

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
W.P.Nos.5837 and 6079 of 2017 &
W.M.P.No.6515 of 2017

Mr.M.K.Vijayan (Age: 53)
S/o, Krishnasamy,
S.S.M.Kumaran Illam,
Salem Camp Main Road,
Mettur Dam, Salem District.

... Petitioner in
both Writ Petitions

Vs

1. The Superintendent of Police,
Salem District,
Salem.
2. The Deputy Superintendent of Police,
Mettur Dam,
Salem District.
3. The Inspector of Police,
Karumalaikoodal Police Station,
Mettur, Salem District.

... Respondents in
W.P.No.5837 of 2017

1. The Commissioner,
The Hindu Religious & Charitable
Endowments Board,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034,
2. The Joint commissioner,
Office of the Joint Commissioner,
H.R. & C.E. Department,
No.319, Thirugnanasambandar Street,
State Bank Colony,
Salem - 636 004.
3. The Assistant Commissioner,
Office of the Assistant Commissioner,
H.R. & C.E. Department,
Salem.
4. The District Collector,
Salem District, Salem.

5. The Revenue Divisional Officer,
Mettur, Salem.

6. The Tahsildar,
Mettur Taluk, Salem District.

7. K.P.Syed Feroze,
S/o: Late Syed Mohammed Hussain,
No:36/72, Thangamapuri Pattinam,
Mettur Dam R.S.,
Salem District - 636 402.

8. The Official Liquidator,
Attached Madras High Court,
Block-1, First Floor, Esplanade,
Chennai - 108.

... Respondents in
W.P.No.6079 of 2017

Prayer in W.P.No.5837 of 2017: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents herein to give Police Protection for protecting the Temple, Idols, Lands, Buildings and Marriage Halls belonging to "Arulmigu Sakthi Mariyamman Thirukoil", situated at Block No.6, T.S.No:20, Survey No.C6/20 in Salem Camp, Mettur Division, Salem District Thus Protecting the integrity safety, Harmony Law and order

Prayer in W.P.No.6079 of 2017: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the Respondents 1 to 6 herein to protect the Integrity, Safety and Harmony of the Idols, Temple Lands, Buildings, Cooking Halls and Marriage halls belonging to the "Arulmigu Sakthi Mariyamman Thirukoil", situated at Block No:6, T.S.No.20, Survey No:C6/20 in Salem Camp, Mettur Division, Salem District.

For Petitioner
in both Writ Petitions : Mr.V.Lakshmi Narayanan

For R1 to R3
in W.P.No.5837 of 2017 : Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

For R1 to R3
in W.P.No.6079 of 2017 : Mr.M.Maharaja
Special Government Pleader
HR & CE Department

For R4 to R6
in W.P.No.6079 of 2017 : Mr.A.N.Thambidurai
Special Government Pleader

For R7
in W.P.No.6079 of 2017 : Mr.M.R.Jothimanian

For R8
in W.P.No.6079 of 2017 : Mr.S.R.Sundar

COMMON ORDER

In view of inter-connectivity of the issue involved in these two writ petitions, they are considered and decided by this common order.

2 On 15.09.2018, this Court passed the following order:

"While W.P.No.5837 of 2017 has been filed seeking a writ of mandamus directing the respondents herein to give Police Protection for protecting the temple, idols, lands, buildings and marriage halls belonging to "Arulmigu Sakthi Mariyamman Thirukoil", situated at Block No.6, T.S.No:20, Survey No.C6/20 in Salem Camp, Mettur Division, Salem District, thus protecting the integrity, safety, harmony, law and order, W.P.No.6079 of 2017 has been filed seeking a writ of mandamus directing the Respondents 1 to 6 herein to protect the integrity, safety and harmony of the idols, lands, buildings, cooking halls and marriage halls belonging to the said temple.

