



C.R.P. (MD) Nos. 2559 of 2022, 615 of 2023 and 835 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM

**THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

C.R.P. (MD) Nos. 2559 of 2022, 615 of 2023 and 835 of 2023  
and

C.M.P. (MD) Nos.12575 of 2022, 3856 of 2023

Sivagangai Samasthanam Devasthanam

Through its Manager,

Door No.27, Raja Chathira Street,

Sivagangai Town, Sivagangai District.

... Petitioner/

Plaintiff

(in CRP(MD) Nos.2559 of 2022

and 615 of 2023)

-VS-

1.Assistant Director,  
District Rural Panchayat,  
Collector's Office,  
Sivagangai Town, Sivagangai District.

2.Block Development Officer,  
Sivagangai Panchayath Office,  
Railway Station Road, Sivagangai.

... Respondents/

Defendants 1 and 2

(in CRP(MD) Nos.2559 of 2022

and 615 of 2023)



C.R.P. (MD) Nos. 2559 of 2022, 615 of 2023 and 835 of 2023

PRAYER in CRP (MD) No.2359 of 2022: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair order and ex-order passed in I.A.No.1 of 2019 in O.S.No.91 of 2010 dated 15.10.2022 on the file of the District Munsif Court, Sivagangai and thereby dismiss the petition.

For Petitioner : Mr.S.Manohar

For Respondents : Mr.J.K.Jayaseelan

Government Advocate for R1 & R2

PRAYER in CRP (MD) No.615 of 2023: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No. 1 of 2019 in O.S.No.91 of 2010 dated 11.11.2022 on the file of the District Munsif Court, Sivagangai and thereby dismiss the petition.

For Petitioner : Mr.S.Manohar

For Respondents : Mr.M.Sidharthan

Addl. Government Advocate for R1 & R2

1.Assistant Director,  
District Rural Panchayat,  
Collector's Office,  
Sivagangai Town, Sivagangai District.

2.Block Development Officer,  
Sivagangai Panchayath Office,  
Railway Station Road, Sivagangai.

... Petitioners/

Defendants 1 & 2

(in CRP(MD) No. 835 of 2023)

-VS-



C.R.P. (MD) Nos. 2559 of 2022, 615 of 2023 and 835 of 2023

1. Sivagangai Samasthanam Devasthanam

Through its Manager P.Elango,

Door No.27, Raja Sathira Street,

Sivagangai Town, Sivagangai District.

... 1<sup>st</sup> Respondent/

Plaintiff

1. The President,

Vaniyangudi Panchayat,

Sivagnagai Taluk, Sivagangai District.

2. M. Anand

... Respondents 2 & 3/

Defendants 3 and 4

(in CRP(MD) No. 835 of 2023)

PRAYER in CRP (MD) No.835 of 2023: Civil Revision Petitions filed under Section 115 of CPC, to set aside the order passed in E.P.No.28 of 2017 in O.S.No.91 of 2010 dated 12.04.2018 on the file of the District Munsif Court, Sivagangai and allow the revision petition.

### **COMMON ORDER**

All these three Civil Revision Petitions are connected to each other, and as such are taken up and disposed of by this common order.

2. Originally a suit in O.S.No.91 of 2010 is filed by Sivagangai Samasthanam Devasthanam, Sivagangai, claiming that the suit property in survey No.175/2 is a property belonging to one of the temples of the



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Sivagangai Samasthanam Devasthanam and the defendant government

authorities wrongfully encroached into the same and put up an Anganvadi building and therefore, the suit is filed for a declaration and mandatory injunction to remove the same and for a permanent injunction not to further interfere with the possession and enjoyment of the plaintiff Temple. The suit went undefended and on 15.12.2011, an *ex parte* decree was passed. Thereafter, an execution petition in E.P.No.28 of 2017 was also filed and pending. At this stage, contending that the respondents 1 to 3 lost the Court notice when they shifted their office, the application is filed to set aside the *ex parte* decree along with an application to condone the delay of 2530 days.

3. The said application was resisted by the Sivagangai Samasthanam Devasthanam on the ground that all along the respondents had notice of the decree as well as the proceedings pending and the reasons mentioned by them are false. The Trial Court considered the case of the parties and allowed the interlocutory application on payment of costs. Thereafter, the petitioner Sivagangai Samasthanam Devasthanam did not accept the costs and therefore, another petition was filed and upon deposit of the costs, a consequential order of allowing the interlocutory application for condonation of delay was also passed. Challenging both the orders, the Civil Revision Petitions in C.R.P



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(MD) Nos.2559 of 2022 and 615 of 2023 are filed by the Sivagangai Samasthanam Devasthanam. Since the execution partition is being proceeded with, C.R.P (MD) No.835 of 2023 is filed by the Assistant Director and two others the official defendants in the suit.

