



W.P.(MD)No.18016 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **07.01.2025**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.18016 of 2022

and

W.M.P.(MD)Nos.13162 and 13163 of 2022

M.Nagarajan

... Petitioner

-Vs-

- 1.The District Collector,
Thenkasi District, Thenkasi.
- 2.Archaeological Survey of India,
Chennai Circle, Chennai-9.
- 3.The Assistant Commissioner / Executive Officer,
Arulmigu Sankaranarayanar Thirukovil,
Sankarankovil, Thenkasi District.
- 4.The Commissioner,
Sankarankovil Municipality,
Thenkasi District.
- 5.The Block Development Officer,
Sankarankovil Panchayat Union,
Thenkasi District.
- 6.The Commissioner,
Department of Archaeology,
Tamil Salai, Egmore, Chennai-8.
- 7.The Tahsildar,
Sankarankovil Taluk, Thenkasi District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned work order in file No.2929/2021/E1, dated 06.12.2021 of Sankarankovil Municipality and quash the same and consequently, to direct the 4th respondent to remove the construction of an electric crematorium adjacent to the Arulmigu Aruvam Soodiya Vinayagar Temple in Survey No.888/3 Sankarankovil Village, Thenkasi District.

For Petitioner : Mr.S.Madhavan
For R1, R6 & R7 : Mr.R.Baskaran,
Additional Advocate General,
assisted by Mr.D.Gandhi Raj,
Special Government Pleader
For R2 : Mr.S.Sivakumar
For R3 : Mr.V.R.Shanmuganathan
For R4 : Mr.K.Kishore Ram
For R5 : No Appearance

ORDER

This Writ Petition is filed challenging the work order issued by the 4th respondent dated 06.12.2021 to construct modern gasifier crematorium at Tirunelveli Road to Nedunkulam Road at Sankarankovil Municipality.



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2.On the request made by the general public of Sankarankovil

Municipality to construct electric crematorium, the Government issued G.O.(Ms)No.90, Municipal Administration and Water Supply (NS) Department, dated 27.10.2021 and allotted funds to implement the crematorium projects in 7 Municipalities, including Sankarankovil Municipality at the cost of Rs.1,045 lakhs. Accordingly, tender was floated, in which highest bidder, namely, M/s. PSR Constructions was selected and work order dated 06.12.2021 was issued to them. As per the work order, now, construction of electric crematorium is under progress.

3.It is the contention of the petitioner that the land, which is chosen by the respondents 4 and 5 herein, belongs to the 3rd respondent temple and adjacent to the said land, Arulmigu Aruvam Soodiya Vinayagar Temple is situated abutting to Sankarankovil to Tirunelveli Main Road and the said temple is being used by the devotees, who are pilgrimage for various places in Tirunelveli and Thoothukudi District. Therefore, even before issuance of the work order, the petitioner submitted representation by way of objections to construct electric crematorium in the place to the 4th respondent. However, the same was not considered by the 4th respondent. Therefore, the petitioner approached this Court by filing Writ Petition in W.P.(MD)No.6262 of 2022,



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wherein this Court, by order dated 05.04.2022, directed the 4th respondent to consider the objections raised by the petitioner and pass orders on merits and in accordance with law. However, the 4th respondent has not considered the objections raised by the petitioner and now, it is half way through of construction of electric crematorium.

4.On perusal of the tender notification as well as the work order, it is seen that the 4th respondent mentioned only the name of the work to be carried out ie., construction of modern gasifier crematorium at Tirunelveli road to Nedunkulam road at Sankarankovil Municipality and he did not even mention the particular place or the survey number, where the construction of electric crematorium is to be carried out.

5.The 4th respondent has filed counter affidavit, stating that the land comprised in S.No.888/3 to an extent of 0.32.0 ares is classified as 'Government Records', wherein there is a stone building, which belongs to Arulmigu Sankaranarayanar Thirukovil, Sankarankovil. The said land was used as threshing floor to an extent of 3808 sq.ft. Already, there was a crematorium and the 4th respondent is only upgrading and developing the same into a electric crematorium based on the request of the general public. That



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apart, this Writ Petition is filed without adding the person in whose name the

work order was issued. Further, the petitioner is none other than the owner of the adjacent property and as such, he is not interested over the temple land.

