

WA(MD)NOS.116 & 217 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 19.11.2024

Pronounced on : 10.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

**W.A(MD)Nos.116 & 217 of 2020
and
C.M.P(MD)Nos.1018 & 1481 of 2020**

In W.A.(MD)No.116 of 2020:

Ponragavan

:Appellant/Petitioner

.VS.

1.The Secretary,
Home Department,
Fort St.George, Chennai.

2.The District Collector,
Nagercoil, Kanyakumari.

3.The Revenue Divisional Officer,
Nagercoil, Kanyakumari.

4.The Superintendent of Police,
Kanyakumari.

5.The Inspector of Police,
Suchindram Police Station,
Suchindran, Kanyakumari.

6.C.Devadhas.

: Respondents/Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.1185 of 2020, dated 23.01.2020.

For Appellant

:Mr.T.Arunan

For Respondent-6

:Mr.Ajmal Khan,
Senior Counsel
for Mr.M.Mahaboob Athiff

In W.A.(MD)No.217 of 2020:

1.The Government of Tamil Nadu,
Represented by its Secretary,
Home Department,
Fort St.George, Chennai.

2.The District Collector,
Nagercoil, Kanyakumari.

3.The Revenue Divisional Officer,
Nagercoil, Kanyakumari.

4.The Superintendent of Police,
Kanyakumari.

5.The Inspector of Police,
Suchindram Police Station,
Suchindran, Kanyakumari.

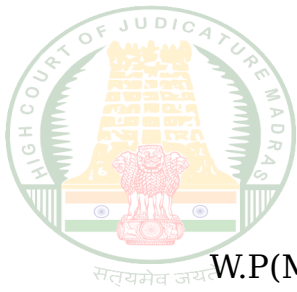
:Appellants/Respondents

.VS.

C.Devadhas.

: Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in



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W.P(MD)No.10694 of 2014, dated 19.12.2018.

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For Appellant

:Mr.Veerakathiravan,
Additional Advocate General -III
asst by Mrs.D.Farjana Ghousia
Special Government Pleader

For Respondent

:Mr.Ajmal Khan,
Senior Counsel
for Mr.M.Mahaboob Athiff

COMMON JUDGEMENT

[Judgement of the Court was made by **N.SENTHILKUMAR,J.**]

The Writ Petitioner one Ponragavan had filed the Writ Petition in W.P.(MD)No.1185 of 2020 to refrain the sixth respondent from putting up a gate or arch or name board of the Church in the disputed land in survey No.283/5, situated in Mathusuthanapuram Village, Agasteeswaram Taluk, Kanyakumari District.

2. The learned Single Judge by taking note of the submissions made by the learned Special Government Pleader that there is likelihood of law and order problem between two religious groups in the said area by allowing the sixth respondent, namely, G.Devadhas to put up construction would result many problems, which may affect the general



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public in the locality, disposed of the said Writ Petition. Challenging the same, the appeal has been filed in W.A.(MD)No.116 of 2020.

3. Similarly, G.Devadhas, who is arrayed as sixth respondent in W.P.(MD)No.1185 of 2020 had filed a Writ Petition in W.P.(MD)No. 10694 of 2014 with a prayer to refrain the respondents 2 to 5 therein or their subordinates from in any way interfering with the petitioner's right to deal with his property including effecting of construction of a gate, arch and name board of the Church in the property of the Church in survey No.283/5, situated in Mathusoohtanapuram village, Agastheeswaram Taluk, Kanyakumari District.

4. The learned Single Judge, after hearing the parties and the counter filed by the fifth respondent therein, namely, Inspector of Police that the petitioner's Church was located in a very communally sensitive area and any construction by the petitioner may lead to breach of peace, communal problem and disturb the cordial relationship, allowed this Writ Petition.



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5. The facts are common in both the Writ Petitions and the present Writ Appeals are one and the same.