2 The long and short of the case is that Mettur Textiles Ltd., went into liquidation and its property in Salem was brought to sale by the official Liquidator and the same was purchased in public auction by the seventh respondent, viz., Syed Feroze. Admittedly, a Mariamman Temple is located within the property and a suit in O.S.No.536 of 1996 in respect of the management of the affairs of the temple is pending on the file of the District Munsif Court, Mettur. Though the said temple was declared as a public temple, yet, due to the pendency of the said suit, the H.R. & C.E. Department has not been able to effectively take over the management of the temple. Pursuant to the purchase of the entire property by the seventh respondent, apprehending that the seventh respondent may demolish the temple, the petitioner is before this Court with the above prayers.

3 Heard Mr.V.Lakshmi Narayanan, learned counsel representing Mr.P.Nethaji, learned counsel on record for the petitioner in both the writ petitions, Mr.Maharajan, learned Special Government Pleader appearing for the H.R. & C.E. Department/respondents 1 to 3 in W.P.No.6079 of 2017, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for respondents 4 to 6 in W.P.No.6079 of 2017, Mr.M.R.Jothimanian, learned counsel for the seventh respondent in W.P.No.6079 of 2017, Mr.S.R.Sundar, learned counsel for the eighth respondent in W.P.No.6079 of 2017 and Mrs.M.Prabhavathy, learned Additional Public Prosecutor appearing for the respondents in W.P.No.5837 of 2017.

4 Mr.M.R.Jothimanian, learned counsel for the seventh respondent submitted that the seventh respondent has no intention to demolish the temple in question and according to him, the temple is located within a compound wall and measures 40 cents.

5 However, it is the case of the petitioner that the temple is located in 0.88 acres (88 cents).

6 The learned counsel for the seventh respondent contended that the petitioner has built a marriage hall in the name of his father Krishnasamy abutting the temple in question in Survey No.18 and that he wants to retain the possession of the marriage hall and prevent it from being demolished by contending that the same forms part and parcel of the temple.

7 In view of the above, this Court directs the Joint Commissioner of H.R. & C.E. Department, Salem and his officials, to inspect the temple and submit a report as to the extent to which, the religious aspect of the temple extend. Such a report shall be accompanied by photographs and sketch as well. The Revenue authorities and the police authorities shall provide necessary support to the H.R. & C.E. Officials as and when they take up the

inspection work."

3 Pursuant to the aforesaid order passed by this Court, the Joint Commissioner (HR & CE) Department inspected the temple and submitted a report along with photographs and sketch. On a perusal of the sketch, this Court found that the measurements were not properly given and therefore, this Court was not satisfied with the report of the Joint Commissioner. Hence, this Court decided to conduct spot inspection after informing either side. Accordingly, this Court went to the spot on 18.11.2018 (Sunday) and conducted inspection from 7.00 a.m. to 8.00 p.m. in the presence of the counsel for the parties, HR & CE Officials, Revenue officials, Municipal Surveyor, police and jurisdictional Munsif and Magistrate. The copies of the rough sketch and the site plan prepared under the supervision of this Court have been furnished to the learned counsel for the parties.

4 In the inspection, this Court found that the temple "Arulmigu Sakthi Mariyamman Thirukoil" was located in an area of 40 cents in T.S.No.20 and securely protected on all the four sides by compound walls. Apart from individual shrines for the deities, the area of 40 cents comprises nandavanam (flower garden), madapalli (temple kitchen), dining hall, store room, office, toilets and shed for temple car. Thus, the entire temple and its adjuncts are self-contained within the area of 40 cents.

5 The seventh respondent has given an unequivocal undertaking that he will not, in any manner, interfere with the 40 cents of the temple, i.e., "Arulmigu Sakthi Mariyamman Thirukoil" campus in T.S.No.20 and this undertaking is recorded.

6 Accordingly, an order of injunction is passed, restraining the seventh respondent and anyone claiming through him, from, in any manner, interfering with the 40 cents of land in T.S.No.20, comprising the temple and the other adjuncts such as nandavanam (flower garden), madapalli (temple kitchen), dining hall, store room, office, toilets and shed for temple car.

