

(2015) 07 MAD CK 0152

In the Madras High Court

Case No : Writ Petition (MD) No. 528 of 2014

Thiru. P.R. Chellamani

APPELLANT

Vs

The District Collector, Dindigul and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 182, 183, 183(1), 183(3), 183(4)

Tamil Nadu Highways Act, 2001 — Section 28, 28(2)

Citation : (2015) 07 MAD CK 0152

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : P. Vairava Sundaram, for the Appellant; Govindan, Spl. G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Om Sathurthi Varasakthi Vinayagar Temple is stated to have been located at Natham Bus Stand. The petitioner claims himself to be the Secretary of Sri Selva Vinayagar Temple Endowment. According to him, Sri Selva Vinayagar Temple is more than 200 years old and it is located in Natham, in Velampatti Village. Four boundaries of the temple are, on the North is Dindigul to Karaikudi Road, on the East is Madurai Main Road, on the South and West are Natham Bus Stand. FMB Sketch shows Om Sathurthi Vinayagar Temple, as a place of worship.

2. It is the case of the petitioner that on 05.11.2001, with a view to widen the Dindigul-Karaikudi Main Road, Highways Department intended to demolish Sri Om Sathurthi Varasakthi Vinayagar Temple. With a view to protect the interest of Hindu faith, the petitioner as a devotee objected for removal. As against the high handed action of the Divisional Engineer and Assistant Divisional Engineer, Highways Department, Natham, Dindigul District, respondents 3 and 4 herein, a police complaint, dated 05.11.2001, was made. There was road work, fasting and

eventually law and order problem. Subsequently, a peace committee meeting was held, in which, the Revenue Divisional Officer, Divisional Engineer, Highways Department, Dindigul, Assistant Divisional, Natham Dindigul District, Deputy Superintendent of Police (Rural) and Inspector of Police, Natham and public participated. It was agreed that after removing the deity, the then existing temple would be demolished and a new temple would be erected 25 ft. away, towards west, i.e., from its earlier location of the temple.

3. For erecting a new temple, the petitioner and like-minded devotees, formed a Thirupanikuzhu, in which, he was the Secretary. Electricity Service Connection in SC 1375 was obtained. New temple was erected, without any hindrance to the free flow of traffic. Many authorities took part in the function. Now, once again, under the guise of widening of road and for laying road pavement, respondents 3 and 4 attempted to demolish the temple, without due process of law. Being aggrieved by the same, the petitioner sent a representation dated 06.01.2014, to respondents 3 and 4 herein. As no action is taken, petitioner is constrained to file this writ petition, for a Mandamus, restraining the respondents herein, from demolishing or removing Sri Om Sathurthi Varasakthi Vinayagar Temple.

4. The Tahsildar, District Collector Office, Dindigul District, 2nd respondent herein, in his counter affidavit, has denied the averments made in the writ petition. According to him, the alleged temple has been constructed, only in the year 2003. It is on the Highways Road and there is encroachment. There are no records regarding any requisition from the Inspector of Police, Natham, dated 27.11.2001 and Peace Committee Meeting. Temple is situated at the junction of Madurai-Dindigul and Karaikudi road, and it is causing hindrance to road traffic.

5. The Assistant Divisional Engineer, Highways Department, Natham, Dindigul District, 4th respondent herein, in his counter affidavit, dated 21.01.2014, has denied the contention that the temple was constructed 200 years ago. According to him, temple is situated in S. No. 179 and that the same is classified as Pathway in A Register. Location of the temple in S. No. 179, recorded in the Field Measurement Book, is admitted. It is on the State Highways Road and causes hindrance to traffic. Temple is situated at the T Junction of the road portion, meeting point of Madurai-Natham Road (SH 72) and Dindigul-Natham, Singampunari, Thiruppathur, Devakottai Rastha Road (SH 35). Both are State Highway Standard roads and Natham Bus Stand is situated behind the said temple. Temple is situated between two State Highways Road Junction, and Natham Bus Stand, is on the other side.

6. The 4th respondent has further submitted that there is no proof or reliable document about the alleged peace committee meeting. Permission has not been granted by Highways Department to put up any construction or in any other place for shifting. Obtaining electricity service connection would not confer any title to the portion, on which, temple is constructed. Though notice under Section 28(2) of the Tamil Nadu Highways Act, was served on the petitioner on 06.01.2014, till the date of filing of the counter affidavit, no reply was given. The

said place is required for widening of the road.

