



W.P.(MD) No.13845 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.13845 of 2024
and
W.M.P.(MD) No.12176 of 2024**

Arulmighu Mariamman Thirukovil,
Irukkankudi,
through its Executive Officer,
Sathur Taluk,
Virudhunagar District.

... Petitioner

/vs./

- 1.The District Collector,
Office of Collectorate,
Virudhunagar,
Virudhunagar District.
- 2.The Assistant Director,
Village Panchayat,
Virudhunagar.
- 3.The Block Development Officer,
Sattur Taluk,
Virudhunagar District.
- 4.Irukkankudi Village Panchayat,
through its Executive Officer,



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Sattur Taluk,
Virudhunagar District.

5.Nathathupatti Village Panchayat,
through its Executive Officer,
Sattur Taluk,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Impugned show cause notice the 4th respondent on 24.05.2024 issued under Rule 34 of the TN Panchayats Building Rules, 1997 and quash the same and consequently direct the 1st respondent to pass appropriate orders on the issue by considering the petitioner's representation dated 30.05.2024, within the time limit as may fixed by this Court.

For Petitioner : Mr.V.R.Shanmuganathan

For R1 & R2 : Mr.S.P.Maharajan
Special Government Pleader

For R3 : Mr.V.Nirmal Kumar
Government Advocate

For R4 & R5 : Mr.Ajmal Khan Senior Counsel for
M/S.Ajmal Associates

ORDER

The petitioner has challenged the impugned notice dated 24.05.2024 issued by the fourth respondent Panchayat calling upon the petitioner to show cause as



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to why as per the provisional order dated 24.05.2024, the petitioner should be directed to demolish the construction made so far without obtaining planning permission and to stop further construction.

2.The dispute pertains to the land in S.No.933, Irukkankudi Village, Virudhunagar District, where the subject temple is situated. According to the petitioner, the old shops abutting the temple premises were in dilapidated condition and therefore, fresh constructions had to be made pursuant to the orders passed by this Court in W.A.(MD) No.710 of 2018 vide order dated 14.09.2021.

3.The learned counsel for the petitioner would submit that the dispute had arisen as to whether the aforesaid land in S.No.933, Irukkankudi Village, Virudhunagar District, fell within the jurisdiction of the fourth respondent Panchayat or the fifth respondent Panchayat. The fifth respondent had earlier approached the Principal District Munsif Court at Sattur in O.S.No.2 of 2008, in the light of the Government Order in Kamarajar District Gazette No.5 dated 26.05.1995.



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4.It is submitted that the suit was between the fourth respondent Panchayat and the fifth respondent Panchayat and that the suit came to be dismissed on 29.10.2012.

5.It is submitted that aggrieved by the same, the fifth respondent has filed an appeal before the Appellate Court in A.S.No.59 of 2012, which is pending consideration as on date before the Sub Court, Sivakasi. It is further submitted that another suit was also filed by few villagers for similar relief in O.S.No.32 of 2021 before the District Court, Srivilliputhur and the suit was also dismissed on 21.06.2022 and an appeal is pending before this Court in A.S.(MD)No.124 of 2024.

6.Arguing further, the learned counsel for the petitioner would submit that in view of the dispute regarding the jurisdiction as to whether the petitioner is required to obtain permission from the fourth respondent or the fifth respondent, the petitioner had sent a representation to the first respondent, who is the Inspector of Panchayat on 29.01.2021 to clarify as to whether the petitioner falls within the jurisdiction of the fourth respondent or the fifth respondent.



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7.It is submitted that the said representation has still not evoked any response from the first respondent. It is further submitted that on 30.05.2024, the petitioner had also sent copies of the proposed plan before commencing the construction to the first respondent with a request to forward the same to the competent respondent, who is competent to sanction the plan. However, till date no action has been taken by the first respondent.

8.It is therefore submitted that in the light of the confusion and in the light of the directions of this Court in W.A.(MD) No.710 of 2018 dated 14.09.2021, constructions have commenced.

9.The learned counsel for the petitioner would submit that the fourth respondent had issued the demand notice for property tax and therefore, the petitioner had approached this Court in W.P.(MD) No.15121 of 2023 and has secured an interim order and that pursuant to the order of this Court, the amounts have been directed to be deposited with the Assistant Director of Panchayat.



