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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :11.03.2021
PRONOUNCED ON :30.11.2022

CORAM :
THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P.No.12351 of 2020

Arulmighu Thirusoolanathar Thirukoil,
Rep by its Executive Officer,
Thirusoolam,
Chennai - 600 043.

...Petitioner

Vs.

1.The Block Development Officer,
St.Thomas Mount Panchayat Union,
Chitlapakkam,
Chennai - 600 061.

2.The Executive Officer,
Thirusoolam Panchayat,
Thirusoolam,
Chennai - 600 043.

3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Pallavaram,
Chennai - 600 043.

4.The Tahsildar,
Pallavaram, Chennai.
(R4 suo motu impleaded as per order dated 15.10.2020)

5.The Commissioner,
Hindu Religious and Endowments Department,
Chennai.

6.The Joint Commissioner,
Hindu Religious and Endowments Department,
Chennai.
(RR5, 6 are suo motu impleaded as per order dated 19.02.2021)

7.C.Angel Charles.

8.A.Brammanathan

9.J.Hamdhu Nisha

10.N.Thanigaivel



11.C.Shanmugam
12.G.Christuraj
13.G.William James
14.P.Jayaraman
15.P.Pushparaja
16.S.Subbiah
17.A.Muthupandi
18.P.Ashadevi
19.K.Panchali
20.K.Elumalai
21.E.Subramani
22.M.Muniyammal
23.S.Arumugam
24.V.Vijayapandian
25.M.Ramesh
26.M.Stella
27.E.Malliga
28.A.Pechiammal

(RR7 to 28 impleaded vide order 30.11.2021 made in W.M.P. No. 3407/2021 in W.P. No. 12351/2020)

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 & 2 to consider the representation of the petitioner, dated 15.07.2020 and to take suitable action against the illegal construction.

For Petitioner :Mr.A.K. Sriram for
M/s.A.S.Kailasam & Associates
Mr.P.Gunaraj for R3
Standing Counsel
Mr.M.Karthikeyan for RR5 & 6
Mr.S.N. Parthasarathy
for RR1 & 2
Mr.E. Balamurugane for R4

For R7 to R28 :Mr.K.Selvaraj

O R D E R

This Writ Petition is filed by the Executive Officer of Arulmighu Thirusoolanathar Thirukoil, Thirusoolam, Chennai - 600 043, seeking a direction, not to sanction electricity connection to the encroachers in the petitioner's temple lands and to cancel the electricity connections already granted to the encroachers, by considering his representation dated, 15.07.2020.



2.The petitioner's temple is a Public Religious Temple, under the control of Tamil Nadu Hindu Religious and Charitable Endowments Department and is having vast extent of lands in various Survey Numbers in Thirusoolam Village to an extent of 77.82 acres. According to the petitioner, some of the lands have been leased out to the tenants and most of the lands have been encroached upon, in the year 2003. A suit was filed by the petitioner's temple before the Additional District Munsif Court, Alanthur, in O.S.No.288 of 2003, as against the President of Thirusoolam Village Panchayat; the Commissioner, St.Thomas Mount Panchayat Union; the District Collector, Kanchipuram District; and the Assistant Executive Engineer, Tamil Nadu Electricity Board, Pallavaram, seeking for permanent injunction, restraining the defendants from laying any road and also for mandatory injunction to remove the water pipe lines, road unlawfully laid by them and to remove all the electrical lines, cables unlawfully drawn in the suit schedule properties. The suit was decreed by the Court on 19.08.2010. Even thereafter, encroachments were made in the petitioner's property and those encroachments were also encouraged with the support of officials of the third respondent, without any approval or sanction. Several constructions were made in the petitioner's land and those constructions have been ratified by the respondents by providing water connection, electricity connection and by laying road on those encroachments.