6. G.Devadhas, the Writ Petitioner in W.P.(MD)No.10694 of 2014, who was a Secretary of CSI Church, Pillayarapuram in Agastheeswaram Taluk, Nagercoil, Kanyakumari District, stated that the Church building is situated in survey No.283/19, which is the property of the Church to an extent of 16.5 cents. Apart from the abovesaid property, the Church has also owned lands in survey Nos.283/18, 283/21, 283/5 in Mathusoothanapuram Village. Out of the said property, the vacant land in survey No.283/5, measuring 1 cent and 620 sq.links was purchased by the Church by a registered sale deed in Doc.No.716 of 2009, dated 26.02.2009. Later, they obtained patta with regard to survey No.283/5 in patta No.4995 and they are in possession of the said property, since 26.02.2009. The petitioner claims that in the land to an extent of 1 cent 620 sq. links in survey No.283/5, which absolutely belongs to the petitioner's Church, the petitioner's Church has the right to put up construction under Article 300A of the Constitution of India.



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7. The counter was filed by the fifth respondent/Inspector of Police, Suchindram Police Station, stating that the land in survey No. 283/5 was named as water tank street and the same was maintained by the local Panchayat and the Tahsildar. According to the counter, the Writ Petitioner wanted to establish his title and right over the property measuring 1 cents 620 sq. links in survey No.283/5.

8. Mr.Ajmal Khan, the learned Senior Counsel appearing for the Writ Petitioner in W.P.(MD)No.10694 of 2014/respondent in W.A. (MD)No.217 of 2020/sixth respondent in W.A.(MD)No.116 of 2020 would contend that the Church is protected by constitutional freedom as enshrined under Article 26 of the Constitution of India, which is extracted hereunder:

“26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

(a) to establish and maintain institution for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property;

and



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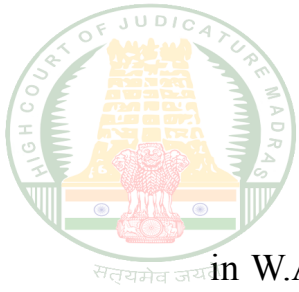
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(d) to administer such property in accordance with law.”

9. The learned Senior Counsel contended that when the property vest with the petitioner’s Church, there cannot be any restriction by the Government officials or by any individual or by any section of people to put up any construction in their private premises.

10. The learned Senior Counsel further referred to the finding of the learned Single Judge in W.P.(MD)No.10694 of 2014 that the respondents (appellants) were directed to issue show cause notice to the Writ Petitioner within a period of four weeks and thereafter, by getting a reply from the Writ Petitioner, the fifth respondent, namely, the Inspector of Police was directed to pass appropriate orders and if no notice would be issued within a period of four weeks as mentioned above, the Writ Petitioner was at liberty to put up gate or arch, after duly informing the respondents in writing. Aggrieved by the same, the State has preferred appeal in W.A.(MD)No.217 of 2020.

11. Mr.Veerakathiravan, learned Additional Advocate General-III appearing for the respondents in W.P.(MD)No.10694 of 2014/appellants



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in W.A.(MD)No.217 of 2020/respondents 1 to 5 in W.A.(MD)No.116 of 2020 would contend that though the Writ Petitioner G.Devadhas claims title over the property in survey No.283/5, which was purchased by way of registered sale deed in Doc. No.716 of 2009, dated 26.02.2009, by the proceedings of the Block Development Officer in Na.Ka.No.A5/1551/2019, dated 03.02.2020, the Writ Petitioner G.Devadhas was intimated that as per G.O.Ms.No.255, Rural Development (C2) Department, dated 18.08.1997, an application has to be made before the Panchayat for getting building plan approval from the Panchayat. Though the above said finding was given by the learned Single Judge in W.P.(MD)No.10694 of 2014 directing the respondents to permit the Writ Petitioner to put up construction, the Block Development Officer has informed that necessary orders to be obtained from the Court as there should be compliance with regard to G.O.Ms.No.255, Rural Development (C2) Department, dated 18.08.1997. Pursuant to the order of the learned Single Judge in W.P.(MD)No.10694 of 2014, dated 19.12.2018, the petitioner did not comply with the said G.O. A Contempt Petition in Cont.P(MD)No.1116 of 2019 was filed, wherein, on 13.02.2020, the petitioner (C.Devadhas) was directed to proceed with the



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direction, which was proposed to be passed in W.A.(MD)No.217 of 2020.

