



W.P.(MD)No.2879 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.07.2024

DELIVERED ON : 21.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.2879 of 2021

and

W.M.P.(MD)No.2345 of 2021

Chellasamy

... Petitioner

Vs.

1.The District Collector,
District Collector Office,
Nagercoil,
Kanyakumari District.

2.The Executive Officer,
Vilavoor Town Panchayat,
Moolachel,
Thuckaly Post,
Kanyakumari District.

3.The Tahsildar,
Thuckaly Taluk,
Thuckaly Post,
Kanyakumari District.

4.S.Jency

... Respondents

1/15



W.P.(MD)No.2879 of 2021

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the first respondent herein in his proceedings in $\text{ந.க.பு}3/8450/2020$, dated 03.02.2021 and quash the same as illegal and further direct the first respondent herein to accord planning permission for the repair and reconstruction of Arulmigu Moolachel Nullivilagam Siva Sudalai Madasamy and Pathrakaliamman Family Temple forthwith.

For Petitioner : Mr.V.Meenakshi Sundaram

For Respondents : Mr.V.OM Prakash
Government Advocate
for R.1 to R.3

: Mr.G.Cenil
for R.4

ORDER

The Writ Petition is directed against the order dated 03.02.2021 passed by the first respondent and for further direction to the first respondent to accord planing permission for the repair and reconstruction of Arulmigu Moolachel Nullivilagam Siva Sudalai Madasamy and Pathrakaliamman Family Temple.



W.P.(MD)No.2879 of 2021

WEB COPY

2. The case of the petitioner is that Moolachel Nullivilagam Siva Sudalai Madasamy Temple is aged over temple more than 300 years old with small Peedam in Nullivilagam, Moolachel Thuckalay, Kanyakumari District, that nearly 47 families are worshiping this temple as their “Kuladheivam” and used to celebrate kodai festival each and every year, that in Document No.1714 in Malayalam year 1111 M.E., that it is stated to be in Old Survey No.881B new survey No.230/7, measuring 6 cents, that the area in which the said temple is situated in the recent past developed as house plots and many houses were constructed by different community people around the said temple, that the land allotted to the temple belonged to their family and patta in Patta No.5444 was issued to the said effect, that the small construction of Peedam in the said temple got damaged due to passage of time and they have decided to repair and reconstruct the same, that they have carried out all rituals and demolished the damaged construction on 07.09.2019 and at that time, the house owners in and around the Survey No.230/7 started creating problem and let out waste water in the temple land, that the fourth respondent has retrained the petitioner and others from doing reconstruction and repair



W.P.(MD)No.2879 of 2021

works and attempted to give religious colour for their attempt, that the fourth respondent has filed a Public Interest Litigation in W.P.(MD)No. 24130 of 2019 to stall the construction work and this Court passed an order dated 15.11.2019 directing the District Collector to look into the matter and if no such prior permission was obtained directing them to take appropriate action, that the petitioner submitted a representation dated 11.11.2019 to the respondents 1 and 2 seeking permission for repair and reconstruction of the said Peedam, but the petitioner was informed to submit an application through proper channel, that the petitioner has then submitted a detailed representation dated 12.12.2019 to the second respondent seeking planning approval, that since there was no response, the petitioner was constrained to file a writ petition in W.P. (MD)No.6485 of 2020 and this Court directed the respondents 1 and 2 therein to consider the petitioner's representation dated 12.12.2019 and pass appropriate orders and that in pursuance of the above direction, the first respondent directed the revenue authorities to make spot inspection and to file a report and the Village Administrative Officer visited the spot and collected no objection affidavit for the repair works to be carried out and on the basis of the said report, the Sub-Collector has submitted a



W.P.(MD)No.2879 of 2021

report dated 08.12.2020 and the Superintendent of Police, Nagercoil was also directed to submit a report and that the first respondent, without considering the material aspects in proper perspective, has passed the impugned order dated 03.03.2021 rejecting the petitioner's representation and that therefore, the petitioner, aggrieved by the impugned order, has filed the present Writ Petition.