7. The 4th respondent has further stated that a road has been formed during Ranimangammal period, connecting Palani with Thondi Minor Port. Due to increase in population, expansion of the said road is essential. The total length of the road is 100.60 km., and it starts from Dindigul to Devakottai, viz., Natham, Singampuneri and Thiruppathur, Palani, being an important pilgrimage centre, attracts lakhs and lakhs people, on the said road, by pedestrians, as "Pathayathra", along with huge vehicular traffic. People from Trichy, Thanjavur, Pudukkottai, Sivagangai and Ramanathapuram, are using the said road, as approach to Palani temple, during Thai Poosam and hence, while considering the safety of the road users and traffic, expansion of the said road is very essential. It is the link road, to approach the four way track (Madurai-Trichy Section NH 45B). Hence, for upgrading the T Junction of State Highways 35 and State Highways 72 (Madurai Natham Road), widening is very important.

8. The 4th respondent has further submitted that the carriage way width of the road is 7.00m only, which is insufficient to hold both the vehicular traffic and pedestrians. As per the traffic censuses in the year 2011, the traffic volume was 20695 PCU. But the capacity of the double lane is 15000 PCU only. As per IRC specification, the available traffic, requires a multilane capacity road. Due to heavy traffic, frequent road accidents have occurred. Therefore, widening of the road, at the T Junction point, is very much necessary, but the existence of temple is an obstruction. In view of the above, proposals to widen the said road to 3 Meters, on the right side of the entire stretch, has been made.

9. In the counter affidavit, dated 20.10.2014, the 4th respondent has further stated that the petitioner has not produced any evidence to prove that the alleged complaint dated 27.11.2001, made to the Inspector of Police was served on the Tahsildar. He has denied the contention of any peace committee meeting. According to him, the property on which, temple is constructed, belongs to Highways Department and that the Inspector of Police is in no way related to the action taken by the Highways Department, for widening the road. It is the further contention that the Government in G.O. Ms. No. 121, Highways and Minor Ports (NHs) Department, dated 24.07.2013, have issued orders for widening the Dindigul-Natham Highways Road. In this connection, work order has been issued to the successful bidder. Notice issued on 06.01.2014, has been acknowledged by the petitioner. Now 90% of the work has been completed. At this stage, writ petition has been filed to protract the work. For the abovesaid reasons, respondents have prayed for dismissal of the writ petition.

10. By way of reply to the counter affidavit filed by the Assistant Divisional Engineer, Highways Department, Natham, Dindigul District, the 4th respondent herein, the petitioner has reiterated that on 25.11.2001, when the 4th respondent wanted to widen the road SH-35 & SH-72 and attempted to remove the superstructure of 200 years old temple, the same was objected to by him. There was a law and order problem and therefore, he lodged a complaint against

the 4th respondent, before the Inspector of Police, Natham Police Station, Dindigul District, for which a receipt No. 522/2001 dated 27.11.2001 was given. It is also the contention of the petitioner that a notice dated 28.11.2001 was also issued by the Inspector of Police, Natham, calling upon the petitioner, as well as the 4th respondent, to attend a Peace Committee Meeting, at the Taluk office on 28.11.2001 wherein, it was agreed upon by the 4th respondent to allocate a land, wherein, the present temple was constructed by raising funds. Thus, according to the petitioner, by removing the then existing temple, the present temple was constructed, for which, Kumbhabishekam was performed on 11.06.2003.

11. According to him, site for the present temple was chosen and allotted, only by the 4th respondent, as decided in the peace committee meeting held on 28.11.2001, after assessing all the pros and cons of the future development of the road. He has also contended that location of the temple, does not cause hindrance to traffic. The petitioner has further contended that SH-72 road starts from Madurai and ends at Natham. SH-72 road is comprised of two parts-20.200 kms, is in Maduri Division and the remaining portion of 18.485 kms, is in Dindigul Division. Thus, the total length of road SH-72 is 38.685 kms and the temple is located at 38.685 kms. Work order has been issued only for 38.485 kms, as the temple is located 200 mts away from the work place. Therefore, it is the contention of the petitioner that work order in ID No. 527 was intended to cover the place, where the temple is also located, is not correct. The petitioner in his reply affidavit has also contended that the impugned notice is contrary to the provisions in Section 28 of the Tamilnadu Highways Act, 2001 (TN Act 32 of 2002).

