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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

W.P.No.33554 of 2023

and

W.M.P.No.33369 of 2023

Arulmigu Sundara Varadharaja Perumal temple,
represented by its Fit Person Durai. Shankar,
Kaliyamman Koil street,
Virugambakkam, Chennai- 600 092.

... Petitioner

Vs.

- 1 The Principal Secretary and Commissioner of Land Administration,
Government of Tamil Nadu,
Ezhizhalagam,
Chepauk, Chennai- 600 005.
- 2 The District Collector,
Chennai District, Singaravelar Maligai,
Rajaji Salai, Chennai- 600 001.
- 3 The District Revenue Officer,
Chennai District, Singaravelar Maligai
Rajaji Salai, Chennai- 600 001.



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4 The Revenue Divisional Officer,
Central Chennai, Gandhi Nagar,
Anna nagar West Extension,
Chennai, Tamil nadu- 600 040.

5 The Tashildar
Mambalam K.K.Nagar Taluk,
New No.1 Old No.2 Bharathidasan Salai,
(Near R.T.O. Office),
K.K.Nagar, Chennai- 600 078.

6. M/s.Chennai Metro Rail Limited,
Rep. By the Chief General Manager (Legal),
at "Metros", No.327, Anna Salai,
Nandanam, Chennai – 600 035.

[R6 impleaded as per order of this Court dated
09.02.2024 passed in W.M.P.No.3363 of 2024]

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 05.12.2022 and 09.10.2023 and direct the respondents to restore the patta and other revenue Entries in the name of the Petitioner Temple in respect of the land survey No.99/4 and 99/5, Virugambakkam , Chennai belonging to Sri Sundara Varadharaja Perumal Temple, Virugambakkam.



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For Petitioner : Mr.M.Ramamoorthi
For R1 to R5 : Mr.A.Selvendran
Special Government Pleader
For R6 : Mrs.Rita Chandrasekar and
Mr.Aditya Chandramouli
SC for CMDA

ORDER

This Writ Petition has been filed to issue a Writ of Mandamus, to direct the official respondents to consider the petitioner's representations dated 05.12.2022 and 09.10.2023 and to direct the official respondents to restore the Patta and other Revenue Entries in the name of the petitioner/Temple in respect of the land in Survey Nos.99/ 4 and 99/5, Virugambakkam, Chennai, belonging to Sri Sundara Varadharaja Perumal Temple, Virugambakkam.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the official respondents and the learned Standing Counsel appearing for the sixth respondent.



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3. Learned counsel for the petitioner submitted that subject property belongs to the Temple. Revenue records from 1775 AD to current Patta and Town Survey Land Register, show that the land in Survey No.2, Block 21 Virugambakkam is under possession of the Temple for 240 years. Town Survey Land Register (TSLR) extract states that the property in question belong to the temple which has been blocked from any registration since 2021. However, the Patta land is wrongly classified as “Sarkar Poramboke land” in the TSLR. The CMRL has planned to construct a Corridor 5 alignment in Virugambakamm, right over the temple located in S.Nos.99/4 and 99/5 (Town Survey No.2, Block No.21). The CMRL has wrongly considered the land S.No.2 Block 21, Virugambakam as a Government land. The Executive Officer of the petitioner/Temple made a representation to the third respondent/ The District Revenue Officer, Chennai, to rectify the error in the Permanent Land Register entry in respect of Block No.21, T.S.No.2, Survey No.99/4. Since there is no response from the third respondent, the petitioner has filed the present writ petition.



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4. Learned counsel for the petitioner/Temple while referring to the counter of the respondents, submitted that the land originally belonged to the temple. However, Town Survey for Virugambakkam village was completed in the year 1998 itself and the said land was recorded as “Sarkar Poramboke” during the Town Survey and notification under Section 13 of Tamil Nadu Survey and Boundary Act was published subsequently on 22.06.1998. The petitioner/Temple in the representation dated 10.10.2023 addressed to the District Collector/second respondent herein stated that classification of the land has been wrongly entered during computerization of the land in the land Records, which is incorrect.

5. However, the learned counsel for the petitioner also submitted that adverse possession would not be applicable to the land that belongs to Deity/Temple. Therefore, the respondents may be directed to consider the said representation and pass orders, and if an opportunity is given to the petitioner/Temple, the grievance would be redressed before the second respondent.

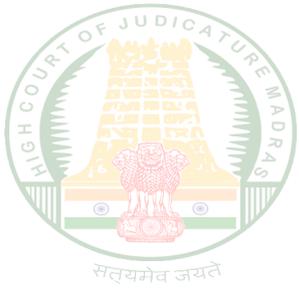


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6. Learned counsel for the sixth respondent submitted that the official respondents have acquired the land in question for Metro Rail Project which is far away from the Deity/Temple. The project is also not disturbing the Deity. Hence, the writ petition may be dismissed as against the the sixth respondent.

7. Official respondents 1 to 4 have filed the counter affidavit stating that, during the Town Survey, the subject land was recorded as poramboke and the final Notification under section 13 of the TamilNadu Boundaries Act, 1923 was published subsequently on 22.06.1998, the said land was recorded as Sarkar Poramboke during the Town Survey conducted in the year 1998 and the petitioner/Temple had challenged the classification of land after more than two decades and if there is any dispute regarding the Town Survey, it has to be made only within three years and hence the petitioner/Temple lost the rights.



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8. Learned counsel for the petitioner/Temple produced the Extract of the Enam Fair Register Virugambakkam 174 in the year 1862 and also Enam Fair Register 552 Virugambakkam which clearly shows that, the property belongs to the writ petitioner/Temple. The respondents 1 to 4 themselves have admitted in their counter affidavit in para 7 that during Town Survey in the year 1998, Virugambakkam village was recorded as “Sarkar Poramboke”, whereas final Notification was published on 22.06.1998. Further it is stated in the counter affidavit that the petitioner made representation only on 10.10.2023 and since the petitioner made representation beyond three decades, the petitioner is not entitled to the relief sought for. It is settled proposition of law that if the land belongs to Idol/Deity, no person can alienate or create encumbrance unless due process of law. In this case, property of the Temple or person incharge of the Temple had not transferred the property. Only during the Town Survey, the land was recorded as Sarkar Poramboke. It is well settled proposition of law that the law of adverse possession or Law of Limitation against the Deity/Idol/Temple would not be applicable.



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9. Therefore under the facts and circumstances, the official respondents are directed to consider the representations of the petitioner dated 05.12.2022 and 09.10.2023 and issue notice to the Executive Officer of the Temple, rival claimants/interested parties/objectors/aggrieved party, if any, and after giving notice to all the parties and conduct enquiry in the manner known to law and pass orders on merits and in accordance with law. The said exercise shall be completed within a period of two months from the date of a receipt of copy of this order. It is stated that the sixth respondent has already taken over the possession of the land and CMRL Project being now carried out by the sixth respondent.

10. With the abovesaid direction, The Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.02.2024
(2/2)

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Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No



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To

- 1 The Principal Secretary and Commissioner of Land Administration,
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VERDICTUM.IN



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