4. Mr.S.Manohar, the learned Counsel appearing on behalf of the Sivagangai Samasthanam Devasthanam would contend that the *exparte* decree was passed after duly considering the documents which are filed by the plaintiff Temple and also the Advocate Commissioner's Report which were taken on file as Exhibit C1 and C2. Earlier a patta was sought to be issued in favour of the Sivagangai Samasthanam Devasthanam. While so, it is only the President of the panchayat, who wrongfully located the Anganvadi. Instead of relocating the Anganvadi, the officials are now indulging in the action of mutating the revenue records erroneously by mentioning it as if it is a Government Poramboke and are perpetrating the error. According to him, the delay is huge and the Trial Court ought not to have condoned the same. The respondent authorities cannot casually come before the Court and contend that the file was lost and that they could not contest the suit. Therefore, he would pray that this Court should interfere in the matter.



5. Per Contra, the learned Additional Government Pleader appearing on behalf of the authorities would submit that the reasons are mentioned in the affidavit file in support of the application. The entire revenue records state that the suit property is a Government Poramboke land. The Sivagangai Samasthanam Devasthanam does not have the predominant title in respect of the suit property. When it has to be decided whether the suit property is a Government Poramboke land or whether it belongs to Sivagangai Samasthanam Devasthanam, an opportunity should be given to the authorities.

6. When the matter came up for hearing on a query by this Court, both sides learned counsel would reply that along with the application for condonation of delay and setting aside the *exparte* decree, no written statement is filed by the authorities.

7. In that background, this Court proceeded to consider the Civil Revision Petitions. As far as the contention of the plaintiff Temple is concerned, it can be seen that even while passing the *exparte* decree, the patta which is considered to be the only document in favor of the temple, seems to have not been marked as an exhibit. It can be seen from the 'A' Register and other documents, the property is described as a Government Poramboke. In that



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background, while it is true that the application is casually filed after a huge delay, at the same time, the *lis* has to be decided on merits. The title with reference to the property has to be decided by the Trial Court.

8. In that view of the matter, when the Trial Court has exercised its discretion and granted an opportunity, that too, on payment of costs, this Court is unable to interfere. However, it can be seen that the Trial Court had allowed the application without even any proposed written statement being filed on behalf of the petitioners. This apart, a cost of Rs.4000/- (Rupees Four Thousand only) was ordered. Considering the quantum of delay, the same is inadequate and the same can be enhanced to Rs.10,000/- (Rupees Ten Thousand only).

9. In view of the above findings, these Civil Revision Petitions are allowed on the following terms:-

The orders of the Trial Court passed in I.A.No.1 of 2019 in O.S.No.91 of 2010 are upheld, subject to the modification to the following modification:-

(a) The costs of Rs.4,000/- (Rupees Four Thousand only) is enhanced as Rs.10,000/- (Rupees Ten Thousand only). The balance sum of Rs.6,000/- (Rupees Six Thousand only) shall be paid to the petitioner Sivagangai Samasthanam



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Devasthanam directly or to the learned Counsel appearing on behalf of the Sivagangai Samasthanam Devasthanam either before the High Court or before the Trial Court on or before 13.08.2024;

(b) The Government will also be entitled to recover the costs from the individual officers, who are responsible for the loss of file/delay;

(c) The orders are also passed on condition that the defendants 1 to 3 to file their written statement without fail on or before 13.08.2024;

(d) If a written statement is filed and the cost is paid/deposited, then the application for condonation of delay as well as the application for setting aside the *ex parte* decree shall stand allowed and the suit shall stand restored to file and shall be conducted further on merits in accordance with law. If either of both of the conditions are not complied with, then the application for condonation of delay itself shall stand dismissed.

10. In view of the above, once the conditions are complied with and the



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suit is restored to file, then the Trial Court itself would do well to close the execution petition and can also consider to take up the suit as expeditiously as possible. Consequently, the connected Miscellaneous Petitions are closed. No costs.

**24.07.2024**

NCC : Yes

PKN

To

1. The District Munsif Court, Sivagangai.



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**D.BHARATHA CHAKRAVARTHY, J.**

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