

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.8715 to 8720 of 2015

And

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

1.A.Madheswaran	... Petitioner in W.P.No.8715 of 2015
2.Malarmani	... Petitioner in W.P.No.8716 of 2015
3.A.Shanmugam	... Petitioner in W.P.No.8717 of 2015
4.P.Saravanan	... Petitioner in W.P.No.8718 of 2015
5.P.Anbu	... Petitioner in W.P.No.8719 of 2015
6.M.Rangasamy	... Petitioner in W.P.No.8720 of 2015

Vs.

1. The Commissioner
Hindu Religious & Charitable Endowment,
Nungambakkam,
Chennai 600 034.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowment
Salem.
3. The Assistant Commissioner,
Hindu Religious & Charitable Endowment
Salem.
4. The Hereditary Trustee,
A/M Sendrayaperumal Temple,
Narasothipatty,
Salem District.

... Respondents in all W.Ps

Common Prayer in W.P.No.8715 of 2015 to 8720 of 2015:

Petitions filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records and to quash the order dated 19.09.2014 passed by the 2nd respondent

in செ.மு.ந.க.எண்.1567/2011/அ3 and to direct the respondents to regularize the petitioner as tenant and receive rents as per G.O.Ms.No.456 dated 09.11.2007 department of Tamil development, endowments and information.

For Petitioner : Mr.Narayanasamy
for Mr.B.Vijayakumar

For Respondents : Mr.M.L.Mahendran for R1 to R3
Government Advocate
No Appearance for R4

COMMON ORDER

Heard Mr.Narayanasamy, learned counsel appearing for Mr.B.Vijayakumar, learned counsel for the petitioner and Mr.M.L.Mahendran, learned Government Advocate appearing for the respondents 1 to 3. With the consent of both the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2.The petitioner in all these writ petitions have challenged the order passed by the second respondent dated 19.09.2014.

3.The order impugned in all these writ petitions is a common order by which the petitioners have been directed to pay the amount mentioned against each of these persons in respect of the property which they are said to be in occupation failing which they would be treated as encroachers.

4.The second respondent initiated proceedings against the petitioners herein and the petitioners filed interlocutory application before the Joint Commissioner which was dismissed by order dated 02.12.2013. Challenging the same, the petitioners filed revision petitions before the first respondent in R.P.Nos.1 to 11 of 2014 under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959.

5.The first respondent by order dated 18.03.2014, after considering the contentions raised, issued a direction to the second respondent to fix the quantum of amount to be deposited by the petitioners towards damages for use and occupation of the property and observed the petitioners should also pay the amount to the Temple without any default till the disposal of the impugned petition pending under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act. Further, it was observed that the payment

of the amount will not confer any right to the petitioners. The second respondent was further directed to conduct enquiry after affording opportunity of being heard to the petitioners and pass orders in accordance with law within a period of sixty days from the date of receipt of a copy of the order.

6.Pursuant to the directions issued by the first respondent in the order dated 18.03.2014, the second respondent has fixed the amount payable by the petitioners as damages for use and occupation of the property. Now, Petitioners have challenged the fixation by filing these writ petitions.

7.The learned counsel for the petitioners submitted that the amounts fixed for damages of use and occupation is vitiated by irregularity and non-application of mind. Further, it is submitted that the petitioners are paying rent to the Temple Authorities who are the Poojaries and their family regularly and the Hereditary Trustee of the Temple, the fourth respondent is fully aware of the same and when he refused to receive the rent and issue receipts, petitions were filed.

8.Further, it is stated that the second respondent while passing the order did not take into consideration the fact that the land situated in the S.No.244/2, as per records is a inam granted to Venkataiyan and Venkatachalapathy and it stood in their name for their service rendered as Poojaries in the Temple. It is stated that this aspect of the matter was not considered by the second respondent.

