

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-09-2015

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P. No.23579 of 2012

N.Senthil Kumar

...Petitioner

Versus

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam, Chennai.

2. The Joint Commissioner,
Joint Commissioner Office
Villupuram, Villupuram District.

3. The Executive Officer,
Arulmigu Veeratanam Eswarar Thirukoil
Thiruvathigai
Panruty Taluk, Cuddalore District.

4. Thiru. Pannerselvam
Municipal Chairman
Panruty Municipality
Panruty, Cuddalore District.

5. Subramaniya Desikar
(R-5 impleaded as per order
dated 10.2.2014, by KRCBJ
in M.P.No.2 of 2012 in
W.P.No.23579 of 2012)

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, to direct the respondents not to interfere the petitioners peaceful possession and enjoyment of the property in Door No.1/21 and 1/22 in Survey No.341-A, Appar Swamigal Mutt, Thiruvathigai Village, Panruti Taluk, Cuddalore District, and act in terms of the law.

For petitioner : Mr.S.Sithirai Anandam
For respondents : Mr.P.Sanjay Gandhi
AGP (R1 o R3)
Mr.K.Moorthy (R4)
Mr.M.Murali (R5)

ORDER

Heard the learned counsels appearing for the parties concerned.

2. This Writ Petition has been filed praying that this Court may be pleased to issue a Writ of Mandamus to direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the property, in Door Nos.1/21 and 1/22, in Survey No.341-A, Appar Swamigal Mutt, Thiruvathigai Village, Panuruti Taluk, Cuddalore District.

3. The petitioner has stated that he is working as the Inspector of the Thiruvaduthurai Adheenam, which had been established by the Saiva Adheenams, in the 14th Century. Thiruvaduthurai Adheenam has mutts in almost all the temples in India catering the needs of a large number of pilgrims, including the providing of Annadanam. One of the Mutt is Appar Swamigal Mutt in Thiruvathigai Village, Panruti Taluk, near Arulmigu Eretaeswarar Temple.

4. The petitioner has further stated that the updated information about the details of the properties and the activities of the Mutts under the control of Thiruvaduthurai Adheenam is submitted to the 1st and 2nd respondents, periodically, as per the provisions contained in Section 29 of the Hindu Religious Charitable and Endowments Act, 1959. While so, on 26.8.2012, the 3rd respondent had attempted to take over the Mutt property belonging to the Thiruvaduthurai Adheenam, in collusion with the 4th respondent.

5. It had also been stated that the 3rd and the 4th respondents, along with their henchmen, had entered the Mutt and had assaulted the 5th respondent, who is an employee of Thiruvaduthurai Adheenam and had also forcibly taken the key of the Mutt. Following the said incident the 5th respondent had lodged a police complaint to the Panruti Police Station. As the complaint had not been taken by the Station House Officer, Panruti Police Station, the matter had been taken up with the higher police officers.

6. It has been further stated that the fourth respondent is regularly involved in land grabbing activities. At present he is attempting to take over the Mutt in question, illegally, even though it is in the possession and enjoyment of Thiruvaduthurai Adheenam

Mutt, which bears the Door Nos.1/21 and 1/22, in Survey No.341-A, Appar Swamigal Mutt, Thiruvathigai Village, Panruti Taluk, Cuddalore District. In such circumstances, the petitioner has preferred the present Writ Petition before this Court, under Article 226 of the Constitution of India.

7. A counter affidavit had been filed on behalf of the 3rd respondent denying the allegations made by the petitioner. It has been stated that Arulmigu Veerattaneswarar Thirukovil, situated at Thiruvathigal Village, Panruti Taluk, Cuddalore District, is a listed temple, under the administrative control of the Joint Commissioner of the Hindu Religious and Charitable Endowment Department, Villupuram. It is administered by an Executive Officer appointed under Section 45 (1) of the said Act and by a fit person, at the time of the filing of the Writ Petition. The present Writ Petition has been filed by the writ petitioner praying that this court may be pleased to issue a Writ of Mandamus to direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the property in Door Nos.1/21 and 1/22 in Survey No.341-A, Appar Swamigal Mutt, Thiruvathigai Village, Panruti Taluk, Cuddalore District. However, as per the records of the Municipal Sub-Inspector, there is no Sub Division as S.No.341-A, in Thiruvathigai Village.