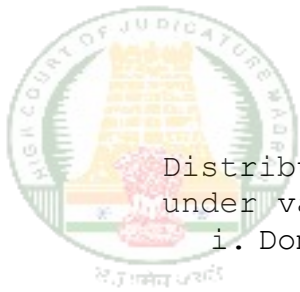
3.Mr.A.K.Sriram, the learned counsel appearing for the petitioner temple submits that the petitioner's temple is not having sufficient man power to monitor the entire properties of the temple and the same was taken advantage by some encroachers, to occupy the lands, put up constructions and those unauthorised occupants have been recognized by the respondents, by providing them water connection, electricity connection and by establishing roads and other infrastructures. The temple administration is agitating this issue from the year 2003 and a decree has also been passed as against the respondents. Even then, the respondents are encouraging the encroachments in the petitioner's temple land. In some case, the encroachers claim that they have been permitted to occupy by the concerned authority. But there is no specific orders to that effect. Even otherwise, if any such permission/sanction has been granted, the same is against the provisions of the Hindu Religious & Charitable Endowments Act, 1959 and the District Municipalities Act, Electricity Act and other relative Rules and Regulations.



4. Upon inspection by the petitioner in the month of May 2019, it was found that more number of encroachments have been made in the temple land and therefore a representation was made to the respondents 1 to 3, requesting them not to grant any planning approval, electricity connections and water connections in the lands belonging to the petitioner's temple, without their consent or approval. The petitioner's temple has also made representation to the Tahsildar, Pallavaram, seeking survey and measurement of lands and also moved a Writ Petition before this Court in W.P.No.29924 of 2019. This Court by way of an interim direction, on 18.11.2019, directed the Revenue authorities to conduct survey and mark the boundaries. Accordingly, survey has been conducted by the Revenue Authorities and the boundaries have been identified. In the meantime, encroachments made in the petitioner's land have also been identified. As the authorities have found that there are more than 700 encroachments, the petitioner made representation to the officials respondents. The inaction on the part of the official respondents led the petitioner to file the present writ petition.

5. This Court while entertaining this writ petition issued an interim direction to the second respondent to immediately act upon the representation of the petitioner's temple and to file a report before this Court on the steps taken by them and to ensure that the encroachers do not get the benefits of water, sewerage connection and posted this petition for compliance on 01.10.2020. Further direction was also issued by this Court on 18.12.2020, that if the constructions have been put up without any sanction, the respondents are expected to act immediately and stop the construction and to take stringent action in accordance with law.

6. Mr. Parthasarathy, the learned counsel appearing for the respondents 1 & 2 admits the unauthorized constructions in the petitioner's land, however would submit that those constructions have been made without any planning approval from the competent authority. There is no explanation as to how water connections, electricity connections and sewerage connections have been effected to those unauthorized constructions. This Court, by order dated 06.01.2021, directed the third respondent to file a report as to how electricity service connections have been effected, without even ascertaining the documents required for planning permission and the documents for ownership. The third respondent has also filed a report that the Department has effected 1103 service connections in the land belonging to the petitioner's temple under Clause 27 (3) and 27(4) of Tamil Nadu Electricity



Distribution Code, 2004. The service connections were granted under various Tariffs, which are as under:-

i. Domestic service (Tariff 1A)- No of connection -995

ii. Public Lights & Water supply
for Panchayat (Tariff II A(V)- No of connection -Nil

iii. Public lights & Water supply
for Municipality &
Corporation (Tariff II A)- No of connection -1

iv. Place of Public Worship
Tariff II C) - No of connection -Nil

v. Cottage and Tiny Industries
(Tariff 3 A1) - No of connection -3

vi. Industrial Service (Tariff III B) - No of connection-15

vii. Temporary Service (Tariff VI)- No of connection -3

viii. Commercial (Tariff V) - No of connection -86

Total No. of Service = No of connections - 1103

7. According to the third respondent, those service connections were granted either based on the property tax receipt issued by Thirusoolam Panchayat and/ or patta issued by the Special Tahsildar, Tambaram, Alanthur, Pallavaram and/or Small Scale Industries Certificate from the Small Scale Industries Department and/ or Lease Deed executed by the Arulmighu Thirisoolanathar Thirukovil in favour of the respective tenants / Small scale Industries & Tiny Industries and Cottage Industries.

