



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON 08.08.2016
ORDER PRONOUNCED ON 22.08.2016

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THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P (MD) No. 12245 of 2016
and
WMP (MD) Nos. 9334 & 9335 of 2016

Palanichamy

... Petitioner

Vs

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
No. 119, Uthamar Gandhi Road,
Chennai.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
4. The Executive Officer,
Sri Kambarayar Perumal Thiru Koil,
Cumbum, Theni District.
5. The Inspector,
Hindu Religious and Charitable Endowments Department,
Periyakulam,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records of the impugned notice, dated 29.06.2016 in Na.Ka.No.1795/2014-1/A3, issued by the 2nd Respondent, which was pasted in the Petitioner's house and to quash the same as illegal, arbitrary.

For Petitioner	: Mr. Issac Mohanlal, Sr. Counsel, For Mr. G. Vanjinathan
For Respondents (R1 to R3 & R5)	: Mr. V. R. Shanmuganathan, Spl. Govt. Pleader

For Respondent-4 : Mr. M. Karuppasamy Pandian

**ORDER**

Heard both sides.

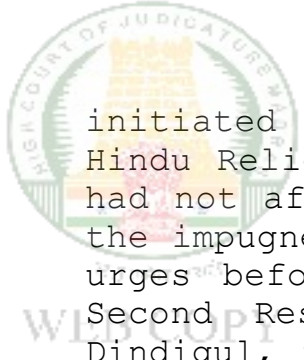
2. According to the Petitioner, their father had constructed a house in Door No.41, Mariamman Koil Street, Cumbum and they were residing there from time immemorial, for the past 61 years. Their father had also availed water tap connection to the house and the same stands in their father's name till date. They along with his brothers lived jointly in the aforesaid house, till the demise of their father. After that, the Petitioner along with his brother Kandasamy's family are residing in the aforesaid house.

3. The stand of the Petitioner is that his brother Kandasamy's son got appointed in a private Firm in Chennai and by last week of June, 2016, they went to Chennai together with his brother's family, with a view to settling him. When they returned on 11.07.2016, they shocked to see the impugned notice, which pasted in their house, in the name of one Jeganathan. When, the Petitioner had enquired about the same, he learnt that the Respondents had initiated eviction proceedings, against an imaginary person viz., one Jeganathan and in his name, they are trying to evict the Petitioner.

4. The categorical stand of the Petitioner is that no person in the name of Jeganathan resides there and they are residing in the same place from time immemorial. As a matter of fact, the Respondents are endeavouring to evict him without following the due process of Law, in the name of some third person. Furthermore, the Respondents had wantonly gave the address of their house in the impugned Notice, as No.41, Kambarayar Perumal Koil Street instead No.41, Mariamman Koil Street, as in village records. Also that, more or both are considered to be same in their locality as their street.

5. The clear-cut plea of the Petitioner is that the Respondents' claim that they had categorised the aforesaid Jeganathan, as an encroacher, and had affixed the impugned Notice for eviction in their house, under Section 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. That apart, the Respondents had not followed the procedures prescribed, under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and without conducting any enquiry had affixed impugned Notice, in their house, by fixing a date of eviction on 13.07.2016. Hence, the Petitioner has filed the present Writ Petition.

6. The Learned Senior Counsel for the Petitioner submits that the impugned order of the Second Respondent / Assistant Commissioner, R&CE Department, Dindigul, dated 29.06.2016, is against the Law and in violation of the Principles of Natural Justice because of the reason that the First Respondent had not



initiated any proceedings, under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Further, he had not afforded any opportunity to the Petitioner before passing the impugned order. The Learned Senior Counsel for the Petitioner urges before this Court that the impugned Notice issued by the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul, is contrary to the plain words of Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

7. At this stage, it is represented on behalf of the Petitioner that the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul, should have considered that, as per Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, show-cause notice is to be issued and only after providing a reasonable opportunity of being heard, an action can be initiated under Section 79 of the said Act and furthermore, the impugned Notice cannot be issued straightway. Therefore, the impugned Notice / order of the Second Respondent, dated 29.06.2016, is contrary to the Tamil Nadu Hindu Religious and Charitable Endowments Act, and is violative of Principles of Natural Justice.

8. Yet another submission of the Learned Senior Counsel for the Petitioner is that the Respondents shall consider that no person in the name of Jeganathan resides in the house and the Petitioner is living there from time immemorial. Also that, the Respondents should have conducted an enquiry. In reality, the Respondents had categorised some third person, as encroacher, and on the guise of evicting him, he is trying to evict the Petitioner, in terms of Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, without affording any opportunity of hearing. As such, the Notice of the Second Respondent, dated 29.06.2016, is an unlawful and illegal one.

