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WP.Nos.11093 of 2022 and 13650 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.11093 of 2022 & Writ Petition No. 13650 of 2024

and

W.M.P. Nos.10687, 10688 & 10690 of 2022

and

W.M.P.Nos.14814 & 14815 of 2024

P.Lakshmi

... Petitioner
(in W.P. 11093/2022)

M.Geetha

... Petitioner
(in W.P. 13650/2024)

Versus

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Nagapattinam.

3.The Executive Officer,
Arulmigu Naduvadeeshwarar Swamy Thirukoil,
Nagapattinam.

... Respondents
(in both W.Ps.)



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W.P.No.11093 of 2022: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records leading to pass impugned notice of the 3rd respondent dated 23.03.2022 pertaining to the properties at Survey Nos.2173/1 and 2173/2, Ward No.4, Block 41, Sivan Keezha Veethi, Velipalayam, Nagapattinam Town and quash the same.

W.P.No.13650 of 2024: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records leading to pass impugned notice of the 1st respondent in M.P.No.142 of 2024/C.2 dated 26.04.2024 and the consequential order dated 03.05.2024 passed in I.A.No.1 of 2024 in M.P.No.142/2024 on the file of the 1st respondent and quash the same.

For Petitioners : Mr. C. Jagadish
(in both the writ petitions)

For Respondents : Mr. N.R.R. Arun Natarajan, (for R1 & R2)
Special Government Pleader.

: Mr. M.S. Palanisamy, (for R3)
(in both the writ petitions)

COMMON ORDER

Challenging the notice dated 23.03.2022, issued by the third respondent indicating that the petitioner had encroached the land in Survey Nos. 2173/1 and 2173/2, Ward No.4, Block 41, Sivan Keezha



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Veethi, Velipalayam, Nagapattinam Town, W.P. No.11093 of 2022 has been filed.

2. Assailing the notice dated 26.04.2024 issued by the first respondent in M.P. No.142 of 2024/C.2 and the consequential order dated 03.05.2024 in I.A.No.1 of 2024 in M.P.No.142/2024 in respect of the land in Survey No.2173, Ward No.4, Block 41, Sivan Keezha Veethi, Velipalayam, Nagapattinam Town said to have been encroached by the petitioner, W.P.No.13650 of 2024 has been filed.

3. The petitioners are none other than mother and daughter. The W.P.No.11093 of 2022 has been filed by the mother while the other writ petition in W.P. No.13650 of 2024 has been filed by the daughter.

4. Since the issues in the writ petitions are one and same these matters are heard together and disposed of by this common order.

5. According to the petitioner in W.P. No.1093 of 2022, the land in Survey No.2173/1 in Sivan Keezha Veethi, Vellipalayam, Nagapattinam



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belongs to the third respondent temple, which was let out on lease in favour of the brother in law of the petitioner by name Somasundaram 60 years ago. In the said property, a small superstructure was built for performing *Maasi magam* festival once in a year. The small superstructure was in a dilapidated condition and it fell down some 20 years back. Therefore, the *masi magam* festival is being conducted in the temple itself. The family members of the petitioner are the Upayadharar of the *masi magam festival* and they are continuing to perform the same for 60 years. After the demise of Somasundaram, in the year 2010, the petitioner has been performing the *masi magam* festival as the eldest member in the family. It is stated that even after death of Somasundaram, the third respondent temple received the land rent.

6. According to the petitioner in W.P. No.1093 of 2022, adjacent to the leased land in Survey No.2173/1, the forefathers of the petitioners have constructed a Vinayagar Temple in the land in Survey No.2173/2. The survey register maintained by the revenue department also indicates that there is a Vinayagar temple in the land in Survey No.2173/2. Further, the A Register indicates that the lands in Survey No.2173/1 and 2173/2 are



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classified as "*Nanthanam Sontham*". While so, on 12.08.2020, the third respondent terminated the lease by claiming that the land measuring 600 sq.ft in Survey No.2173/1 alone has been taken on lease and not the entire land and that the petitioner and her family members have encroached the remaining land in Survey No.2173/1 as well as the land in Survey No.2173/2. In and by the notice dated 12.08.2020, the third respondent arrived at conclusion that the lands mentioned therein belong to the third respondent temple. Challenging the same, the petitioner filed O.S. No.112 of 2020 before the District Munsif Court, Nagapattinam in and it is pending. In the said suit, the third respondent also filed the counter and written statement. However, pending the suit, on 23.03.2022, the third respondent affixed a notice in the premises of the petitioner stating that the petitioner had encroached the *masi maga* mandapam in Survey No.2173/2 and directed to remove the encroachment and to handover the land to the third respondent. Aggrieved by the order dated 23.03.2022, W.P. No.1093 of 2022 is filed.