8. The encroachers around 22 in numbers have filed WMP.No.3407 of 2021 to implead them as respondents in this Writ Petition. In order to decide the issue on hand, it is necessary to implead them as party respondents in this petition, since they are said to be the encroachers of the petitioner's land. Hence, this miscellaneous petition is allowed. The proposed respondents are impleaded as respondents 7 to 28 in this writ petition. Registry is directed to carry out necessary amendment in this writ petition.



9.Mr.Selvaraj, the learned counsel appearing for the respondents 7 to 28 submits that these private respondents and several others have occupied the petitioner's temple lands and are residing in the place for the past twenty five years and now they have put up concrete house structures with their hard earned money. He further submits that more than 5000 persons are residing in the place and the Panchayat has put up street lights, water tank, road, etc., to the occupants. Property tax as well as water tax are also assessed. Electricity service connections were obtained prior to 2013. When objections were made by the writ petitioner for grant of electricity service connection, the private respondents and others have filed a Writ Petition before this Court in W.P No.20824 of 2013, and in that writ petition, the petitioner's temple had taken a stand that they are prepared to give no objection for providing electricity service connection, provided the petitioners therein pay a fair rent to the petitioner's temple and accordingly this Court disposed of that writ petition on 17.07.2014, with a direction to the petitioner's temple to fix the fair rent, within thirty days and on such condition, the temple has to give No Objection Certificate, on payment of 50% of the fair rent.

10. As per the orders of this Court, the petitioner's temple has not fixed the fair rent till date and therefore, these private respondents and others petitioners have moved the Tamil Nadu Electricity Board with an undertaking affidavit, as per clause 27(4) and 12 of Tamil Nadu Electricity Distribution Code, 2004. The Tamil Nadu Electricity Board/the third respondent herein, on satisfaction, has provided electricity service connections to the respective houses. The learned counsel further submits that this writ petition is filed without any reference to the earlier orders of this Court in W.P.No.20824 of 2013 and the commitment made by this petitioner in the said writ petition. He further submits that these newly impleaded respondents are ready to pay the rent, provided, if the fair rent is fixed by the petitioner's temple.

11.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

12.The petitioner's temple is a public Religious Temple governed under Tamil Nadu Hindu Religious & Charitable Endowments Act. Several devotees of the temple have donated vast extent of lands for certain religious purpose. These lands have been encroached by the respondents 7 to 28 and others and those encroachments have also been ratified by the official



respondents by providing electricity service connections, water service connections with property tax and by laying road and by providing street lights. The petitioner's temple is agitating this issue from the year 2003. A Suit has been filed by the petitioner's temple as against the official respondents and the District Collector, Kancheepuram District in O.S.No.288 of 2003 before the Additional District Munsif Court, Alanthur and the Court has also decreed the suit in favour of the petitioner's temple, by granting a mandatory injunction, directing the respondents 1 & 2 to remove the water pipe lines, roads etc., unlawfully laid by them in the suit mentioned properties and also for removing electricity lines, cables, Posts and other electrical installations unlawfully drawn and erected in the suit mentioned properties. Even then, the authorities have not acted upon it. On the other hand, they have facilitated the encroachers by granting water connection and electricity service connections.

13.The third respondent is governed by the provisions under the Indian Electricity Act and the Tamil Nadu Electricity Distribution Code to effect the domestic service connection or non-domestic service connection. On an application by the owner or occupier of any premises, the concerned authority shall provide electricity service connection, as per Section 43 of the Indian Electricity Act 2003. The application is also defined as ''application'' means, the completed application in all respects in the appropriate form, as required by the distribution license, along with documents showing payment of necessary charges and other compliances. Tamil Nadu Electricity Distribution Code, 2004 has been framed under the powers conferred in the Electricity Act, which satisfied the methodology to be adopted by the TANGEDCO, in connection with the requisitions made for supply of electricity. The regulation 57 also specifies that the service connection can be effected to the owner or lawful occupant. The following documents entitle an applicant to get the electricity supply to a premises:-

- (a) Certified copy of proof of ownership such as Sale Deed, Partition Deed, Gift settlement, allotment letter, computer patta, ownership certificate issued by revenue department officials, Court Judgment or recent property tax receipt.
- (b) In case of joint property, certified copy of proof of ownership such as legal heir, certified along with parent documents, consent letters from the co-owners and, in its absence, an indemnity bond with enhanced security deposit.



