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W.P.No.20958 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.20958 of 2024

&

W.M.P.No.22914 of 2024

in

W.P.No.20958 of 2024

Padma
W/o.Krishnan

... Petitioner

Vs.

1. The District Collector
Tiruvannamalai District

2. The Tahsildar
Cheiyar Taluk
Cheiyar
Tiruvannamalai District

3. Nethaji

4. Selvam

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5. Ranjith

6. Rajkumar

7. Selvam

8. Satheeshkumar

9. Sampath

10. Prasannakumar

11. Rajesh

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 and 2 to consider the petitioner's representation dated 06.06.2024 and further forbearing the respondents 3 to 11 from proceeding with the illegal construction of Vinayagar Temple in Survey No.291/2, Government Sarkar Poramboke land situated at Palla Theru, Mukkur Village, Cheiyar Taluk, Tiruvannamalai District.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.P.Balathandayutham
Spl.Govt.Pleader for R1 & R2

ORDER

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

Captioned main 'Writ Petition' ['WP' for the sake of brevity] pertains to alleged illegal construction/encroachment in S.No.291/2 which according

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to learned counsel for writ petitioner Mr.Gnanasekar along with Mr.M.Palani is 'Government Sarkar Poramboke land situated in Palla Theru, Mukkur Village, Cheiyar Taluk, Tiruvannamalai District' [hereinafter 'said land' for the sake of convenience and clarity].

2. Learned counsel for writ petitioner submits that the writ petitioner has his residential house put up in S.No.294 of the same village, same Taluk and same District and Natham Patta being Patta No.48 has been issued in the name of Krishnan, son of Chinnappa and that Krishnan is writ petitioner's spouse. Learned counsel submits that writ petitioner has put up a dwelling house in S.No.294. It is submitted that the alleged offending construction is being put up right in front of writ petitioner's dwelling house in the garb of construction of Vinayagar emple taking advantage of a small Suyambu Vinayagar and a small structure thereat which existed earlier. To be noted, scanned reproduction of the photographs placed before us is as follows:



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3. Issue notice to official respondents i.e., issue notice regarding admission.

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4. Mr.P.Balathandayutham, learned Special Government Pleader accepts notice for R1 and R2.

5. Learned State counsel submits, on instructions, that the second respondent would conduct a survey qua S.No.291/2 as well as S.No.294 and give a report as to whether there is encroachment in Government Poramboke land as alleged. If the survey report says that there is encroachment, action would be initiated either under 'the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' [hereinafter 'said 1905 Act' for the sake of brevity and convenience] or under 'the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994)' [hereinafter 'TN Panchayats Act' for the sake of brevity].

6. Before we proceed further, we deem it appropriate to record the stated position of the learned counsel for writ petitioner that writ petitioner is not opposed to existence of the small Suyambu Vinayar Statue or a small structure thereat but the writ petitioner's objection is only with regard to a huge construction being put up by expanding the existing small structure thereby obstructing access to his dwelling house. This submission is recorded.



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7. Owing to the aforementioned fair stand taken by both sides, the legal perimeter within which the captioned main WP should now perambulate has dwindled vastly and therefore with the consent of learned counsel on both sides, main WP was taken up. In this regard, we are acutely conscious that R3 to R11, who are private respondents, are not before this Court and therefore, we will be putting in a safety valve in this regard infra.

8. In the light of the narrative thus far and facts and circumstances set out supra, the following order is made:

i) R2 shall conduct a survey of aforementioned said land (S.No.291/2) as well as the writ petitioner's house site in S.No.294 for which the writ petitioner says that he has Natham patta and submit a report as to whether there is any alleged obstruction / encroachment or illegal construction in Government Pormaboake land and if the survey report of R2 says that there is no encroachment and/or illegal construction in S.No.291/2 as alleged, copies of the survey report shall be furnished to the writ petitioner as well as to R3 to R11.

ii) All questions are left open and it is open to the writ



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petitioner to challenge the survey report in a manner known to law:

iii) If survey report says that there is offending construction in Government Poramboke land (S.No.291/2), and / or S.No.294 proceedings shall be initiated under TN Panchayats Act and depending on the trajectory it takes, further proceedings will be under said 1905 Act;

iv) To be noted, Section 131(2) of TN Panchayats Act provides for alleged encroachers to be put on notice / show-caused. This is the safety valve qua R3 to R11;

v) As regards writ petitioner, we make it clear that if proceedings are initiated under Section 131(2) of TN Panchayats Act, copy shall be marked to writ petitioner also;

vi) As regards the aforementioned point, we leave open all questions and all the rights and contentions of writ petitioner as well as R3 to R11 are preserved for being canvassed / agitated in an appropriate forum;



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vii) As learned counsel for writ petitioner submits that construction is proceeding at break neck speed, let survey be done day-after-tomorrow i.e., on 31.07.2024.

viii) The aforementioned exercise i.e., furnishing survey report and/or proceedings under Section 131(1) of TN Panchayats Act followed by said 1905 Act if the need arises shall be completed as expeditiously as the official business of respondents and other officials would permit but in any event the entire exercise shall be completed within six weeks from today i.e., by 09.09.2024;

ix) If there is encroachment, the fair stand taken by learned counsel for writ petitioner that he is not opposing the existence of small Suyambu Vinayagar and / or pooja for the same shall be taken into consideration by the Authority concerned.

Captioned WP disposed of in the aforesaid manner with aforementioned observations, directives and preservation of rights in the



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as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
29.07.2024

Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

gpa

P.S. I: *Upload forthwith*

P.S.II : *All concerned including 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.*

To

1. The District Collector
Tiruvannamalai District
2. The Tahsildar
Cheiyar Taluk
Cheiyar
Tiruvannamalai District



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M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

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