6.The 3rd respondent has filed counter affidavit, stating that the lands comprised in old S.No.564/A5 new S.No.888/3 to an extent of 77 acres and 95 cents situated adjacent to Arulmigu Aruvam Soodiya Vinayagar Temple were dedicated to the service of the temple entrance and treasury watchman service attached to Arulmigu Sankaranarayanar Thirukovil, Sankarankovil vide T.D.No.194 and the temple is notified under Section 46(iii) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act'). In the subject land, there is a Madam, called Odaikarai Madam, which is being used by the devotees, who visit Tiruchendur Temple for taking rest and to worship Aruvam Soodiya Vinayagar for peaceful pilgrimage and further, during harvesting seasons, the adjacent lands were utilized by the agriculturists for doing harvesting works. While being so, without even prior intimation or permission from the HR & CE department, the 4th respondent had taken steps to put up construction of electric crematorium in the subject land. In fact, the 3rd respondent also filed objections dated 11.01.2022 to the respondents 4 and 5 and thereafter, the construction work was kept in abeyance.



WEB COPY 7. On perusal of the revenue records, it is seen that the property comprised in S.No.888/3 situated at South Sankarankovil, Tenkasi District is classified as Government Poramboke and marked as Temple.

8. At this juncture, it is relevant to rely upon the judgment of this Court reported in CDJ 2020 MHC 3375 (S.Sridhar & others Vs. The State of Tamil Nadu), wherein this Court held as follows:-

“22. In view of the foregoing discussions, the emerging conclusions are summed up in seriatim as follows:

i. The temples are entitled to the rights of possession and enjoyment in respect of the respective disputed lands, subject to the control and administration of the HR & CE Department. Needless to say that no trustee/private individual shall claim right over the disputed lands possessed and enjoyed by the temples in any manner whatsoever.

ii. The right and title over the disputed lands vest with the Government. However, the Government shall not utilise/alienate/assign/transfer the same and construct permanent structures therein for the purposes other than the beneficial interests of the temple as indicated in Rule 13 of the Revenue Standing Order No.26 and the provisions of the HR & CE Act.

iii. The subject temples under the administration and control of the HR & CE Department, are entitled to all the



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prescriptive rights not only because of their long possession, but also in view of Rule 13 of the Revenue Standing Order No.26 and the provisions of HR & CE Act.

.....(a) The Fisheries Department shall approach the Commissioner of HR &CE Department and enter into an agreement for rent/lease of the land under its occupation, where the buildings are located, within a period of three months from today. The appropriate/fair rent shall be fixed by the Commissioner as per the provisions of the HR & CE Act;

(b) If the Fisheries Department is no inclined or fails to enter into such agreement, it shall deliver vacant possession of the buildings to the HR & CE Department within a period of three months from the expiry of three months period, as indicated in clause vii(a) of paragraph No.22 of this order;

(c) The HR & CE Department shall take possession of the remaining vacant land and secure it by construction a compound wall at their own cost within a period of six months and utilize it only for the betterment of the subject temple in terms of Rule 13 of the Revenue Standing Order No.26;

(d) If any portion of the property is occupied by any other person, the HR & CE Department shall evict such encroacher in the manner known to law; and

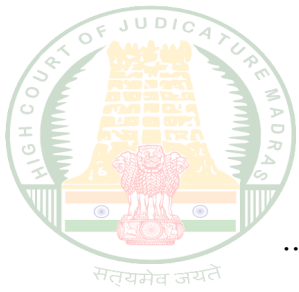
(e) The HR & CE Department shall also take possession of the temple pond and maintain the same, for the usage of the temple and its activities.”



WEB COPY 9. The above judgment is also upheld by the Division Bench of this Court in W.A.(MD)Nos.126 of 2022 etc., batch vide order dated 13.06.2022, where the Division Bench of this Court held as follows:-

*“30. The argument of the learned Advocate General cannot be accepted because the land under Temple remains to be a Government poramboke and the Commissioner of HR&CE Department controls the affairs. In Column 12 of the 'A' Register, reference of temple is given. The Record of 1951, produced before us, Column 12 shows the land in question to be of a Temple. The alteration in the records was made in the year 1963 to add Fisheries Department in column. Further, the issue regarding exclusive right on possession and enjoyment of temple poramboke land by the temple is no longer res integra. In this regard, reliance may be placed on the decision of the Apex Court in the case of **Subramanya Swamy Temple, Ratnagiri v. V.Kanna Gounder (Dead) by LRs, (2009) 3 SCC 306**. Paragraphs (3), (5) and (10) are relevant and the same are quoted hereunder:*

"3. The classification of 32 acres of land of Survey No. 370/1 was made as "Sri Subramanya Swamy Temple, poramboke". The said classification of temple "poramboke" in the revenue record-of-rights indicates the reason for which it has been set apart as also its occupation and use. Temple poramboke consists of unassessed wasteland by the Temple. It may also include common passage, water ponds, thrashing floor; etc. etc.