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(c) If the applicant is not the owner, consent letter from owner or valid proof of occupancy and indemnity bond, lease agreement, registered power of attorney, possession order from appropriate authority or decree or judgment of Courts etc.

14. Admittedly, several Electricity service connections have been effected without ascertaining the ownership or ascertaining the documents for legal occupancy. The Standing Counsel for the Tamil Nadu Electricity Board submits that pursuant to the representation to their Department dated 15.07.2020, no further electricity service connections were effected in the subject lands and according to him, in fact, no service connection was granted w.e.f 31.12.2019. However, he admits that 891 electricity service connections are existing and those electricity service connections were granted to small houses or house buildings, petty shops etc., and that most of the records are not available in their office. More over, they are ready to take appropriate action, as per the directions of this Court.

15. In similar circumstances, a Division Bench of this Court, in WP(MD)No.64 of 2018 and WMP(MD)Nos.54 and 860 of 2019, dated 23.10.2019, passed an order and the relevant portion from the above order is extracted as under:-

33. The final status report filed by the District Collector, Karur, on 30.01.2019, would reveal the present status of the lands, which they have categorised into five. Though the impleaded respondents have raised very many contentions that they are the bonafide purchasers and they have been in possession and enjoyments of the respective lands for years together, the same cannot be a ground to allow them to continue with their occupation in the lands, in view of the judgments cited above and the specific stand taken by the District administration and the temple administration, they have to redress their grievance only in the manner known to law. However, it is open to the Commissioner, HR & CE Department to consider the case of the respondents 11 to 239 that they have put up constructions and residing in the place for several decades, provided they come with a proposal to treat them as tenant or willing to take the lands make good the loss at the



prevailing market price or prescribed by the committee and the same can be considered by the Commissioner, HR & CE Department, as per Section 34 of the HR & CE Act.

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16. Considering the facts and circumstances of this case, the official respondents are liable to take appropriate action by considering the representation of this petitioner dated 15.07.2020 and to disconnect the electricity service connections, water connections, sewerage connections which were granted to the illegal occupants, without any authority of law or as against the provisions of law and the concerned authorities/higher officials of the respondent Departments have to initiate departmental proceedings as against those officers, who have ratified these illegal occupants by providing electricity service connections, water connections, sewerage connections, without ascertaining the ownership or without verifying as to whether they are the legal occupants of the place.

17. With regard to the submissions made by the learned counsel for the private respondents as to the earlier order passed by this Court in W.P. No.20824 of 2013, dated 17.07.2014, this Court feels that there is reasonable force in the contentions. Therefore, in order to comply the earlier order of this Court in W.P.No.20824 of 2013, dated 17.07.2014, the Commissioner of Hindu Religious and Charitable Endowments Department shall treat the private respondents herein /the petitioners in the said writ petition as tenants and fix the fair rent, within a period of six months from the date of receipt of a copy of this order.

18. With the above observations and directions, this Writ Petition is allowed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1. The Block Development Officer,
St. Thomas Mount Panchayat Union,
Chitlapakkam,
Chennai - 600 061.



2.The Executive Officer,
Thirusoolam Panchayat,
Thirusoolam,
Chennai - 600 043.

3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Pallavaram,
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4.The Tahsildar,
Pallavaram, Chennai.

5.The Commissioner,
Hindu Religious and Endowments Department,
Chennai.

6.The Joint Commissioner,
Hindu Religious and Endowments Department,
Chennai.

+1 CC to Mr.K.Selvaraj, Advocate sr 62322
+1 CC to Mr.A.S. Kailasam & Associates sr 62305
+1 CC to The Government Pleader sr 62976.
+1 CC to Mr.L. Jai Venkatesh, Advocate sr 62754

W.P.No.12351 of 2020

SSD(CO)
SP(31/03/2022)