



W.P.No.27243 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.27243 of 2023

and

W.M.P.No.26671 of 2023

T.K.Sampath Kumaran

... Petitioner

Vs.

- 1.The District Collector,
Kanchipuram District Collectorate,
Kanchipuram – 631 501.
- 2.The Commissioner,
Kanchipuram City Municipal Corporation,
Anna Indira Gandhi Salai,
Kanchipuram – 631 502.
- 3.The Commissioner,
Hindu Religious & Charitable Endowments Board,
112, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.



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4.The Executive Officer,
Vilakoli Temple,
Vilakoli Kovil Street,
Kanchipuram – 631 501.

5.The Director,
Archaeological Survey of India,
Janpat, New Delhi – 110 004.

6.The Superintending Archaeologist,
Chennai Circle,
Archaeological Survey of India,
Chennai – 600 009.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to remove and forbear the 2nd respondent from illegal occupation and construction of any structure or building contiguous to the southern wall of the Sri Vilakoli Perumal Temple, Kanchipuram, and consequently, remove the illegally constructed building contiguous to the southern wall of the Sri Vilakoli Perumal Temple, Kanchipuram.

For Petitioner	:	Mr.Niranjan Rajagopalan
For R2	:	Mr.P.Muthukumar Additional Advocate General assisted by Mr.R.Gopinath Standing Counsel
For R1	:	Mrs.V.Yamuna Devi Special Government Pleader



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For R3 and R4 : Mr.S.Ravichandran
Additional Government Pleader
(HR & CE)

For R5 and R6 : Mr.Rajesh Vivekananthan
Deputy Solicitor General

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is filed for issuance of a Writ of Mandamus directing the respondents 1 and 2 to remove and forbear the 2nd respondent from illegal occupation and construction of any structure or building contiguous to the southern wall of Sri Vilakoli Perumal Temple, Kanchipuram, and consequently, to remove the illegally constructed building contiguous to the southern wall of Sri Vilakoli Perumal Temple, Kanchipuram.

2.Brief facts that are stated in the affidavit filed in support of this writ petition are as follows :



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2.1.The petitioner is a permanent resident of Kanchipuram and he is the Secretary of Sri Thathadesikar Thiruvamsathar Sabha, Kanchipuram. The Sabha in which the petitioner is Secretary takes care of the welfare of the Thathachariyar community, members of whom had been the Trustees of Sri Devaraja Swamy Temple for years. Being the member of Thathachariyar community, the petitioner has key holding and is closely connected with the Temple and its administration. Sri Vilakoli and Sri Thoopul Vedanta Desikan Temple, Kanchipuram, is a 2000 year old Temple and is one of the 108 Divya Desams and has got a lot of devotees visiting the Temple everyday. The Temple, being 2000 years old, the construction including the wall should be declared as a heritage building and brought under the purview of the Archaeological Survey of India.

2.2.The street in which the Temple is situated is a busy area with lot of traffic. The *prahara* wall of the Temple is more than 700 years old. Just abutting the Temple compound wall, originally, there existed buildings which were used as Mid Day Meal Centre, Office for Corporation and Ration Shop. Recently, the local body had demolished a portion of the



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existing construction and touching the existing structure and Temple wall, the local body has now up a new construction.

2.3.As per the Revenue records, the petitioner found that the vacant land adjacent to the Temple wall is classified as Road and therefore, the local body has put up construction just in a public road. The petitioner gave a representation to the respondents 1 and 2 on 18.07.2023 calling upon them not to put up any construction abutting the southern wall of the Temple and to demolish all the existing illegal constructions. Since the petitioner's representation was not considered by the respondents, the petitioner has come forward with the above writ petition with specific allegation that the 2nd respondent had illegally encroached and put up construction touching the southern wall of the Temple which is not only against the law but also in utter disregard to the provisions of the Tamil Nadu Urban Local Bodies Act, 1998. Since encroachment in public pathway or public road is objectionable, the petitioner has also prayed for demolition of the entire structure which is in the public road and existence of which would be against the interest of public.



3.Having regard to the facts admitted, and since there is no dispute with regard to the interest the petitioner has in the administration of the Temple, this Court finds that the petitioner has *locus standi* to file this writ petition.

4.After hearing the parties, this Court finds that the Temple, though is an old Temple, is not declared as a Heritage Building or a building with national importance by the Central Government under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or the corresponding State Act. The Superintending Archaeologist, Chennai Circle, Archaeological Survey of India, who has been impleaded as the 6th respondent, has filed a counter affidavit clarifying this position.

