- 1 The District Collector,
Collectorate, Tiruvarur District,
Tiruvarur.
- 2 The Revenue Divisional Officer,
R.D.O. Office, Mannargudi.
- 3 The Commissioner of Municipality,
Thiruthuraipoondi Municipality,
Thiruthuraipoondi Post,
Tiruvarur District.
- 4 Vijayabaskar
- 5 The Executive Officer,
Sri Karpaganathaswamy Temple,
Karpaganatharkulam Village and Post,
Edumbavanam Via Thiruthuraipoondi Taluk,
Tiruvarur District.

... Respondents



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Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents 1 to 3 to remove the encroachments on the public approach road at Anna Nagar especially the encroachment made by the 4th respondent who has also encroached upon the temple land of the 5th respondent as well as the poramboke lands.

For Petitioner	: Mr.A.Udhayachandiran
For Respondents 1&2	: Mr.P.Muthukumar, State Govt.Pleader
For Respondent No.3	: Mr.D.Ravichandran
For Respondent No.5	: Mr.N.R.R.Arun Natarajan, Spl.G.P.

ORDER

(Delivered by D.KRISHNAKUMAR, J.)

The petitioner has filed the Writ petition for removal of encroachment of the property comprised in S.No.168/3 to an extent of 200 sq.ft. of temple land of the 5th respondent temple.

2. The learned State Government Pleader appearing for the respondents on instructions would submit that the property comprised in S.No.168/3 to an extent of 200 sq.ft. of land belongs to Arulampalam Karpaganadhaswamy Thirukkottai, 5th respondent herein. Therefore, appropriate authority is the Joint Commissioner, H.R.& C.E. Department to initiate action under Sec.78 of H.R.& C.E. Act.

3. Mr.Arun Natarajan, Special Government Pleader appearing for the 5th respondent has produced a letter from the 5th respondent addressed



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to the Special Government Pleader, H.R.& C.E. Department stating that action will be taken under Sec.78 of H.R.& C.E. Act for removal of encroachment. The Special Government Pleader also assured this Court that appropriate action will be taken under Sec.78 of the Act within the time as may be fixed by this Court. It is also brought to the notice of this Court that inspection also conducted by the 5th respondent and report also submitted to the Joint Commissioner through Assistant Commissioner, H.R. & C.E. Department and the complaint will be preferred before the Joint Commissioner, H.R.& C.E. Department and therefore, action being taken for removal of encroachment in the aforesaid property.

4. Recording the aforesaid submissions made by the parties, we are of the view that even though the Joint Commissioner, H.R.& C.E. is not a party in the writ petition, based on the report submitted by the Executive officer, the Joint Commissioner, H.R.& C.E. Department shall take appropriate action after providing opportunities to the parties concerned. Insofar as the property comprised in S.No.236/2, the petitioner has not mentioned the classification of the said land for removal of encroachment, we are not inclined to issue any direction to the authorities concerned for removal of encroachment in S.No.236/2. It is open to the petitioner to approach the authorities concerned for removal of encroachment.

Per Justice Indira
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With the above observations, the writ petition stands disposed of. No costs. Connected miscellaneous petition is closed.

(D.K.K.J.) (T.V.T.S.)
22.11.2022

Speaking/Non Speaking order

Index: Yes

vaan

To

1. The Joint Commissioner, H.R.& C.E. Department
2. The District Collector, Collectorate, Tiruvarur District, Tiruvarur.
3. The Revenue Divisional Officer, R.D.O. Office, Mannargudi.
4. The Commissioner, Thiruthuraiipoondi Municipality, Thiruthuraiipoondi Post, Tiruvarur District.
5. The Executive Officer, Sri Karpaganathaswamy Temple, Karpaganathankulam Village and Post, Edumbavaram Via Thiruthuraiipoondi Taluk, Tiruvarur District.

2024/11/22 14:15



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8. Pursuant to the aforementioned order, 2nd respondent before us has issued a notice dated 21.11.2022 bearing Reference M.P. No. 295/2022/C.2 under Section 78 of TN HR & CE Act.

9. It is submitted that pending 78 proceedings, some quantum of rent qua said land was agreed between said temple and writ petitioner. It is also admitted that writ petitioner defaulted in payment of rent but there is no material to demonstrate that there is any lease much less any subsisting lease. In other words, though a contention has been raised that writ petitioner is a lessee under the said temple, there are no rental receipts, lease deed and no material to support this contention.

