
(2014) 09 MAD CK 0130

In the Madras High Court

Case No : W.P.(MD). No. 13097, 13489 and 13097 of 2014 and M.P. (MD). Nos. 1, 1 and 2 of 2014

Tamilannai Tamiraparani Welfare Trust

APPELLANT

Vs

The Commissioner

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2015) WritLR 92

Hon'ble Judges : R. Mahadevan, J;M. Jaichandren, J

Bench : Division Bench

Judgement

R. Mahadevan, J.—Since the issues involved in these Writ Petitions are one and the same, they are taken up together and decided, by a common order.

2. The short facts, in a nutshell, are as follows:-

Originally, the Tamilannai Tamiraparani Welfare Trust came up with a Writ Petition in W.P. (MD). No. 13092 of 2014 praying for a Writ of Mandamus to forbear the respondents 1 to 3 from raising any manner the construction at the north west corner of Rajagopuram situated on the western side of Arulmighu Subramaniya Swamy Temple, Thiruchendur. Subsequently, it came up with another Writ Petition also praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders passed by the second respondent vide Se. Mu. Nada. Na. Ka. No. 46105/2013/Y1 dated 25.12.2013 and consequential estimation approval order passed by the same authority vide Na. Ka. No. 46105/2013/Y1 dated 03.01.2014 quash the same and direct the respondents to restore the place of construction namely north west corner of Rajagopuram to its original position.

3. It is averred that Tiruchendur Temple is considered to be one of the prime temples, as per Skandhapuranam and the Temple is situated on the sea shore. Naturally, the construction of temple in the sand of the seashore is really a mystery technology for the present civil engineers. The Rajagopurm of the said

temple is situated on the western side of the temple, which is approximately more than 120 feet height and having the foundation depth of 90 feet, because by considering the non-rigidness of the soils of total height of the Rajagopuram had been dug to lay foundation for 120 feet height Rajagopuram. It is further averred in the affidavit that in order to strengthen its foundation furthermore, the soil and basement on the four sides of the Rajagopuram were kept vacant enabling the rainwater to intrude into the soil.

4. Initially, the place where the construction is being put up, had been occupied by a shed meant for temple elephants. The south east and north east portion will come inside the compound wall and near by the north west portion of the Rajagopuram there is an open space with many neem trees. Further, there is also a small deity situated, viz. Arulmighu Sangili Bhoothathan and the said deity has been worshipped daily. While so, the respondents in W.P. (MD). No. 13092 of 2014, without obtaining any permission, from the fourth respondent raising the construction abetting the Rajagopuram and causing hardships to the devotees. The averment of the Writ Petition in W.P. (MD). No. 13484 of 2014 is more or less identical to the Writ Petition in W.P. (MD). No. 13097 of 2014, except to state in paragraph 6 of the affidavit that an order has been passed by the second respondent for putting up the construction in question.

5. Mr. K.P.N. Narayanakumar, the learned counsel appearing for the petitioner in both the Writ Petitions submitted that since the temple is an ancient one, the respondents have not scientifically analyzed the nature, area and position of the construction. If the construction in question is allowed, it not only obstructs the complete vision of the Rajagopuram, but also, its foundation. Further, the temple had been constructed as per the peculiar theory called Thantra Samuchayam and the new construction near Rajagopuram is not only endanger to human life, but also a threat to the structure of archaeological importance and the same would also endanger the other temple buildings. He further submitted that before preparation of plans, estimations and other works regarding construction of Mandapam, Rule 30 of Management and Preservation of Properties of Religious Institution Rules has to be complied with. Due to the present construction, the devotees could not worship "Arumigu Sangili Bhoothathan" and eventually, he submitted that the construction may be stopped in order to preserve the ancient temple.

6. The learned counsel for the respondents through the counter affidavit submitted that the respondents are exempted from getting any permission for construction under Rule 18 of the Tamil Nadu District Municipality Building Rules. Therefore, obtaining permission from the fourth respondent does not arise. The present construction is put up only on the advise of the High Level Advisory Committee and the same was further approved by the first respondent, namely, the Commissioner, Hindu Religious and Charitable Endowment Department, Chennai, vide proceedings dated 25.12.2013, under the provision of the Hindu Religious and Charitable Endowment Act, particularly, Section 116(2) (XVII)

(XVIII) (XIX) (XXII) r/w the Management and Preservation of Properties of Religious Institution Rules. He further laid emphasis that after getting necessary technical sanction from the experts viz., the Stapathis as per Rule 30 of the Management and Preservation of Properties of Religious Institution Rules, Assistant Executive Engineer and Superintending Engineer of the Hindu Religious and Charitable Endowment Department of the second respondent Temple as per Rule 4 r/w Annexure 1 of the Management and Preservation of Properties of Religious Institution Rules, the work is proceeded with. Further, the construction of Kavadi Mandapam is only for the benefit of devotees who come to the festivals. Therefore, he submitted that no Public interest is involved in these Writ Petitions and the same are liable to be dismissed.

7. Heard the learned counsel appearing on behalf of the petitioner, as well as the learned counsel appearing on behalf of the respondents.

8. It is well known that the Thiruchendur Temple is one of the six major abodes (Arupudai Veedu) of Lord Muruga, where, a large number of devotees gather from all over the States and even from Abroad to fulfil their prayers for some reason or the other. The respondents are duty bound to fulfil the basic amenities, such as drinking water, sanitary facilities, boarding & lodging and so on and so forth, at an affordable price. Needless to state that during festivities, especially, Kandhasashti, Kiruthigai, Soorasamharam, Panguniuthiram, and Thaipoosam, a large number of People throng to the Tiruchendur Temple to have the Dharshan and get blessings from Lord Muruga. In order to meet out the growing needs of the public, the respondents thought it fit to put up Kavadi Mandapam in the place in question. As far as obtaining permission is concerned, as rightly pointed out by the learned counsel appearing on behalf of the respondents that they are exempted from getting any permission for construction as per the Rule 18 of the Tamil Nadu District Municipalities Building Rules. The other apprehension of the petitioner that "Arulmighu Sangili Bhoothathan" could not be worshipped due to present construction, for which, it is specifically averred in the counter affidavit that a distance of 13 feet between Arulmighu Sangili Bhoothathan and the present construction is available and there is no impediment for worshippers there.

9. In any event, the major concern of the petitioner raised in his affidavits is addressed in paragraph 13 of the counter affidavit filed by the second respondent, wherein, it is specifically averred that the construction is going on, based on the report given by the technical experts attached to the second respondent temple as well as the Stapathis. It is also averred that proper procedure is followed for putting up construction besides providing Rain Water Harvesting System. Therefore, the averments made in the counter affidavit, to the effect that the present construction is intact by complying the Management and Preservation of Properties of Religious and Institutional Rules, is recorded.

10. In view of the facts and circumstances of the case and also in view of the counter affidavit filed by the second respondent, no further orders are necessary

in the present Writ Petition. Hence, this Writ Petition stands closed. Consequently, the connected miscellaneous petitions are also closed. No costs.