

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.No.25616 of 2015

and M.P.Nos.1 & 2 of 2015

1.A.Govindan
2.A.Alamelu
3.K.Balan
4.Mrs.A.Kundalakesi
5.Mrs.S.Durga
6.E.Pachaiammal
7.V.Narasimalu
8.S.Saraswathi
9.S.Padmini
10.N.Dhanapal
11.K.Paneerselvam
12.M.Kanchana
13.P.Bobby
14.C.Shanmugam
15.Manigandan
16.K.Venu

....Petitioners

-Vs-

1.The Joint Commissioner/Executive Officer,
Arulmigu Arunachaleswar Thiru koil,
Thiruvannamalai.

2.Arulmigu Arunachaleswar Thiru koil,
rep by its Fit Person cum Executive Officer,
Thiruvannamalai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records of 1st respondent relating to the notices dated 16.07.2015 issued to each of the above petitioners and quash the same and consequently forbear the respondents from in any way interfering with the petitioners peaceful possession and enjoyment of their respective properties.

For Petitioners : Mr.P.Wilson, Senior Counsel
for M/s.P.Wilson Associates

For Respondents : Mr.P.Sanjay Gandhi,
Additional Government Pleader (R1)

Mr.A.K.Sriram
for M/s.A.Kailasam Associates (R2)

O R D E R

All these petitioners have been issued with impugned notices by the respondent no.1 as the Executive Officer of the temple stating that construction has been put up in the form of shops and residential buildings without any permission, apart from letting them out/sub-letting. Accordingly, by the said impugned notices, the petitioners were asked to remove the encroachments, failing which, action under Section 78 of the Hindu Religious and Charitable Endowment Act would be taken.

2.The learned senior counsel appearing for the petitioners submitted that the order impugned treats the petitioners as encroachers, perse factually incorrect. Though the orders say that action would be taken under Section 78 of the Hindu Religious and Charitable Endowment Act, in fact, such an action has been taken without following the procedure contemplated thereunder by the respondents. A further submission has been made that the respondent no.1 is likely to take twin role by acting both as Executive Officer and as Joint Commissioner.

3.The learned Additional Government Pleader appearing for the respondent no.1 submitted that there no sale has been effected in favour of the petitioners and any action done unilaterally assuming it is so by the temple cannot be construed as under Section 34 of the Act. The learned Additional Government Pleader also submitted that as per the records the lands under the possession of the petitioners are still temple lands.

4.The learned counsel for the respondent no.2 submitted that the impugned notices are only intimation and the said notices have been issued only as the Executive Officer and not under the capacity of the Joint Commissioner.

5.A perusal of the orders impugned would show that the petitioners have been given only a mere intimation to remove the encroachments, failing which appropriate action would be following. The said notices issued by the respondent is only in the capacity of the Executive Officer. Merely because the Executive Officer incidentally happens to be a Joint Commissioner, the orders impugned would not par take Section 78 of the Act. In other words, it is only a letter of the Executive Officer, though incidentally having the rank of a Joint Commissioner.

6.Thus, this Writ Petition is disposed of holding that the order impugned is only an intimation and in any case, in the event of any action being taken under Section 78 of the Act, it can be only by another Joint Commissioner, other than the respondent herein. It is also clarified that inasmuch as the action under

Section 78 of the Act has not been taken, the petitioners cannot be evicted merely in pursuant to these impugned notices. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

va

To

1.The Joint Commissioner/Executive Officer,
Arulmigu Arunachaleswar Thiru koil,
Thiruvannamalai.

2.Arulmigu Arunachaleswar Thiru koil,
rep by its Fit Person cum Executive Officer,
Thiruvannamalai.

1 cc to M/s.A.S. Kailasam & Associates., Advocate, sr. 43377
1 cc to M/s. P. Wilson, Associates,. Advocate, sr. 43378
1 cc to the Government Pleader, Sr. 43598

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GP (CO)
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