7 As regards the affairs relating to the day-to-day administration of the temple, it is left open to the petitioner, HR & CE Department and the local public to resolve the disputes, if any, before the appropriate forum.

8 Coming to Krishnaswamy Thirumana Mandapam (Marriage Hall), it is seen that it does not form part of the temple campus and in fact, a public road in T.S.No.19

runs between the temple and the marriage hall. Krishnaswamy Thirumana Mandapam (Marriage Hall) is located in T.S.No.18 and measures about 11.25 cents. That apart, the Revenue records show that the marriage hall has been constructed on the Revenue land and now, the land stands in the name of the seventh respondent, to whom, patta has been issued.

9 Mr.Lakshmi Narayanan, learned counsel for the petitioner took this Court through various records and submitted that the temple is situated in 0.88 acres and therefore, Krishnaswamy Thirumana Mandapam (Marriage Hall) would also fall within its ambit.

10 It is true that based on certain records the petitioner and his predecessors have been asserting that the land in which the temple is located measures about 0.88 acres. However, such an assertion by the interested persons, by itself, cannot be a proof for concluding that the temple is located in a land measuring about 0.88 acres. Actual measurements were done under the supervision of this Court and the site plan has been prepared. The measurements clearly show that the temple campus, with its clearly demarcated compound walls, measures only 40 cents. By including the measurements of the public road and Krishnaswamy Thirumana Mandapam (Marriage Hall), the measurements can be hiked, but, that is impermissible.

11 Further, enquiries reveal that the name 'Krishnaswamy' indicates none other than the father of the petitioner and that the petitioner has built the marriage hall in memory of his father on the land of Mettur Textile Industries Ltd., which has now been purchased by the seventh respondent from the Government in public auction. Hence, this Court cannot grant any protection to the petitioner qua Krishnaswamy Thirumana Mandapam (Marriage Hall).

12 That apart, Krishnaswamy Thirumana Mandapam (Marriage Hall) cannot be construed as an essential requirement for the religious and spiritual activities of the temple. It may fetch revenue for the temple, but, that cannot be a good ground to give protection to Krishnaswamy Thirumana Mandapam (Marriage Hall), when, admittedly, the seventh respondent has purchased that portion also in public auction.

13 Further, this case appears to have had a chequered history and has even gone up to the Supreme Court.

<https://hcservices.ecourts.gov.in/hcservices>

Court. In S.L.P.No.6502 of 2017, filed by A.Joseph & others challenging the order dated 25.10.2016, passed by this Court in W.A.No.1199 of 2016, on 03.03.2017, the Supreme Court has passed the following order:

"We do not find any reason to interfere with the impugned order passed by the High Court. The Special Leave Petition is, accordingly, dismissed.

However, looking to the facts of the case, we grant time to the petitioners upto 31st May, 2017 to surrender vacant and peaceful possession of the premises in question to the respondents on humanitarian grounds, on condition that the petitioners shall individually file affidavits before the High Court that they will not create any third party rights in respect of the property and that they will, without any demur, surrender vacant and peaceful possession by 31st May, 2017.

The affidavits, as above, shall be filed within four weeks.

We make it clear that the dismissal of this Special Leave Petition shall not stand in the way of the petitioners approaching the Government for alternative accommodation, which we find was one of the suggestions in the Peace Committee meetings.

Pending interlocutory applications, if any, stand disposed of."

14 Only thereafter, the present writ petitions have been filed with the above prayer. In view of the findings by this Court that the temple, which is the property in dispute, measures only 40 cents and that Krishnaswamy Thirumana Mandapam (Marriage Hall) is not an integral part of it, it is open to the seventh respondent to take appropriate steps to take possession of Krishnaswamy Thirumana Mandapam (Marriage Hall) since it vests with him, after he having purchased it in public auction.