9. Per contra, it is the submission of Respondents 1 to 3 and 5 that the Petitioner is only challenging the Execution Proceedings order in the Writ Petition. Further, it is represented on behalf of Respondents 1 to 3 and 5 that Original Lessee Murugesan was in arrears of rent to the tune of Rs.78,000/- upto the year 2013 and on 16.04.2014, during the spot inspection, it was found out that one Jeganathan was in actual possession of the House at Door No.41, Kamaraya Perumal Street, Cumbum and the said Murugesan had settled the property to Jeganathan and the Hindu Religious and Charitable Endowments Authorities had issued Notice to the said Jeganathan and for the three show cause notices, it was no appearance and under Section 78(4) of the said Act, the party was treated as an encroacher.

<https://hcservices.ecourts.gov.in/hcservices/>

10. The Learned Special Government Pleader for the Respondents 1 to 3 and 5 contends that the Petitioner is the Third Party and



he has no *locus-standi* to file the present Writ Petition and there cannot be a tenancy in succession to a Temple property and therefore, the Writ filed by the Petitioner, is not maintainable.

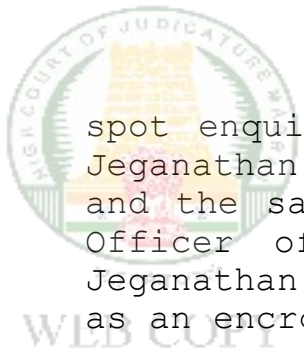
11. Advancing his argument, the Learned Special Government Pleader for 1 to 3 and 5 projects an argument that the Petitioner is not a tenant and the factual dispute arising in the subject matter in issue between the Petitioner and the Authorities / R1 to R3 and R5, cannot be gone into in a summary Writ jurisdiction, under Article 226 of the Constitution of India.

12. In response, it is the submission of the Learned Counsel for the Fourth Respondent that the Petitioner in the present Writ Petition had only questioned the consequential order passed by the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul, and in fact, he had failed to question the main order passed under Section 78 the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, by the Third Respondent / Joint Commissioner, HR&CE Department, Madurai, which is the basis for the present impugned order. As such, it is contended on behalf of the Fourth Respondent that the Writ Petition is liable to be Dismissed. Also, it is brought to the notice of this Court that the Fourth Respondent / Executive Officer of the Temple had taken possession of the property, on 13.07.2016 and therefore, nothing survives for adjudication in the present Writ Petition.

13. The Learned Counsel for the Fourth Respondent proceeds to state that the Petitioner is a 3rd party to the proceedings and in fact, being a muscle man, had created forged documents, as if he is residing in the Temple property, but in fact, he is not residing there.

14. At this juncture, the Learned Counsel for the Fourth Respondent brings it to the notice of this Court that, as per the records maintained by the Fourth Respondent / Temple one Murugesan was the original tenant of the Temple and the rent was fixed at the rate of Rs.424/- per month and presently the monthly rent is Rs.741/-. Therefore, the Writ Petitioner has no *locus standi* to file the present Writ Petition and that, he cannot claim any right over the said property.

15. Besides the above, it is represented on behalf of the Fourth Respondent / Executive Officer of the Temple that, since the original tenant viz., Murugasan had failed to remit the rent to the Fourth Respondent / Temple and as on 30.11.2013, the arrears of rent came around Rs.77,978/- and inspite of numerous demand, the said Murugesan had not turned up. Therefore, the Fourth Respondent / Executive Officer of the Temple had issued a ~~Summons~~ ^{Notice} dated 01.12.2013, which was sent on 09.12.2013, to the said Murugesan and the same was returned. Therefore, the Fourth Respondent / Executive Officer of the Temple had made a



spot enquiry and in the said enquiry, it came to light that one Jeganathan S/o.Subramanian, is residing in the aforesaid address and the said fact was known to the Fourth Respondent / Executive Officer of the Temple only during the enquiry and the said Jeganathan is an unauthorized person and therefore, he was treated as an encroacher.

16. The Learned Counsel for the Fourth Respondent / Executive Officer of the Temple strenuously takes a stand that the said Jeganathan is an Encroacher and the Fourth Respondent / Temple issued a notice, calling upon the said Jeganathan to evict from the said house and hand over the possession to the Temple, on 17.02.2014. As a matter of fact, the said Jeganathan had not vacated from the said house and the Fourth Respondent / Executive Officer of the Temple had sent a report to the Third Respondent / Joint Commissioner, HR&CE Department, Madurai (Through the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul) and requested to initiate action, under Sections 78 & 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 on 28.02.2015.

17. Pursuant to the report of the Fourth Respondent / Executive Officer of the Temple, the Second Respondent / Assistant Commissioner of HR&CE Department, Dindigul, had filed a Petition together along with the Fourth Respondent / Executive Officer of the Temple, before the Third Respondent / Joint Commissioner, HR&CE Department, Madurai, on 03.03.2016 and that the said Petition was taken on file by the Third Respondent, who issued Notice to the said Jeganathan and in the notice, it was mentioned that the property as House, on 25.08.2015. The said Jeganathan, however, refused to receive the said notice issued by the Third Respondent / Joint Commissioner, HR&CE Department, Madurai, and thereupon, another notice was issued by the Third Respondent / Joint Commissioner, to the said Jeganathan, requiring him to appear before him, on 30.09.2015. Further, it is represented that the said notice was also refused by the said Jeganathan.