3. The first respondent has filed a counter affidavit stating that in pursuance of the directions of this Court, the first respondent has directed the Superintendent of Police, Nagercoil and the Sub-Collector, Padmanabhapuram to submit reports, that the Superintendent of Police in his report has stated that he is not recommending to grant permission in order to avoid law and order problems, that the Sub-Collector, Padmanabhapuram has reported that if permission is granted, it will create law and order problem issue between the Hindus and Christians, that there is apprehension of law and order problem in granting permission to the petitioner due to the strong objections of the neighbours, that one Davapalus, who is the joint pattadar of the said land in dispute has raised objections for granting permission, that the



W.P.(MD)No.2879 of 2021

neighbours including the fifth respondent have raised strong objection for granting permission and that therefore, the first respondent, after considering the reports of the Sub-Collector, Padmanabhapuram and the Superintendent of Police, Nagercoil and the objections raised by the neighbours as well as joint pattadars, has rightly passed the impugned order rejecting the writ petitioner's representations.

4. The second respondent has filed a counter affidavit reiterating the contentions raised in the counter affidavit filed by the first respondent.

5. The fourth respondent has filed the counter affidavit stating that the petitioner along with two persons Senthil and Robhi had constructed “Iyya Vazhi Temple” without getting prior permission from the Government, that there are three temples and a church already existing within 100 meters from the house of the fourth respondent, that the petitioner and other people in that area had requested the petitioner and others to stop constructing the new temple explaining their trouble and difficulty because of the sound horns used in the other temple, that they



W.P.(MD)No.2879 of 2021

have also explained the health condition of the old aged people in that area and also the difficulty of the school and college going students, that they are constructing the temple touching the house of the fourth respondent compound wall without leaving any space around, that the fourth respondent approached the Inspector of Police, Thuckalay and explained about the illegal construction being done and also made a representation before the first respondent and the Superintendent of Police, but no action was taken and that therefore, she was constrained to file the writ petition in W.P.(MD)No.24130 of 2019 and this Court directed the first respondent to look into the matter, that the first respondent had conducted enquiry on 22.01.2021, that the fourth respondent had attended the enquiry and narrated her grievances and that the first respondent after getting report from the officials and also after conducting proper enquiry, has correctly rejected the petitioner's application.

6. It is pertinent to note that the case of the petitioner that there existed Siva Sudalai Madasamy temple with small Peedam in S.No.230/7 (old Survey No.881B) of Nullivilagam, Moolachel Thuckalay has not



W.P.(MD)No.2879 of 2021

been disputed by the respondents specifically. The contention of the petitioner is that there was a reference to the land allotted to the temple in Document No.1714, in Malayalam year 1111 M.E., and that the said temple has been shown as northern boundary of the property of the fourth respondent in the settlement deed executed in favour of the fourth respondent's husband Robert Kingsley, are also not disputed by the respondents. It is not in dispute that the fourth respondent has filed a Public Interest Litigation in W.P.(MD)No.24130 of 2019 and this Court passed an order dated 15.11.2019 and the result of the petition is extracted hereunder:

“3. The learned Special Government Pleader appearing for the official respondents submitted that insofar as Kanyakumari District is concerned, no person is entitled to put up any construction or a place of worship or for any other religious activities, without prior permission. It appears that no such permission has been obtained. Therefore, we direct the District Collector, Kanyakumari District, to look into the matter and if no such prior permission is obtained, appropriate direction be issued to the respondents 3 and 4 to prevent such construction. However, if permission has already been obtained, it shall be ensured that the construction is in



W.P.(MD)No.2879 of 2021

accordance with the permission, which was granted.

WEB COPY

4. With these observation, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.”

7. It is also not in dispute that the petitioner has filed a writ petition in W.P.(MD)No.6485 of 2020 seeking a Writ of Mandamus directing the respondents 1 and 2 therein to consider his representation dated 12.12.2019 and pass appropriate orders in the issue of planning and permission under Rule 4(3) of Tamil Nadu Panchayat Building Rules 1973 for the repair and reconstruction of Arulmigu Moolachel Nullivilagam Siva Sudalai Madasamy and Pathrakaliamman family temple within a stipulated time as fixed by this Court and this Court vide order dated 16.10.2020 has disposed of the same with the following direction:

“4. For the foregoing reasons, this Court directs the first and second respondents to consider the petitioner's representation dated 12.12.2019 and pass appropriate orders in the issue of planning and permission under Rule 4(3) of the Tamil Nadu Panchayat Building Rules 1973, to carry out the repair and reconstruction works in Arulmigu



Moolachel Nullivilagam Siva Sudalai Madasamy and Pathrakaliamman Family Temple situated at Kalkulam, Kanyakumari District, within a period of six weeks from the date of receipt of a copy of this order.