15 In the result, these writ petitions are disposed of with a direction that there shall not be any interference by the seventh respondent and any person claiming through him in "Arulmigu Sakthi Mariyamman Thirukoil" campus measuring 40 cents in T.S.No.20 and that

there shall not be any direction or protection qua Krishnaswamy Thirumana Mandapam (Marriage Hall) located in T.S.No.18 which vests with the seventh respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS vii)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Superintendent of Police,
Salem District,
Salem.
2. The Deputy Superintendent of Police,
Mettur Dam,
Salem District.
3. The Inspector of Police,
Karumalaikoodal Police Station,
Mettur, Salem District.
4. The Commissioner,
The Hindu Religious & Charitable
Endowments Board,
No.119, Uthamar Gandhi Salai,
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6. The Assistant Commissioner,
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8. The Revenue Divisional Officer,
Mettur,
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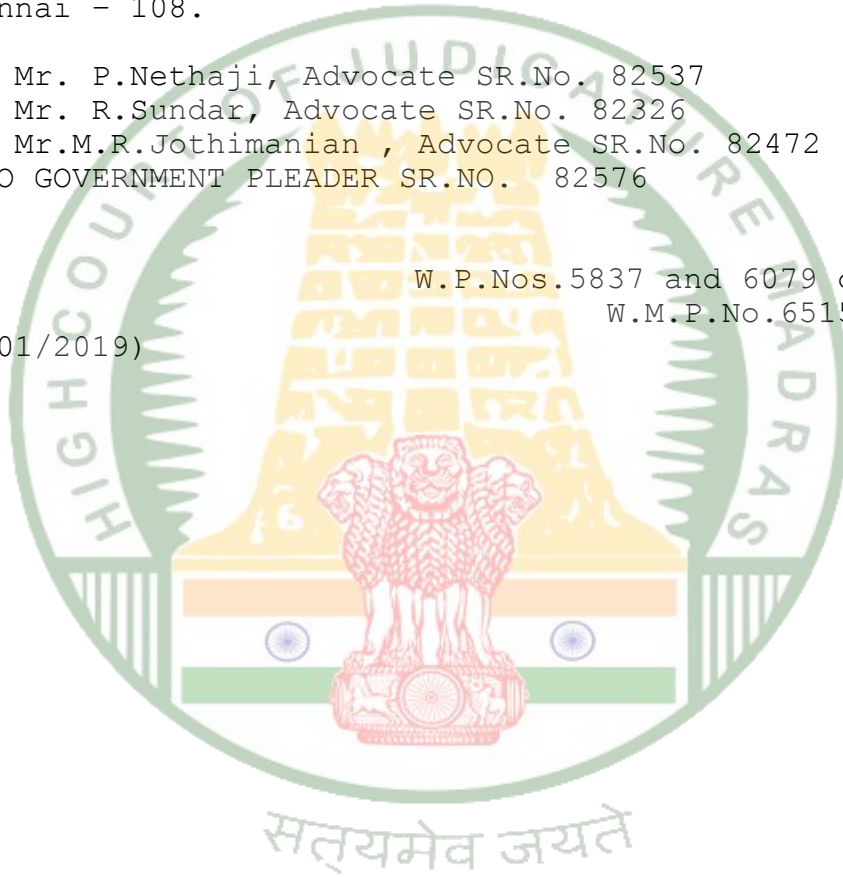
9. The Tahsildar,
Mettur Taluk,
Salem District.

10. The Official Liquidator,
Attached Madras High Court,
Block-1, First Floor, Esplanade,
Chennai - 108.

+1cc to Mr. P.Nethaji, Advocate SR.No. 82537
+1cc to Mr. R.Sundar, Advocate SR.No. 82326
+1cc to Mr.M.R.Jothimanian , Advocate SR.No. 82472
+1 CC TO GOVERNMENT PLEADER SR.NO. 82576

W.P.Nos.5837 and 6079 of 2017 &
W.M.P.No.6515 of 2017

ASK(04/01/2019)



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