7. In so far as W.P. No.13650 of 2024 is concerned, it is contended by the petitioner that the land in Survey No.2173/3 along with a



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thatched house measuring 520 square feet in Sivan Keezha Veethi, Vellipalayam, Nagapattinam belongs to her having acquired it through a registered settlement deed dated 16.10.2006 executed by her mother (petitioner in W.P. No.11093 of 2022). According to the petitioner, recognizing her possession, the revenue department has also issued Patta to the petitioner. Aggrieved by the same, the third respondent filed an appeal to the District Revenue Officer, Nagapattinam and it is pending. It is further stated that the petitioner has commenced construction of a building in the vacant land adjacent to her house after obtaining planning permission from Nagapattinam Municipality, but the said construction was prevented by the third respondent. Therefore, the petitioner has filed a suit in O.S. No.25 of 2004 on the file of District Munsif Court, Nagapattinam, in which notice was ordered on 22.04.2004, returnable by 03.06.2004. At this stage, the petitioner received the impugned notice dated 26.04.2004 from the first respondent purportedly issued under Section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act, calling upon her to appear for an enquiry on 03.05.2004. Accordingly, the petitioner appeared and filed her counter. Notwithstanding the same, the first respondent passed an order dated 03.05.2004 in I.A. No.1 of 2024 in M.P



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No.142 of 2024 restraining the petitioner from proceeding with the construction.

8. According to the petitioner, the land in Survey No.2173/1 measuring 4628 square feet and 2173/2 measuring 3400 square feet have been classified as *Natham* lands and they are in continued possession of the family of the petitioner. Earlier, the third respondent issued a notice under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and it was challenged in W.P. No.11093 of 2022 in which an interim order was granted by this Court. So far as the land in Survey No.2173/3 is concerned, it is the absolute property of the petitioner and she has also obtained *Patta* for the same. Moreover, the petitioner has already filed O.S. No. 25 of 2024 against the third respondent and it is pending. While so, the proceedings initiated by the first respondent is without jurisdiction. Therefore, the petitioner has filed W.P. No.13650 of 2024.

9. The learned counsel for the petitioners would contend that the petitioners cannot be branded as encroachers of the lands in question. The



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petitioners are residing in the land in question for over 60 years and performing the *maasi magam festival* as *Upayadharars*. As far as land in Survey No.2173/3 is concerned, it is the private property of the petitioner in W.P. No.13650 of 2024. In any event, when civil suits are pending *inter se* between the parties, the first respondent cannot pass an order restraining the petitioner from constructing the building in the land in question. The first respondent also failed to take note of the fact that the petitioner in W.P. No.13650 of 2024 commenced building construction after getting permission from Nagapattinam Municipality. When the construction is in half way, the impugned order was passed by the first respondent in W.P.No.13650 of 2024 and therefore, the impugned order is legally not sustainable.

10. Per contra, the learned Special Government Pleader appearing for the respondents by placing reliance on the counter filed by the third respondent in both writ petitions would submit that the third respondent temple owns 9276 sq.ft of land in S.No.2173, with a *Mandapam* used for *masi magam* festival. That apart, land measuring 600 sq.ft was leased to one Mr.Somasundaram, who is brother-in-law of the petitioner in W.P.



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No.11093 of 2022. After his death, the petitioner's mother, namely, Mrs. P. Lakshmi, allegedly encroached on the temple's property despite not being a tenant. Therefore, the temple issued a notice under Sections 78 & 79 of the TNHR & CE Act, on 12.08.2020, directing the petitioner's mother to vacate and handover the same to the third respondent. In paragraph No.5 of the counter, it was specifically stated that the petitioner falsely claims to own the land in S.No.2173/3, measuring 1599 sq.ft, along with a 600 sq.ft thatched house in Sivan Keezha Veethi, Vellipalayam, Nagapattinam Town, The petitioner also allegedly claims to have acquired the property through a registered settlement deed from their mother, Mrs. P. Lakshmi, in the year 2006, and to have subsequently replaced the Thatched roof with Asbestos sheets in 2008 and also obtained Patta in her name. According to the third respondent, the petitioner in W.P. No.11093 of 2022 received notice under Sections 78 & 79 on 12.08.2020 and filed a suit in O.S.No.112 of 2020, seeking an interim injunction. The learned District Munsif refused the interim relief. Without disclosing all those facts, W.P. No.11093 of 2022 has been filed in which interim order was granted for a period of six weeks on 28.04.2022 and thereafter, the stay was not extended and the said Writ Petition remains pending. In the meanwhile, the



