

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.06.2016

CORAM

The Hon'ble Mr.Justice M.Sathyanarayanan

W.P.No.6707 of 2016

and

W.M.P.No.5947 of 2016

M.Gopinath,
President of the Sabai,
Kadambadi Innootru Vagai Kongu
Chettimar Dharmaparibalana Sabai,
Avinashi - 641 654, Tiruppur District.

... Petitioner

Vs

1. The Commissioner,
Hindu Religious and Charitable
Endowments Trust, Fort St. George,
Chennai - 600 009.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Trust (HR & CE)
Dr.Balasundaram Road,
Coimbatore - 641 018,
Coimbatore District.
3. The Assistant Commissioner
Hindu Religious and Charitable
Endowments Trust (HR & CE)
Veeraragava Perumal Kovil Campus,
Tiruppur - 641 604, Tiruppur District.
4. The Executive Officer,
Arulmigu Sree Avinashi
Lingaeswarar Temple,
Avinashi - 641 654,
Tiruppur District.
5. The District Collector
Collectorate Building,
Tiruppur - 641 604,
Tiruppur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari to call for records relating to the impugned proceedings issued by the second respondent/Joint Commissioner in Miscellaneous Petition No.109/2015/A1, dated 18.12.2015, and to quash the same.

For Petitioner : Mr.P.Godson Swaminath

For Respondents 1-3 : Mrs.Rita Chandrasekar
Special Government Pleader

For Respondent-4 : No appearance

For Respondent-5 : Mr.P.Sanjaigandhi
Additional Government Pleader

O R D E R

By consent, the Writ Petition is taken up for final disposal.

2. The petitioner-Sabai claims that it is the absolute owner of the property, admeasuring to an extent of 1 acre and 70 cents, in S.No.93, at Avinashi Village, along with superstructure and pathway rights, and in this regard, filed a suit, being O.S.No.311 of 2005, on the file of District Munsif Court, Avinashi, praying for the declaration and other consequential relief. The said Suit, after contest, came to be dismissed on 27.04.2009, and challenging the legality of the judgment and decree of the Trial Court, the the plaintiff preferred an Appeal, being A.S.No.28 of 2009, on the file of the Sub Ordinate Court, Tiruppur, and the said Appeal is pending. However, there is no interim order. While things were so resting, the second respondent issued a notice under Section 78 of the Hindu Religious and Charitable Endowments amended Act 39 of 1996, dated 18.12.2015, stating among other things that they have encroached upon the property, belonging to Avinashi Lingaeswarar Temple, and therefore, called upon the petitioner to appear on 19.01.2016, and explain their stand. Challenging the legality of the said order, the petitioner has come forward to file this Writ Petition.

3. Mr.P.Godson Swaminath, learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment rendered by the Trial Court, in O.S.No.311 of 2005, and would submit that the Trial Court has recorded the fact that the petitioner/plaintiff is entitled to retain possession of the suit property, and in the light of the same, the impugned notice is not at all sustainable, and prays for quashment of the same.

4. This Court heard Mrs.Rita Chandrasekar, learned Special Government Pleader respondents 1 to 3 and Mr.P.Sanjaigandhi, learned Additional Government Pleader for fifth respondent on the aforesaid submissions.

5. It is seen that the impugned notice is in the nature of a show cause notice, and it is always open to the petitioner to submit their response, and the contents of the impugned notice would also reveal that opportunity of personal hearing is also given to the petitioner to appear in person or through the Advocate.

6. In the light of the above facts, this Court is of the view that the Writ Petition, at present, is premature, therefore, it is dismissed. However, petitioner is at liberty to submit their response to the show cause notice on or before 29.06.2016. The second respondent is directed to take up the matter on 11.07.2016, and afford reasonable opportunity to the petitioner to putforth their stand, and till the disposal of the said Miscellaneous Petition, both the parties shall maintain status quo as regards possession of the property, in the light of the observations made by the Trial Court in para No.10 of its judgment, dated 27.04.2009 in O.S.No.311 of 2005. Consequently, the interim order of stay, granted in W.M.P.No.5947 of 2016, is vacated. Accordingly, the said W.M.P. is disposed of. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sd

To

1. The Commissioner,
Hindu Religious and Charitable
Endowments Trust, Fort St. George,
Chennai - 600 009.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Trust (HR & CE)
Dr.Balasundaram Road,
Coimbatore - 641 018,
Coimbatore District.

3. The Assistant Commissioner
Hindu Religious and Charitable
Endowments Trust (HR & CE)
Veeraragava Perumal Kovil Campus,
Tiruppur - 641 604, Tiruppur District.
4. The Executive Officer,
Arulmigu Sree Avinashi
Lingaeswarar Temple,
Avinashi - 641 654,
Tiruppur District.
5. The District Collector
Collectorate Building,
Tiruppur - 641 604,
Tiruppur District.

+1 cc to M/s.Isaac Mohanlal, Advocate sr.29258
+1 cc to the Government Pleader sr.29473

W.P.No.6707 of 2016

sk(co)
aa21/06/2016



WEB COPY