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.....
5. By reason of such classification, the appellant Temple obtained full right to possession and exercise right to transfer of the lands assigned in its favour. The right of the appellant to hold and possess the said land was noticed by a Bench of the Madras High Court in *M.S. Krishnan v. Govt. of T.N.* [(2001) 2 LW 723 (Mad)] in the following terms : (LW p. 726, para 10)

“10. ... Such a land does not cease to be a poramboke property over which the Government will have control subject only to the rights of the Temple.”

10. The High Court, in its impugned judgment proceeded on the basis that there had been no assignment in favour of the Temple by the State. It committed an error in relation thereto. The paramount title of the State is not disputed. It remains vested in the State. The State, however, having regard to the possession of the appellant over 32 acres of land classified the same as “Temple poramboke”. It, by reason of the said classification, not only permitted the appellant to continue to possess the land but also granted a superior right, namely, to make constructions as also to grant lease thereof subject of course to the conditions laid down as noticed hereinbefore. The principle of possessory title was, thus, completely overlooked by the High Court.”

31. In view of the aforesaid and as we find the land in question remained under the possession of the temple, it was rightly taken to be a Temple poramboke land and therefore the G.O. could



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not have been issued to assign the land to the Fisheries Department, rather the Temple poramboke land can be utilized in the manner given under the Act, 1959 and Rule 13 of the Revenue Standing Order No.26. In the case on hand, the Commissioner, HR & CE Department, who is having the general power of superintendence and control over all the temples has neither been consulted nor been involved in the decision making process. It is not in dispute that by virtue of Section 34 of the Act, 1959, the Commissioner has been empowered to grant long lease of the temple property, but in consultation with the Government.”

10. In the present case on hand, since the land in question is in possession and enjoyment of the temple, it cannot be assigned for any other purpose other than the beneficial interest of the temple and the temple can utilise its land in the manner given under the Act and Rule 13 of the Revenue Standing Order No.26. The Commissioner of HR & CE Department, who is having general power of superintendence and control over all the temples, has neither been consulted nor been involved in the decision making process. Further, under Section 34 of the Act, the Commissioner is empowered to grant long lease of the temple property, but in consultation with the Government. Therefore, if any portion of the property was occupied by any other person other than the temple, the HR & CE Department shall take appropriate action to evict them in the manner known to law.



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11. Admittedly, the 4th respondent did not obtain any prior permission from the 3rd respondent, while awarding work order to the contractor to execute the construction of electric crematorium in the temple land. That apart, already the petitioner submitted detailed objection even before issuance of the work order. Since the same has not been considered, he approached this Court by way of filing Writ Petition, in which this Court specifically directed the 4th respondent herein to consider the objections raised by the petitioner and after giving opportunity of hearing, pass orders. Even then also, the 4th respondent, without considering the objections and without conducting any enquiry, mechanically issued work order. Though the petitioner herein failed to implead the contractor, who was awarded work order, as a party respondent in this Writ Petition, the 4th respondent has no right over the temple property comprised in S.No.888/3 situated at South Sankarankovil, Tenkasi District to issue any work order.

12. In view of the above, the respondents 4 and 5 are directed to remove the construction put up in the subject land and hand over the vacant land to the 3rd respondent. It is made clear that the respondents 4 and 5 are hereby restrained from putting up any construction or occupation of the subject property without due process of law.



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WEB COPY 13. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
NCC : Yes / No

Yuva

TO:-

1. The District Collector,
Thenkasi District, Thenkasi.
2. The Commissioner,
Department of Archaeology,
Tamil Salai, Egmore, Chennai-8.
3. The Tahsildar,
Sankarankovil Taluk, Thenkasi District.



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