5.The Advocate Commissioner, who was appointed by this Court, has filed photographs and a report indicating the following :

“At the beginning of the Compound wall, on the road, a Fair Price Shop is functioning. The Temple Southern side Compound wall is being used as a wall of the building of the Fair Price Shop. Next to the ration shop, After giving gap of 5 ft, Zonal



office of the Corporation Of Kancheepuram is constructed without providing any gap between the compound wall of the temple and the wall of the zonal office. The wall of the zonal office is being attached on the Southern side Compound wall of the temple. Inside the Zonal office, one toilet is constructed. After the zonal office 5 ft gap was there. In the 1 feet gap another toilet is being constructed for Public without any gap on the Southern side Compound wall of the temple. After 5 feet gap, two building is constructed meant for Anganwadi. Between the two Anganwadi building, 5ft gap is there. Between the compound wall of the temple and the Anganwadi building there is a gap of 3 feet. In the gaps provided by the 2nd respondent, there is a possibility of Public misusing the same. Safety to the temple will be jeopardized.”

In the report, few more constructions beyond the Anganwadi building are also indicated. The Commissioner pointed out that the entire 75 m of the public road adjacent to the southern side compound wall of the building is encroached by the 2nd respondent by constructing buildings for their purposes. It is also noted that the buildings were constructed by the 2nd respondent without even informing the Temple. The constructions are so close that the Temple will not be in a position to carry out any repair or



maintenance work in the compound wall particularly on the southern side.

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6.However, the justification given by the 2nd respondent to preserve the construction put up by them is that the local body has spent substantial amount towards the construction and that the present construction is also after demolishing the existing structure which was there for quite sometime.

7.The 1st respondent, pursuant to the directions of this Court, filed an affidavit giving an undertaking in the following lines :

“3. ... This respondent undertakes and assurances that no inconvenience will be caused to the public due to the ongoing construction of the Rural Child care Center (Anganvadi), Ration Shop & Ward Office of this 1st Respondent herein the Commissioner, Kanchipuram City Municipal Corporation. I further state that this respondent will affix a CCTV Camera in aforesaid place enabling the Temple to have access to it in order to safeguard the temple and its super structure and also to avoid any kind of illegal or criminal activities taking place near the temple premises. I further reassure that this respondent will maintain the age-old compound wall of Sri Vilakoli Perumal Temple, Kanchipuram which has existence for several decades by valuing its antiquity.”



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8. Similarly, the Commissioner, Kanchipuram Municipality, has also filed an affidavit with similar undertaking.

9. The fact that the local body has put up construction in a public road or in the road margin which is meant for public use, is not in dispute. Since the construction put up by the local body is to house the Anganwadi Centre and to run a Ration Shop and the new construction had come up in the place where some construction was already there, this Court is inclined to show some indulgence to preserve the building atleast for a period of 25 years. The respondents are directed to pull down the entire structure in the public road on the expiry of 25th year from today. Thereafter, there shall not be any construction and the entire stretch of the property, in which the construction had been put up by the 2nd respondent, should be kept as a vacant land and it should be allowed for the free flow of traffic. Till such time the respondents are permitted to use the buildings adjacent to the Temple wall, the respondents shall take utmost care and be responsible for the maintenance of the wall.



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10.As undertaken by them, the 2nd respondent is directed to affix CCTV Camera in the appropriate place of the building put up by the 2nd respondent in such a manner that the Temple administration will have access to the CCTV Camera which is meant to safeguard the Temple and its structure, to avoid any kind of illegal or criminal activities taking place near the Temple premises. The entire compound wall of Sri Vilakoli Perumal Temple, which is in existence for several decades, should be maintained at the cost of the 2nd respondent and the 2nd respondent shall meet out the expenses in case any permanent damage is caused to the Temple on account of the existing construction put up by the 2nd respondent.

11.With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

12.Since a sum of Rs.50,000/- has already been paid to the Advocate Commissioner as initial remuneration, this Court finds it appropriate to fix a sum of Rs.10,000/- (Rupees Ten Thousand only) as additional remuneration



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to the Advocate Commissioner. The said additional remuneration of

Rs.10,000/- shall be paid to the Advocate Commissioner, by the Temple.

(S.S.S.R., J.) (N.S., J.)
15.03.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

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