12. Reliance is also placed on a letter of the petitioner dated 28.10.2014 addressed to the Tahsildar, Natham Taluk, Dindigul District, to provide copies of the proceedings of the peace committee meeting said to have been conducted on 30.11.2001 at the Taluk office and to the reply of the Tahsildar, Natham Taluk, Dindigul District, dated 14.11.2014, wherein, it has been stated that the concerned file No. 1331/03 was lodged along with another file 498/03 and stated to have been closed. On the strength of the above reply, learned counsel for the petitioner, therefore, submitted that it is not correct to say that no peace committee meeting was conducted, at the Taluk office, Natham, for allocation of an alternate site, where the temple is located.

Heard the learned counsel for the parties and perused the materials available on record.

13. Prayer made in the writ petition is for a Mandamus, forbearing respondents 1 to 5 from demolishing or removing Sri Om Sathurthi Varasakthi Vinayagar Temple located in Velampatti Village S. No. 179 of Natham Town, Natham, Dindigul District. Contention of the petitioner that Sri Om Sathurthi Varasakthi Vinayagar Temple located at Natham bus stand was erected about 200 years ago, for the benefit of the general public, has been specifically denied. According

to the respondents, the temple has been put up, only in the recent past, i.e., 10 years ago. If the temple was in existence for 200 years, as contended, certainly it would have found place in the revenue records. No document has been filed by the petitioner, to substantiate the abovesaid contention. However, location of the temple in Survey No. 179 has been mentioned as pathway in A register. As per the counter affidavit of the official respondents, construction of the temple is on Highway property and that the same has come up, only in the year 2003.

14. Though it is the contention of the petitioner that when the 4th respondent sought to remove the temple, in the year 2001, he made a complaint before the police, against highways authorities, respondents 3 and 4 herein, and that on receipt of the complaint, Natham Police gave a receipt No. 522/01 dated 05.11.2001 and that there was a road blockade, which resulted in law and order problem and consequently, a peace committee was organised at the Taluk office, Natham, in which, Revenue Divisional Officer, Divisional Engineer (Highways), Assistant Divisional Engineer (Highways), Deputy Superintendent of Police-Rural and the Inspector of Police, Natham, petitioner and others participated, and an agreement was arrived at, to the effect that the deity of the temple shall be removed from the then existing place and a new temple would be constructed and thereafter, a new temple was constructed 25 feet away towards the west of its earlier location, and the further contention that the present temple was constructed in the allocated place, the abovesaid contentions have not been substantiated by the petitioner with any acceptable evidence. Even the letter dated 27.01.2011 said to have been written by the Inspector of Police, Natham Police Station, Dindigul District, to the Tahisildar, Natham, with copies marked to the Assistant Engineer, Highways Department, Natham, and to the petitioner, does not contain any reference number. Even the receipt enclosed at page 3 of the typed set of papers, as proof of receipt of the complaint given to Natham Police Station, does not contain any proceedings number or seal of the police station.

15. Insofar as the representation dated 05.11.2001 of the petitioner and others, alleged to have been given to the Tahsildar, Natham, there is no proof of acknowledgement. The respondents in the counter affidavit, have specifically denied the averments regarding any complaint given to the Inspector of Police. They have also denied the alleged peace committee meeting said to have been conducted on 28.11.2001 at the Taluk office, Natham, in the presence of Revenue Divisional Officer, Divisional Engineer (Highways), Assistant Divisional Engineer (Highways), Deputy Superintendent of Police-Rural and the Inspector of Police, Natham, petitioner and others.

16. Contention has been made that the Electricity Service Connection has been given to the Temple. Merely because, service connection has been given, it would not amount to regularising encroachment, if any. Xerox copy of the certificate, dated 06.06.2003, enclosed in the typed set of papers, though may indicate that convening of a meeting on 30.11.2001, from the contents of the said letter, it is

evident that the temple is located only on the Highways. The relevant portion is extracted hereunder:

17. In the Adangal Register, enclosed in the typed set of papers, Survey No. 179/1, indicates sub-division, as Survey No. 179/1 and 179/2. In fine, Survey No. 179, is mentioned as "Pattai", meaning, "Way, Road". Existence of temple is also mentioned. When the petitioner, by letter, dated 28.10.2014, sought for a copy of the decision of the Peace Committee Meeting, alleged to have been conducted on 30.11.2001, at the Taluk Office, vide proceedings, dated 14.11.2014, a reply has been given that there was no such file in Taluk Office.