5. With the aforesaid direction, this writ petition stands disposed of. No Costs.”

8. It is not in dispute that in pursuance of the directions of this Court, the first respondent has called for reports from the Sub-Collector, Padmanabhapuram and the Superintendent of Police, Nagercoil who in turn submitted their reports to the first respondent. It is also not in dispute that the Superintendent of Police and the Sub-Collector, Padmanabhapuram in their reports have made recommendation not to grant permission to the petitioner, as there is possibility for law and order problem. Moreover, the first respondent has also taken note of the objections raised by the fourth respondent and one Devapalus, one of the joint pattadar of the land in dispute.

9. The learned Counsel for the petitioner would mainly contend that since the already existing Peedam got damaged, they have decided to reconstruct the Peedam and they have no plan to make any new



W.P.(MD)No.2879 of 2021

constructions in the property in dispute. Regarding the objection that the joint pattadars of the land in dispute have not given any consent to carry out the repair and renovation works, the learned Counsel for the petitioner would submit that except Devapalus, all other joint pattadars are supporting the case of the petitioner and they have no objection for carrying out the repairs and renovation works and that they are ready to produce no objection letters from the joint pattadars.

10. The main complaint of the fourth respondent is that using of sound horns in the temple causes difficulties and health issues to the old aged people and also school and college going students and that though the neighbouring people requested them to reduce the sound, they purposely used the loud horns to disturb that area. If that be the complaint, the first respondent can only be directed to impose necessary conditions through the competent authorities, but that by itself is not a ground to reject the prayer for repairs and renovations of the structures which existed earlier.



W.P.(MD)No.2879 of 2021

11. It is not in dispute that one of the joint pattadhar, who raised objections, has already converted to Christianity and is now professing it.

When all the joint pattadharars are consenting to the proposed work, one of them, now professing a different religion, cannot raise objections and that too, for carrying out the repair and renovation of the peedam that existed in that place for several years. As rightly contended by the learned Counsel for the petitioner, the impugned order came to be passed, as if the petitioner has been seeking permission to make a new and huge constructions in the property in dispute and their representation is only to repair and renovate the Peedam which existed earlier.

12. Considering the above facts and circumstances and taking note of the submissions on either side, this Court is of the view that the petitioner has to be directed to produce no objection letters from all the joint pattadars other than Devapalus and also to submit an undertaking affidavit that they will undertake repair and renovation work of the Peedam which existed earlier, without making any new constructions and on such production of no objection letter and undertaking affidavit, the respondents 1 and 2 are to be directed to grant permission by imposing



W.P.(MD)No.2879 of 2021

necessary conditions. Accordingly the the petitioner is directed to produce no objection letters from all the joint pattadars except for Devapalus and also to furnish an undertaking affidavit that they will restore the Peedam to its original state through repair and renovation, without undertaking any new constructions and on such production of no objection letter and undertaking affidavit, the respondents 1 and 2 are directed to grant permission by imposing necessary conditions.

13. With the above directions, the Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

21.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

SSL



W.P.(MD)No.2879 of 2021

To

- 1.The District Collector,
District Collector Office,
Nagercoil,
Kanyakumari District.
- 2.The Executive Officer,
Vilavoor Town Panchayat,
Moolachel,
Thuckaly Post,
Kanyakumari District.
- 3.The Tahsildar,
Thuckaly Taluk,
Thuckaly Post,
Kanyakumari District.



WEB COPY



W.P.(MD)No.2879 of 2021

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY ORDER MADE IN

W.P.(MD)No.2879 of 2021

21.08.2024