9.Further, it is stated that the second respondent failed to note that the intention of the fourth respondent is only to evict the petitioners treating them as encroachers. Further, it is stated that while calculating the amount payable as damages for use and occupation, the second respondent did not follow the guidelines laid down by the Government in G.O.Ms.No.456 dated 09.11.2007.

10.Admittedly, as against the impugned order, the petitioners have an effective alternative remedy of filing revision petition before the first respondent under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowment Act. In terms of the said power, the first respondent may call for and examine the record of the Joint or Deputy or Assistant Commissioner or any Trustee of religious institution other than a mutt or a specific endowment attached to a mutt in respect of any proceedings under the Act, not being a proceedings in respect of which suit or an appeal to a Court is provided under the Act or in respect of which the application for revision has been preferred under Section 21 A to the Joint

Commissioner or Deputy Commissioner and is pending. In terms of sub-section 5 of Section 21, the Commissioner shall not pass any order prejudicial to any party without hearing them or giving them an opportunity of being heard. In terms of sub-section 6 of Section 21, the Commissioner is empowered to stay the execution of any decision or order referred to under the various sub-sections under Section 21. The period of limitation prescribed in terms of sub-section 7 of Section 21 is three months from the date on which the order or proceedings to the application relates was communicated to the applicant. In terms of the power conferred under Section 21, the Commissioner can suo motto also exercise such powers.

11. Infact, on the earlier occasion when the second respondent dismissed the applications filed by the petitioners in I.A.No.1 of 2013 in M.P.Nos.1 to 4, 6, 7, 9, 11 to 14 of 2011 filed under section 78 of the Act, the petitioners rightly preferred revision petitions under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowment Act to the first respondent. Those revision petitions were disposed of by a common order dated 18.03.2014. Pursuant to the directions issued in the said order, the second respondent has passed the impugned order. Therefore, if the petitioners are still aggrieved by the impugned order, they have to resort to the remedy provided under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowment Act.

12. In the light of the above discussion, this Court is of the view that the petitioners have not made out any case to bye-pass the revision remedy available under the statute which is effective and efficacious. Accordingly, these writ petitions are held to be not maintainable on the ground of availability of effective and efficacious alternative remedy under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act. Hence, this Court is not inclined to interfere with the impugned order passed by the second respondent for the reasons afore mentioned.

13. In the result, while holding that these writ petitions are not maintainable, liberty is granted to the petitioners to file revision petitions as against the impugned order before the first respondent and such revision petition shall be filed within a period of thirty days from the date of receipt of a copy of this order and if such revision petition is filed within the time permitted by this Court, the first respondent shall entertain the revision petition without reference to limitation and hear and decide the matter on merits and in accordance with law after affording opportunity of personal hearing to the petitioners. Till the petitioners file the revision petition before the first respondent, the status-quo with regard to the possession, prevailing as on date shall be maintained by the

second respondent. It is open to the petitioners to file interlocutory application in the revision petition before the first respondent and seek for interim relief and the interim relief granted by this Court will operate till the petitioners move the first respondent for appropriate interim protection.

14. Since the writ petitions are disposed of at this stage, it is also open to the Hereditary Trustee of the Temple to raise all the objections before the first respondent in the revision petition which is directed to be filed by the writ petitioners in this order.

15. The writ petition is disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed. Registry is directed to return the original of the impugned orders.

Sd/-
Assistant Registrar(CS II)

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To

Sub Assistant Registrar

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Nungambakkam,
Chennai 600 034.
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Salem.
3. The Assistant Commissioner,
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4. The Hereditary Trustee,
A/M Sendrayaperumal Temple,
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Salem District.

+6cc's to Mr.V.Narayanasamy, Advocate, S.R.No.17244
+1cc to the Government Pleader, S.R.No.17433

W.P.Nos.8715 to 8720 of 2015
And M.P.Nos.1 and 1 to 1 of 2015
and 2 to 2 of 2015

RJ(CO)
CA(15/04/2015)