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10.The learned counsel for the petitioner would draw attention to the issues framed by the trial Court. Issue No.6 in O.S.No.2 of 2008 on the file of the Principal District Munsif Court, Sattur reads as under:

“6.காமராஜர் மாவட்ட கெஜட் 26.5.1995 ஊர்ஜிதத்திற்கு வரவில்லை என்றும் சட்டப்படி செல்லத்தக்கதல்ல என்று எதிர்வாதி கறுவது சரியா?”

11.He would also draw attention to the answer of the learned Principal District Munsif in the judgment and decree dated 29.10.2012, wherein it has been held that the said Kamarajar District Gazette No.5 dated 26.05.1995 has not come into force.

12.On the other hand, the learned Senior Counsel for the third respondent defending the stand of the fourth respondent would submit that in the light of the decision of the learned Principal District Munsif, which has not been disturbed till date, it is the fourth respondent, which is a competent authority both under the erstwhile Tamil Nadu Panchayat Building Rules, 1997 as also under the provisions of the Tamil Nadu Combined Development and Building Rules, 2019.



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13. That apart, the learned Senior Counsel would submit that the entire civic activity in S.No.933, Irukkankudi Village, Virudhunagar District, where the temple is situated, is undertaken by the fourth respondent Panchayat. That apart, it is submitted that the professional tax is also paid by the petitioner.

14. It is submitted that the petitioner temple has itself issued a circular dated 18.09.2020, wherein the petitioner has exhorted all its employees to pay the tax directly to the fourth respondent temple. That apart, it is submitted that water is also supplied by the fourth respondent and therefore, there is no merits in the present writ petition seeking to quash the impugned notice dated 24.05.2024.

15. By way of rejoinder, the learned Senior Counsel for the third respondent would submit that A.S.No.59 of 2012 was dismissed and an application to restore the appeal suit is pending before the Sub Court, Sivakasi.

16. However, the learned counsel for the petitioner would submit that the aforesaid application to restore the appeal suit was allowed and the appeal has been restored to the file of Sub Court, Sivakasi in A.S.No.59 of 2012.



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17.I have considered the arguments advanced by the learned counsel for the petitioner, learned Special Government Pleader for the respondents 1 and 2, learned Government Advocate for the third respondent and the learned Senior Counsel for the respondents 4 and 5.

18.*Prima facie*, the attempt of the petitioner to put up a construction on account of the prevailing confusion as to the jurisdiction would not entitle the petitioner to start the construction without getting approval. The petitioner could have approached the Division Bench for clarification in the order passed in W.A. (MD) No.710 of 2018, in the light of pendency of the appeal suit in A.S.No.59 of 2012 on the file of Sub Court, Sivakasi, against the judgment and decree dated 29.10.2012 of the Principal District Munsif Court, Sattur in O.S.No.2 of 2008.

19.Recording the submission of the learned counsel for the petitioner and taking judicial notice of the fact that the construction has been put up by the petitioner out of the natural resources, which are utilized, demolition cannot be ordered.



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20.The planning permission, which was sent by the petitioner to the first respondent on 30.05.2024, is directed to be filed before the fourth respondent Panchayat. The fourth respondent Panchayat shall examine the same and see whether it meets out the requirements of Tamil Nadu Combined Development and Building Rules, 2019.

21.If the construction is otherwise in order, the petitioner may continue with the construction. In case, there are any deviations noticed, it is open for the fourth respondent to stall further construction by the petitioner or to make such changes as may be required to ensure that the construction meets the requirement of the Tamil Nadu Combined Development and Building Rules, 2019. This will be without prejudice to the rights of the fifth respondent in A.S.No.59 of 2012. In case, any amount is to be collected towards the services provided by the fourth respondent, the amounts will have to be transferred to the fifth respondent.

22.It is made clear that the petitioner shall furnish all the documents, which the petitioner should have filed either before the fourth respondent or before the



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fifth respondent for putting up the construction with the fourth respondent. In case, any deviation is noticed at that stage, the fourth respondent can intervene and issue fresh notice for stalling the construction.

23.The petitioner shall also file papers with the fourth respondent and pay necessary charges with the fourth respondent within a period of 15 days from the date of receipt of a copy of this order. The fourth respondent shall pass suitable orders on the application to be filed by the petitioner within a period of 15 days thereafter.

24.The Writ Petition stands disposed of, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No
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To

1.The District Collector,
Office of Collectorate,

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Virudhunagar,
Virudhunagar District.

2.The Assistant Director,
Village Panchayat,
Virudhunagar.



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C.SARAVANAN, J.

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