12. The learned Additional Advocate General further contended that the Block Development Officer has already intimated that necessary planning permission has to be obtained from the local authority by communication, dated 03.02.2020 to the Writ Petitioner G.Devadhas. Hence, aggrieved by the finding of the learned Single Judge, both the appeals.

13. The Additional Advocate General had circulated a proceedings of the District Collector of Kanyakumari District vide proceedings in Pa.Mu.C3/16507/2022 dated 30.10.2023. The said proceedings relates to an enquiry contemplated in survey Nos.283/19, 291/4, wherein CSI Church was sought for planning permission for renovation and construction of church. In the abovesaid proceedings, the Collector had stated that regarding the properties in survey Nos.283/14, 15, 16, 283/17, 291/3, 6, 283/18, 291/4, 291/1 and 291/7, a suit was filed in O.S.No.1249 of 1988 before the Trial Court with a prayer to permit the usage of the



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road as a public road, wherein the Trial Court allowed the suit, against which, A.S.No.27 of 1991 was filed, wherein, an Advocate Commissioner was appointed to ascertain as to whether there is a public passage or not in survey Nos.283/19 and 291/4.

14. The learned Additional Advocate General also circulated a copy of a letter of Block Development Officer addressed to the Tahsildar, Agastheeswaram in Na.Ka.No.A1/1134/12, dated 04.05.2012, wherein, it is stated that in survey No.283/5, there was a lamp post, electricity connection, water connection.

15. The learned Additional Advocate General has circulated an Encumbrance Certificate issued by the SRO, Edalakudi, dated 18.11.2024 with regard to the survey No.283/5. It is found that in survey No.283/5, the Encumbrance Certificate would reveal the boundaries as follows:

“.... மேற்கருகோடு மேற்படி முருகன் மனையில் மேற்கருகோடும்
வடக்கேயுள்ள ரோடு வரை வழிநடந்து கொள்ளும் பாதை
அவகாசமும்”



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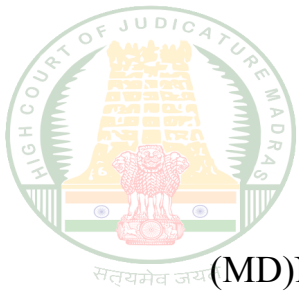
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16. As per page No.11 of the 'A' Register with regard to survey No.283/5, in column 11, it is stated that 'Na.Thangasamy (1), Na.Ayyakutti (2), Na.Arumugakkannu (3)' and in column 12, it is found that 'Nilaviyal pathai' which is mentioned as passage in the above survey number.

17. The Additional Advocate General further relied upon the typed set of paper filed in W.A.(MD)No.116 of 2020 at page No.26, wherein, the Block Development Officer has also informed the Tahsildar *vide* proceedings Na.Ka.No.A1/1134/12, dated 04.05.2012 that in survey No. 283/5 is a cement road maintained by Athikkattuvelai Panchayat and the said place is used as a road by the people without any hindrance. Hence, prayed to allow these appeals.

18. Heard both sides and perused the records.

19. Both the Writ Appeals in W.A.(MD)Nos.116 & 217 of 2020 have been filed, aggrieved by the order passed by this Court in W.P.



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(MD)No.1185 of 2020 filed by one Ponragavan and in another W.P.

(MD)No.10694 of 2014 filed by G.Devadhas, where the subject matter of the both the cases raised regarding survey No.283/5.

20. The CSI church claims title over the property by virtue of the sale deed in Doc.No.716 of 2009, dated 26.02.2009 by stating that after purchase of the said property, they are in actual possession of the suit schedule property. It is not in dispute with regard to the direction given by this Court to continue the construction when a construction is permitted to take place. However, Such construction has to be carried out only after getting necessary approval from the competent authority, namely, local authority or the local body as per the Act.

21. When there is a dispute with regard to the passage through road in survey No.283/5 with a rival claim, the Court cannot ignore the vital objection raised by the Inspector of Police, Suchindram Police Station with regard to livelihood break up law and order situation between two religious groups.



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22. As per the counter filed by the Inspector of Police, Suchindram Police Station that a case was registered in Cr.No.153 of 2008 under Sections 147, 148, 188, 353, 332, 336, 307, 115A of IPC, Section 3(c) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and Section 25(1A) of the Arms Act, 1959 against one Balasubramanian and 21 others and the same is pending before the I Additional Sessions Court, Kanyakumari District at Nagercoil in S.C.No. 53 of 2013.