18. However, from the materials furnished by the learned Government Pleader, it is evident that the District Collector, Dindigul, has enquired into the matter, as to whether, there is any encroachment. Spot inspection has been conducted on 05.11.2014. Report of the District Collector, is extracted hereunder:

19. As stated supra, as per "A" Register, entered on 10.01.2014, Survey Nos. 179/1 and 179/2, have been described as Pattai. Having regard to the reasons adduced for widening the road, visibility for the users of the road, from Madurai to Dindigul and from Kottampatti region, and also of the fact that there are frequent accidents, at the junction, which required to be prevented, a decision has been taken, for implementation of the orders of the Government issued in G.O. Ms. No. 121, Highways and Minor Ports (HN 2) Department, dated 24.07.2013. Decision of the Government is in Public Interest.

20. Work order in K. No. TRP 181/2013-14 JD-1, dated 15.10.2013, has been issued by the Superintending Engineer (Highways), Construction and Maintenance, Madurai Division, to M/s. Sri L. Karuppiiah and Company, Madurai. Work order is extracted hereunder:

21. Eviction notice in Ku. No. 2/2014/A-1, dated 06.01.2014, has been issued to the Secretary, Managing Trustee, Sri Varasakthi Vinayagar Temple. Contents of the same are extracted hereunder:

22. Spot Inspection has been conducted and in the Report, dated 05.11.2014, of the District Collector, Dindigul, has taken note of the decision of the Hon'ble Apex Court in SLP (C) No. 8519/2006, wherein, guidelines have been issued that there should not be any permission for establishment of any religious symbols, on public roads, platforms, road side, which are in use by the public. Necessity to widen the junction, has been reiterated in the report, as stated supra. From the revenue records, extracted supra and the materials furnished by the petitioner also, it is evident that the temple is on the highways road. As per the counter affidavit and spot inspection report, there is intensity of traffic and existence of the temple, on the highway at the T. Junction is an hindrance to traffic. An encroacher has no right to obstruct the duties and obligations of the State to provide a roadway, and safety to road users. Being a violator of law, it is not open to the petitioner to seek for a Mandamus, against the State from discharging their statutory duties.

23. The petitioner is stated to have given a written submission, dated 10.10.2014, to the District Collector, Dindigul. Factum of encroachment is evident from the revenue records. From the counter affidavit of the Assistant Divisional Engineer, Highways Department, Natham, Dindigul District, it is evident that more than 90% of the work has been completed. Temple is stated to be situated at the T Junction of the road portion, at the meeting point of Madurai-Natham Road (SH 72) and Dindigul-Natham, Singampurnari, Thiruppathur Devakottai Rastha Road (SH 35). Temple is stated to be causing hindrance to road traffic. Both the State Highway Standard Roads, and Natham Bus Stand is situated behind the said temple. Temple is situated between two State Highways Road Junction and Natham Bus Stand on the other side. In the counter affidavit, it is also stated that the petitioner has not given any explanation to the eviction notice.

24. At this juncture, we deem it fit to consider a Full Bench decision of this Court in *Ramaraju Vs. The State of Tamil Nadu and Others*, (2005) 2 CTC 741 , wherein, it has been held as follows:

"38. It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P. No. 689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner:

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6) Before taking action under Section 182 of the District Municipalities Act, notice in writing giving atleast two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixture. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

(2) The decision in W.P. No. 689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has power to lease road sides and street margins for occupation on such terms and conditions and for such period as the Council may fix. However, such power under Sections 183(1) and 183(3) should be exercised keeping in view the provisions contained in Section 183(4)

and no such licence under Section 183(1) or lease under Section 183(3) should be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Any projection or construction put up under Section 183(1) or (2) can be removed on expiry of the licence or the lease, as the case may be. Compensation is required to be paid in matters coming within the scope of 182(2).

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporations or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporations or Panchayats.

(5) To the extent the National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the Tamil Nadu Highways Act, 2001, are applicable to the Roads coming under the State Act.

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

(8) The directions issued in W.P. No. 689 of 2005 are applicable to removal of encroachments on roads and road margins and not other lands belonging to the Local Authorities or the State. The said decision should not be construed as giving a licence to the Local Authorities to cancel the existing license or lease or to remove the encroachments without following the procedure contemplated under the law.

(9) If any Civil Courts decree or interim order is holding the field, obviously, no action can be taken, unless and until such a decree or interim order is set aside or vacated in a manner known to law.

39. Subject to the aforesaid observations, both the writ petitions are disposed of. There would be no order as to costs. Consequently, the connected miscellaneous

petitions are closed."

25. Decision to remove a temple on the Highway, for the reasons stated, cannot be said to be arbitrary. In the light of the discussion and the decision, stated *supra*, we are not inclined to set aside the eviction notice, dated 06.01.2015.

In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.