8. It has been further stated that the Mutt in question has been under the control of the 3rd respondent after he had taken possession of the same, on 25.8.2012. As such, it would not be open to the petitioner to seek a Writ of Mandamus to forbear the respondents from interfering with the peaceful possession and enjoyment of the Mutt, by the petitioner.

9. It has been further stated that, as per the document filed by the petitioner, dated 2.3.2012, he had been appointed only as 'Maniam' and not as an Inspector, as described in the present Writ Petition. Further, there is no specific order appointing him as the Inspector of Appar Swamigal Madam. The incident said to have happened, relating to the taking away of the key of the Mutt, is absolutely false.

10. It has been further stated that the Appar Swamigal Mutt is functioning in a portion of Arulmigu Veerattaneswarar Thirukovil, Thiruvathigai. Therefore, the allegations made by the petitioner that the Mutt is in the possession and enjoyment Thiruvaduthurai Adheenam is incorrect.

11. A counter affidavit has been filed on behalf of the 4th respondent reiterating the averments made in the counter affidavit filed by the 3rd respondent. It has also been stated that the Writ Petitioner had also filed a Criminal Original Petition, in

Cr1.O.P.No.21953 of 2012, with regard to the incident relating to the assault and the taking away of the key of the Mutt, by the third and the fourth respondents. Pursuant to the order passed by this Court, an enquiry had been conducted by the police and it had been found that no such incident had taken place. The statement of the 5th respondent had also been recorded, on 14.9.2012, in which the 5th respondent had denied the allegations of the petitioner.

12. The learned counsel appearing on behalf of the fifth respondent had also submitted that the allegations made by the petitioner against the 3rd and the 4th respondents are false. The learned counsels appearing on behalf of the respondents had further submitted that the present Writ Petition is not maintainable, as the claims made by the petitioner are being disputed by the respondents. Such factual issues cannot be gone into by this Court, in the present Writ Petition, filed under Article 226 of the Constitution of India. They had further submitted that it may be open to the petitioner to establish his rights, if any, before the appropriate civil forum, or by filing an appropriate application before the designated authority, as per the provisions of the Hindu Religious and Charitable Endowments Act, 1959.

13. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that the petitioner had raised certain issues, with regard to the Mutt, said to be bearing door Nos.1/21 and 1/22, in Survey No.341-A, Appar Swamigal Mutt, Thiruvathigai Village, Panruti Taluk, Cuddalore District, which are disputed by the respondents.

14. It is a well settled position in law that such disputed facts cannot be gone into by this court, by way of roving enquiry, by invoking its writ jurisdiction, under Article 226 of the Constitution of India. The learned counsel had referred to the decisions made in Commissioner, Hindu Religious and Charitable Endowment Vs. P.Shanmugam and others, CDJ 2005 SC 143 and Thiruvaduthurai Adheenam Vs. State of Tamilnadu, (High Court of Madras, dated 15.11.2007 in W.P.No.8408 of 1999) in support of his contentions. However, this Court is of the view that the decisions cited by the learned counsel for the petitioner are not relevant for considering the facts and circumstances of the present case. As such, the reliefs prayed for by the petitioner, in the present Writ Petition, cannot be granted. Hence, the Writ Petition stands dismissed. However, it goes without saying that it may be open to the petitioner to seek his remedies, if any, before the appropriate civil forum, or by invoking the relevant provisions of the Hindu Religious and Charitable Endowments Act, \

1959, before the authorities concerned. No costs. Consequently, connected miscellaneous petition in M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

csh

To

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam, Chennai.

2. The Joint Commissioner,
Joint Commissioner Office
Villupuram, Villupuram District.

3. The Executive Officer,
Arulmigu Veeratanam Eswarar Thirukoil
Thiruvathigai
Panruty Taluk, Cuddalore District.

1 CC to Mr.S.Sithirai Anandam, Advocate SR.No. 49956

1 CC to Mr.K.Moorthy, Advocate SR.No. 50085

1 CC to the Government Pleader, SR.No. 50231

+1 cc to Mr.M.Murali, Advocate, sr.50957 (16/10/2015)

W.P. No.23579 of 2012

VGI (CO)
PSI (01.10.2015)

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