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W.P. No.20727 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR
AND
THE HONOURABLE MS. JUSTICE R.N. MANJULA

W.P.No.20727 of 2021 and W.M.P.No.21983 of 2021

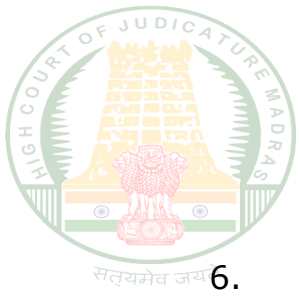
R.Mangayarkarasi

Petitioner

VS.

1. The Commissioner
Cuddalore Municipality
Bharathi Road
Cuddalore 607 001
2. The Superintending Engineer
Tamil Nadu Electricity Generation &
Distribution Corporation
Capper Hill
Cuddalore 607 004
3. K.S.Vasan
4. The Tahsildar
Cuddalore Taluk
Cuddalore District
5. The Commissioner
Hindu Religious and Charitable
Endowments Department
No.119, Uthamar Gandhi Salai
(previously Nungambakkam High Road)
Nungambakkam
Chennai 600 034

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6. The Joint Commissioner
Hindu Religious & Charitable
Endowments Department
Cuddalore
Cuddalore District

Respondents

(RR4 to 6 impleaded *vide* order dated 07.04.2025)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the 1st respondent to remove the encroachment upon T.S.No.2745/- in Cuddalore-O.T., Cuddalore Taluk, Cuddalore District caused by the 3rd respondent by constructing a temple.

For petitioner	Mr. B. Sankara Narayanan for Mr. D. Baskar
For R1	Mr. P. Srinivas Standing Counsel
For R2	Mr. V. Venkata Seshaiya Standing Counsel
For R3	No appearance
For R4	Mr. M.S. Arasakumar Government Advocate
For RR5 & 6	Mr. S. Ravichandran Addl. Govt. Pleader (HR & CE)



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ORDER

(made by M. SUNDAR, J.)

Subject matter of captioned 'writ petition' (hereinafter 'WP' for the sake of brevity) is 'land in T.S.No.2745 in what is described as Cuddalore O.T., Cuddalore Taluk, Cuddalore District' (hereinafter 'said land' for the sake of convenience and clarity).

2. Mr. B. Sankara Narayanan, learned counsel representing Mr. D. Baskar, learned counsel on record for writ petitioner, submits that R3 (K.S. Vasan – private respondent) has encroached upon said land by constructing a temple. Learned counsel is unable to give facts and details *qua* earlier proceedings with clarity and specificity. However, in the interest of the parties, this Court examined the same and earlier proceedings are given below in the form of a tabulation:



S.No.	Case No.	Parties	Prayer	Remarks/Status
1	O.S.No.211 of 2010 on the file of Principal District Munsif Court, Cuddalore	Ambika Ammal vs. Commissioner, Cuddalore Municipality and Kaliyaperumal	To remove encroachment in the channel	Ambika Ammal (plaintiff) is the mother of writ petitioner – Suit dismissed on the ground that description of property was wrongly given.
2	W.P.No.29712 of 2017	Ambika Ammal vs. Collector, Cuddalore District Commissioner, Cuddalore Municipality & S. Kaliyaperumal	Mandamus to remove all encroachments in channel in S.No.2745 in Cuddalore O.T., Cuddalore Taluk, Cuddalore District	We are informed that Ambika Ammal is mother of writ petitioner – W.P. disposed of on 21.11.2017
3	O.S.No.15 of 2020 on the file of District Munsif Court, Cuddalore	Sri Valli Devasena Samedra Kalyanaskandan (Chinnamalai Murugan Koil) Seva Arakkattalai represented by K.S. Vasan vs. Ambika, Mangaiyarkarasi & Ramadoss	Permanent injunction from disturbing temple's peaceful possession and permanent injunction from demolishing temple	(Plaintiff is R3 before us) Suit is as regards half a cent of land in T.S.No.1581, Cuddalore O.T., Cuddalore Municipality - Suit dismissed after full contest on 29.11.2023

3. As regards respondents, Mr. P. Srinivas, learned Standing Counsel for Cuddalore Municipality (R1) and Mr. V. Venkata Seshaiya, learned counsel for R2 are before us. R3 (K.S. Vasan - private respondent) has been duly served, name of R3 together with address



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in the cause title, has been shown in the cause list however there is no representation for R3. We are informed by Registry that R3 has not chosen to enter appearance through counsel.