10. In the aforementioned circumstances, 4th respondent before us filed a second WP being W.P. No. 2145 of 2024 with a prayer to direct revenue authorities namely, District Collector, Revenue Divisional Officer, Director of Municipal Administration, Commissioner of Municipality, Tahsildar, as well as Jurisdictional Joint Commissioner of TN



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HR & CE Department and Executive Officer of said temple to evict the writ petitioner (V. Vijayabaskar) and another (Ms. Periyanyaki) from what according to 4th respondent is public utility road. (To be noted, this writ also pertains to same survey No.168/3, Karpanakanatharakulam, Thiruthuraipoondi Taluk, Thiruvarur District)

11. The second WP filed by 4th respondent being W.P. No. 2145 of 2024 came to be disposed of by another Hon'ble Division Bench in and by order dated 22.04.2024, the relevant portion of which reads as follows:

'Heard Mr.K.M. Subrahmaniam, learned counsel for the petitioner; Mr.A. Edwin Prabakar, learned State Government Pleader, assisted by Mr.K. Karthik Jegannath, learned Government Advocate for respondents 1 to 3 and 5; Mr.D. Ravichandran, learned counsel for the fourth respondent; and Mr.N.R.R. Arun Natarajan, learned Special Government Pleader (HR &CE) for respondents 6 and 7.

2. *Learned Special Government Pleader (HR & CE) submits that pursuant to the order of this Court dated 22.11.2022 passed in W.P. No. 24729 of 2022, the HR & CE Department has already taken action under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short, "the*



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Act of 1959”) in respect of Survey No. 168/3, 4 and 5. Earlier, the date of eviction was fixed on 19.3.2024 and now the final date is fixed on 30.6.2024.

3. *As action is already taken for eviction under Section 78 of the Act of 1959 and the next date is fixed on 30.6.2024, at present, no orders are necessary.*

4. *The writ petition, accordingly, is disposed of. There shall be no order as to costs. Consequently, W.M.P. No. 2302 of 2024 is closed.’*

12. It is in the aforementioned order that it has been recorded that the final date for eviction has been fixed as 30.06.2024 vide Section 78 proceedings under TN HR & CE Act.

13. Mr.S. Ravichandran, learned Additional Government Pleader, on instructions, submits that 30.06.2024 is not eviction date but the next hearing date qua 78 proceedings, which are now underway before 2nd respondent before us.

14. We are informed that 4th respondent before us is also party to 78 proceedings.



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15. In the hearing today, Mr.K.M. Subramanian, learned counsel for 4th respondent contended that said land was temple land at one point of time i.e., land belonging to the said temple but was subsequently converted into a public utility road and that it vests in the local body namely, Commissioner of Thiruthuraipoondi Municipality.

16. We make it clear that it is open to 4th respondent to raise this plea in the 78 proceedings as we are informed that 4th respondent is also a party to 78 proceedings now underway before 2nd respondent. We also make it clear that 4th respondent can now raise this plea on 30.06.2024, being the next hearing date and raise this plea.

17. If the contention of 4th respondent that the said land is a public utility road is the correct obtaining position, then encroachment has to be removed by the local body.

18. The pivotal point is, writ petitioner has fairly admitted



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that said land does not belong to him and that it is not a private land either.

The question is whether it is temple land or public utility road, which vests in the local municipality. Either way, it is an encroachment and the same deserves to be removed, albeit by adhering to due process of law under the statute concerned.

19. In the captioned WP, we find that writ petitioner has not added revenue authorities as respondents. We deem it appropriate to add revenue authorities as respondents. Therefore, the District Collector, Collectorate, Tiruvarur District, Tiruvarur, the Revenue Divisional Officer, RDO Office, Mannargudi, the Commissioner of Municipality, Thiruthuraipoondi Municipality, Thiruthuraipoondi and Post, Tiruvarur District are added as respondents 5 to 7 respectively. Registry to carry out necessary and consequential amendments in the case file before uploading/ before issuing any certified order copy.

20. In the light of the narrative thus far, all the official



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respondents are directed to carry the eviction proceedings to its logical end and conclude the same as expeditiously as their respective businesses would permit but in any event within four weeks from today i.e., by 23.07.2024.

21. We make it clear that right of appeal, revision or any other right of writ petitioner will stand preserved.

22. Captioned WP is disposed of in the aforesaid manner with aforementioned simple directives. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
25.06.2024

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P.S.I: Upload forthwith

P.S.II: All concerned (including the Registry of Madras High Court) to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR coded.

P.S.III: Registry to communicate this order to

(i) The District Collector, Collectorate,
Tiruvarur District, Tiruvarur.

(ii) The Revenue Divisional Officer,
RDO Office, Mannargudi.

(iii) The Commissioner of Municipality
Thiruthuraipoondi Municipality,

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*Thiruthuraipoondi and Post,
Tiruvarur District.*

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P.S.IV: *Though captioned WP is disposed of, Registry to list captioned WP under the cause list caption 'FOR REPORTING COMPLIANCE' on 26.07.2024.)*

To

1. The Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Uthama Gandhi Road, Nungambakkam,
Chennai – 34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Nagapattinam District.
3. The Executive Officer,
Karpakanathaswamy Temple,
Karpakanatharakulam,
Thiruthuraipoondi Taluk,
Thiruvarur District.
4. The District Collector,
Collectorate,
Tiruvarur District, Tiruvarur.
5. The Revenue Divisional Officer,
RDO Office, Mannargudi.
6. The Commissioner of Municipality
Thiruthuraipoondi Municipality,
Thiruthuraipoondi and Post,



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Tiruvarur District.

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M. SUNDAR,J.
AND

K. GOVINDARAJAN THILAKAVADI,J.

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