23. It is also brought to our knowledge by the learned counsel appearing for the Writ Appellant in W.A.(MD)No.116 of 2020 that a criminal case was registered regarding the issue between two religious groups.

23(a). Though the property was purchased by the CSI Church on 26.02.2009 to an extent of 1.620 cents in R.Survey No.283/5 situated at Pillayarapuram Village, Agastheeswaram Taluk, Nagercoil, Kanyakumari, through sale deed in Doc.No.710/2009 registered in the O/o. the Sub Registrar, Edalakudi, whereas the said appellant contends that Hindus



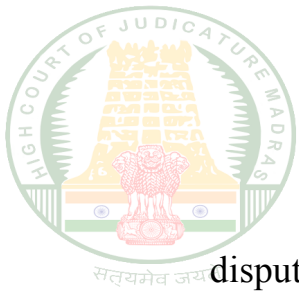
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claim that the said property/pathway in R.Survey No.283/5 as a public pathway, it has been maintained by the Panchayat.

23(b). This Court cannot express its view with regard to the pendency of A.S.No.27 of 1991 against O.S.No.1249 of 1988, where, an Advocate Commissioner was appointed to ascertain the existence of pathway, the communication by the Athikkattuvilai President to the Block Development Officer dated 04.05.2012 and the proceedings of the Block Development Officer to the Tahsildar vide Na.Ka.A1/1134/12, dated 04.05.2012, where it is stated that the survey No.283/5 is maintained as 'cement road' assumes significance.

24. On the one hand, the Church claims that it is their property stating that they are in possession pursuant to the sale deed. On the other hand, the nature and character of the property as common passage and it is maintained by the local Panchayat, which was confirmed by the Block Development Officer by intimating the same to the Tahsildar as stated supra. Thus, this Court is of the view that there is clear disputed factum of possession, as both parties claim contra to each other and the said



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dispute as to who is in possession cannot be gone into in the Writ Petition and moreover, a Civil Suit is also pending.

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25. The Planning permission ought to have been obtained from the competent authority and without a planning permission, there cannot be a construction. If any construction is put up without the planning permission from the competent authority, then the construction is illegal and unauthorised construction.

26. The local authority was not made as a party-respondent in the Writ Petitions. When the necessary party was not impleaded as respondent in the Writ Petitions, it is fatal to the case and it suffers from non-joinder of necessary party. Had the local authority was made as a party-respondent, the real picture could have been placed before the Court.

27. In view of the discussion in the previous paragraphs, this Court pass the following orders in these two writ appeals:

1. W.A(MD)No.217 of 2020 filed by the State against



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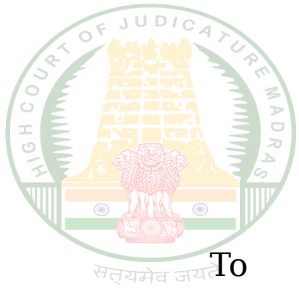
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W.P(MD)No.10694 of 2014 filed by Devadhas stands allowed. Consequently, the order dated 19.12.2018 made in W.P(MD)No.10694 of 2014 is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

2. W.A(MD)No.116 of 2020 filed by Ponragavan who is also the petitioner in W.P(MD)No.1185 of 2020 stands allowed and modified to the extent that the order of rejection passed by the learned Single Judge in closing the application is set aside. In view of the order passed in W.A(MD)No.116 of 2020, no separate order is necessary in W.P(MD)No.1185 of 2020 and accordingly, the same is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

[T.K.R.,J.] & [N.S.,J.]
10.01.2025

Index:Yes/No
Internet:Yes/No
apd



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To

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1.The Secretary,
Home Department,
Fort St.George, Chennai.

2.The District Collector,
Nagercoil, Kanyakumari.

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RMT.TEEKAA RAMAN,J.

AND

N.SENTHILKUMAR, J.

apd

**PRE-DELIVERY JUDGMENT MADE IN
W.A.(MD)Nos.116 & 217 of 2020**

10.01.2025