4. Considering the nature of the matter, we deem it appropriate to implead:

- i. jurisdictional Tahsildar, *i.e.*, Tahsildar, Cuddalore Taluk, Cuddalore District as R4;
- ii. The Commissioner, Hindu Religious and Charitable Endowments Department, No.119, Uthamar Gandhi Salai (previously Nungambakkam High Road), Chennai 600 034 as R5; and
- iii. The Joint Commissioner, Hindu Religious and Charitable Endowments Department, Cuddalore, Cuddalore District as R6.

5. Mr. M.S. Arasakumar, learned Government Advocate, accepts notice for newly impleaded R4 and Mr. S. Ravichandran, learned Additional Government Pleader (HR & CE), accepts notice for newly impleaded RR 5 and 6.



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6. Though learned counsel for writ petitioner submits that said land is a channel, no document to support this contention has been placed before us. All that the learned counsel refers to is an order dated 21.11.2017 made in W.P.No.29712 of 2017, wherein, the writ petitioner's contention that it is a channel has been captured by Hon'ble Single Judge.

7. It is important to notice that all temples in Tamil Nadu are public temples *vide* sub-section (3) of Section 1 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959) {hereinafter 'HR & CE Act'} unless exempted in part or wholly *vide* Section 4. This is the reason why we have *suo motu* impleaded Commissioner, Hindu Religious & Charitable Endowments Department, Chennai - 600 034 and Joint Commissioner, Hindu Religious and Charitable Endowments Department, Cuddalore, Cuddalore District, as RR 5 and 6 respectively.

8. In the light of the narrative thus far, to give a comprehensive closure to the matter, the following order is made:



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- i. R4 (jurisdictional Tahsildar) shall survey the said land if it is public land or channel, as contended;
- ii. If said land is not public land, *i.e.*, private or patta land, parties will have to work out their remedies in Civil Court;
- iii. If said land is a channel and if survey is conducted, survey shall be done after putting on notice all parties concerned and it shall be a joint survey by R4;
- iv. RR 5 and 6 are directed to appoint a Fit Person and/or Executive Officer *qua* Sri Valli Devasena Samedha Kalyanaskandan Murugan (Chinnamalai Seva Arakkattalai Koil), if not already appointed (to be noted, this limb of the order is made in exercise of our inherent powers to make 'such other or further orders' in a Article 226 legal drill);
- v. If a survey is to be conducted, Fit Person/Executive Officer should be put on notice;
- vi. The aforementioned exercise of conducting survey (if it is public land) shall be concluded within eight weeks from today *i.e.*, 02.06.2025;



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- vii.If any encroachment is found *qua* said land (subject, of course, to the same being public land), action shall be commenced in accordance with appropriate / applicable statute *i.e.*, the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) or the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007), as the case may be
- viii.If the said land is not a public land, suitable communication shall be sent to the writ petitioner within four weeks from today, *i.e.*, by 05.05.2025;
- ix. Though obvious, we make it clear that we are not expressing any opinion or view on the merits of the matter *i.e.*, about alleged encroachment, all questions are left open and parties can respond suitably, if show caused; and
- x. We further make it clear that action will be subject to Civil Court decree if it is applicable to said land.



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9. Captioned main WP stands disposed of in the aforesaid manner. Consequently, captioned writ miscellaneous petition thereat is disposed of as closed. There shall be no order as to costs.

(M.S., J.) (R.N.M., J.)
07.04.2025

cad

Index:Yes/No

Internet:Yes/No

To

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M. SUNDAR, J.

and

R.N. MANJULA, J.

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