

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-02-2016

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 3887 and 3888 of 2016
and

Writ Miscellaneous Petition Nos. 3247, 3248, 3249, 3250 and
3251 of 2016

K. Senniappan .. Petitioner in WP No. 3887 of 2016
Kothai Nayagi .. Petitioner in WP No. 3888 of 2016

Versus

1. The Secretary to the Government
Hindu Religious and Charitable Endowment
Department
Chennai - 600 034
 2. The Commissioner
Hindu Religious and Charitable Endowment
Department
Chennai - 600 034
 3. The Joint Commissioner
Hindu Religious and Charitable Endowment
Department
Chennai - 600 034
 4. The Assistant Commissioner
Hindu Religious and Charitable Endowment
Department
Chennai - 600 034
 5. A/m. Tiruppuliyur Vageesar Madalayam
rep. by its Madathipatty
Kamatchi Dhasa Ekambaranatha Swamigal Salai
Avinashi Nagar & Taluk
Tiruppur District
 6. The State represented by
the Inspector of Police
Kadathur Police Station
Erode District
- .. Respondents in both the
Writ Petitions

WP No. 3887 of 2016:- Petition filed under Article 226 of
The Constitution of India praying for a Writ of Certiorarified
Mandamus calling for the records pertaining to the impugned
order made in R.P. No. 197 of 2015 D2 dated 20.01.2016 passed
by the second respondent herein and quash the same and
consequently forbearing the respondents, their men or agents in

any way interfering with the petitioners peaceful possession of the land measuring 4.03 acres in S.No.390/1 A & S.No.392 in Alakuli Village and for any other order or relief or reliefs that may be appropriate in the present circumstance of the case.

WP No. 3888 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order made in R.P. No. 197 of 2015 D2 dated 20.01.2016 passed by the second respondent herein and quash the same and consequently forbearing the respondents, their men or agents in any way interfering with the petitioners peaceful possession of the land measuring 4.03 acres in S.No.390/1 A & S.No.392 in Alakuli Village and for any other order or relief or reliefs that may be appropriate in the present circumstance of the case.

Petitioner : Mr. A. Selvendhran
in both the writ petitions

For Respondents : Mr. K.V. Dhanapalan
Additional Government Pleader for RR1 to 4
in both the writ petitions

Ms. P.T. Ramadevi for R5
in both the writ petitions

Mrs. P. Rajalakshmi
Government Advocate for R6
in both the writ petitions

COMMON ORDER

The petitioners have come forward with these writ petitions questioning the correctness of the order dated 20.01.2016, by which the second respondent rejected the appeals preferred by the petitioners and confirmed the order passed by the third respondent.

2. The petitioner in WP No. 3887 of 2016 is the husband of the petitioner in WP No. 3888 of 2016. The petitioners claim to be in possession of the lands in question on the basis of the lease granted in their favour by the fifth respondent temple. According to the petitioners, the fifth respondent attempted to evict them from the lands in question on the ground that they committed default in payment of lease amount continuously for a period of five years. Apprehending eviction, the petitioners have filed OS No. 193 of 2010 on the file of District Munsif Court, Gobichettipalayam for a declaration and it was dismissed for default. In the meantime, on the basis of the complaint given by the fifth respondent-Mutt, the third respondent initiated proceedings under Section 78 of the Hindu Religious and Charitable Endowment Act (in short, HR & CE Act) and it was numbered as MP No. 2 of 2010. The petitioners have contested the petition by stating that they have paid the lease rent without any default, but it is

the fifth respondent, who refused to issue any acknowledgment for the payments made. After considering the submission of both sides, the third respondent allowed the application on 21.04.2015 and ordered for eviction. Challenging the same, the petitioners have filed a revision before the second respondent and the same was also rejected on 20.01.2016 by observing that the petitioners are unauthorisedly occupying the lands belonged to the fifth respondent-Math and such possession can be construed as an encroachment.

3. When the writ petitions were taken up for hearing on 02.02.2016, this Court directed both sides to maintain status-quo for a period of one week and directed the respondents to file their counter.

4. Today, the fifth respondent has filed a counter affidavit opposing the writ petition. According to the fifth respondent, after the order dated 20.01.2016 passed by the second respondent, confirming the order dated 21.04.2015 of the third respondent, proceedings were initiated by the fifth respondent as contemplated under Section 79 of HR & CE Act to evict the petitioners and the petitioners were also evicted on 02.02.2016 at 11.00 am. The possession of the lands in question was thereafter handed over to the fifth respondent-Mutt which was also duly reported to the second respondent herein. However, suppressing the same, the petitioners have filed this writ petition and obtained the order of status-quo. According to the fifth respondent, when possession of the lands in question were taken over by the fifth respondent from the petitioners, nothing survives in these writ petitions for adjudication. It is further stated that if the petitioners are aggrieved by the eviction proceedings, they have to have preferred an appeal before the government and these writ petitions are not maintainable.

5. I heard the counsel on either side and perused the material records, including the counter affidavit filed by the fifth respondent. It is stated by the fifth respondent that possession of the lands in question were taken over by the fifth respondent-Mutt on 02.02.2016. When possession of the lands in question have been taken over from the petitioners, no relief can be granted in this writ petition. Furthermore, as rightly pointed out by the counsel for the fifth respondent, if the petitioners are aggrieved by the order dated 20.01.2016 of the second respondent, which is impugned in this writ petition, alternative remedy of revision is available to them before the Government. When an alternative remedy is available, the petitioners ought to have exhausted the same. Further, when there are disputed questions of fact involved, this Court cannot conduct any roving enquiry under Article 226 of The Constitution of India. Therefore, this Court is not inclined to grant any relief to the petitioners and if the petitioners are aggrieved by the order impugned in these writ petitions, it is well open to them to question the correctness or otherwise of the order dated 20.01.2016 of the second respondent by filing a revision before the Government.

In the result, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government
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Tiruppur District
6. The Inspector of Police
Kadathur Police Station
Erode District

+ 2 ccs to M/s. P.T. Ramadevi, Advocate Sr.8496
+ 2 ccs to Government Pleader sR.8601 & 8603

WP No. 3887 & 3888/2016

VGI (CO)

EU 04.03.16

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