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petitioner tried to construct a building on the temple land, which prompted the third respondent temple to seek an injunction by way of filing I.A.No.1 of 2024 in M.P. No.142 of 2024, wherein an order was passed in favour of the third respondent temple, whereby, the first respondent passed an order on 03.05.2024 restraining the petitioner from proceeding with the construction in the said land. Challenging the said order, the petitioner in W.P. No.13650 of 2024. That apart, the petitioner in WP No. 13650 of 2024 also filed a suit in O.S.No.25 of 2024, in which, she filed I.A.No.1 of 2024 for interim injunction and the same was dismissed. Thus, the order dated 03.05.2004 has been rightly passed by the first respondent to restrain the petitioner in W.P. No.13650 of 2024 inasmuch as the construction is being put up in the land belonging to the third respondent. The petitioners have no semblance of right over the lands belonging to the third respondent temple and therefore, the writ petitions filed by them are not maintainable.

11. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.



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12. According to the respondents, even as per the affidavit of the petitioner, the land in S.No.2173/1 to the extent of 20.0281.5 and the land in S.No.2173/2 to the extent of 0.0316.0 are classified as “*Naththam Sontham*” in the revenue records and the entire possession of the property is within the family for more 60 years. However, the fact remains that on the one hand, the petitioners claim themselves as a tenant with the third respondent. On the other hand, they claim ownership over the land in S.No.2173/3. Such a contradictory stand taken by the petitioners in the respective affidavits filed in these writ petitions, are not sustainable. Further, the petitioner/Mrs. P.Lakshmi filed the suit in O.S. No. 112 of 2020 on the file of the District Munsif Court, Nagapattinam, in which, she was not able to obtain any interim injunction and thereafter, the petitioner/Mrs. M. Geetha, daughter of Mr. P. Lakshmi, has filed a suit in O.S. No.25 of 2024 on the file of the District Munsif Court, Nagapattinam, in which, she could not obtained any interim injunction. While so, in the absence of interim injunction, there is no legal bar on the part of the official respondents to issue notice under Section 78 of the TNHR&CE Act. In any event, the first respondent/Joint Commissioner is seized of the matter in respect of the proceedings under Section 78 of the Act and passed an



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order restraining the petitioner from putting up any construction in the temple land. In such view of the matter, this Court is of the view that the petitioners have not produced any material evidence to show that they are the owners of the land in question. On the other hand, the petitioners have been only leased out land measuring 600 square feet and even the lease was terminated. As against the order of termination, the petitioner in W.P. No.11093 of 2022 also filed a civil suit. In such circumstances, this Court does not find any reason to interfere with the proceedings, which are impugned in these writ petitions.

13. On perusal of the records, admittedly, the petitioners are not the owners of the property in S.No.2173/1 and S.No.2173/2. The “Mandapam” is situated in S.No.2173/1, in which *masi magam* festival is being conducted. The “Vinayagar” temple is situated in S.No.2173/2. Though the petitioners claims that during the *masi magam* festival pooja is being performed in the Vinayagar temple, however, no proof has been produced to substantiate the same. Even the petitioners in the affidavit claim that Mr. Somasundarm, who is the *Upayaharar* performed the *masi magam* festival in the said *mandapam* but to that extent, no records were



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produced before this Court. Further, the petitioner herself claims in the affidavit in W.P. No.11093 of 2022 that they have no right in S.No.2173/1 and 2713/2 but, in fact, the petitioners paid the rent to the third respondent as a tenant. In another W.P. No.13650 of 2024, the daughter of the petitioner in W.P.No.11093 of 2022, claim that she is the owner of the land in S.No.2173/3 for which, no title deed has been produced before this Court. If at all the petitioner in W.P. No.13650 of 2024 has any semblance of right over the land in Survey No.2173/3 then she has to work out her remedy in the civil suit filed by her. Moreover, the petitioner in W.P. No.11093 of 2022 has already filed O.S. No.112 of 2020, for declaration to declare the notice under Section 78 of the TNHR&CE as null and void. The petitioner in W.P. No.13650 of 2024 has filed the suit in O.S. No.25 of 2024 only for bare injunction. Even the petitioners did not obtain any interim injunction before the Civil Court. All these facts reveal that the petitioners have not approached this Court with clean hands. Therefore, this Court is not inclined to entertain the writ petitions filed by the petitioners.



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14. In the result, both the Writ Petitions are dismissed. No costs.
Consequently, the connected miscellaneous petitions are also closed.

20.09.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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To

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur.
- 2.The Assistant Commissioner,
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- 3.The Executive Officer,
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M.DHANDAPANI, J.,

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