18. The crystalline stand taken on behalf of the Fourth Respondent / Executive Officer of the Temple is that despite numerous notices have been issued to the said Jeganathan, he had not turned up and therefore, the Third Respondent / Joint Commissioner, HR&CE Department, had proceeded with the matter. Further, based on the available records with him and passed the impugned order dated 03.03.2015, under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, whereby, it was informed that he should vacate the said property within 30 days from the date of receipt of the said Notice, failing which, further action would be initiated, under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959.



19. At this stage, the Learned Counsel for the Fourth Respondent / Executive Officer of the Temple informs this Court that while passing the impugned order, the Third Respondent / Joint Commissioner, HR&CE Department, Madurai, had mentioned the property, as shop instead of house and the error made only a typographical one. Also, it is projected on the side of the Fourth Respondent / Executive Officer of the Temple that the Petitioner had produced all the documents in respect of the property bearing D.No.41, Mariamman Koil Street and the said document would not help the case of the Petitioner. Even, water connection was falsely procured by the Petitioner in favour of his father and the same would not confer any title or right over the property and since the Petitioner is a third party, he has no right or title over the property. There is no necessity to give any notice to the Petitioner.

20. The Learned Counsel for the Fourth Respondent / Executive Officer of the Temple further submits that based on the spot enquiry, the Fourth Respondent / Executive Officer of the Temple, had initiated action against the encroacher Jeganathan, under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and pursuant to the said order, an order was also passed by the Third Respondent, under Section 79(i) of the Act, wherein, it was ordered that the encroachers should be vacated on 13.07.2016 at 11.00 a.m., and that the possession of the property should be handed over to the Fourth Respondent / Executive Officer of the Temple. Since the encroacher had refused to receive the postal letter, it was directed to hand over the said order, in person, to the said encroacher, by the Second and Third Respondents, in the proceedings, dated 04.07.2016. In fact, the Fourth Respondent / Temple had taken possession of the property on 13.07.2016 and encroachment was removed from the said place by following the principles of Law and the Procedures contemplated under the said Act.

21. By means of Reply, it is represented on behalf of the Petitioner that the lands originally situated in Survey No.857, wherein, the Petitioner's house is situated was a 'Grama Natham' and the Petitioner's father P.Gurusamy had constructed a house in Old No.81 Al New No.41, Mariamman Koil Street, Cumbum and they are living as joint family in the said house, from time immemorial.

22. Further, it is the stand of the Petitioner that the lands in Survey No.857 were assigned by the Government through G.O(Ms) No.59, Revenue, dated 06.01.1970, in favour of the 'Arul Migu Kambaraya Perumal and Kasi Viswanathar Swamy Temple' on condition that the rent from the building and houses should not be enhanced, without the approval of the Government. Inasmuch as the lands were assigned to the Temple, the Temple was given a right to collect rent for the land and pay property tax only for the land and so far the superstructures built by the tenants shall pay



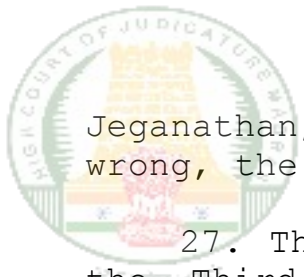
Municipal Tax, for the superstructures alone.

23. The Petitioner in his rejoinder, dated 29.07.2016 had averred that after the demise of their father P.Gurusamy, all his brothers viz., (I) G.Murugesan, 2. G.Palanivel, 3. G.Palanisamy 4. G.Kandhasamy and 5.G.Saran were jointly living in the aforesaid house and after the demise of their father, the brothers had lived jointly for some period and now, the Petitioner along with one of his brother Kandhasamy is residing with his family. Till their father was alive, the tenancy was in his name and after his demise, the same devolved in their elder brother's name. Moreover, they were under the impression that their elder brother was making payment towards the rental of their house to the Respondents all these years, but after the impugned proceedings and after perusing the documents filed by the Respondents, they came to know that due to some misunderstanding between them, their elder brother G.Murugesan had failed to make payment towards the rent.

24. The Petitioner, at Paragraph No.5 of the Rejoinder, had also averred that after the year 2014, as per the claim of the Respondents, the aforesaid Jeganathan had encroached, but, all the notices sent by them were returned as, 'Insufficient Address' and they had received various communication in the above address, to be more precise, Cumbam Municipality had issued communications dated 05.11.2012 and 31.01.2013, Highways Department had issued a communication, on 25.05.2015 and Income Tax Refund Advice, dated 02.03.2016 were also sent in the aforesaid address. In short, it is the plea of the Petitioner that he had received all the communications, since he is residing there even after the period it was alleged as encroached by the said Jeganathan.

25. The Petitioner in the Rejoinder had taken a stand that the Respondents in their counter had stated that the property evicted is a shop and the address is No.41, Kambaraya Perumal Kovil Street and not Mariamman Kovil Street and claimed that both streets are different and not the same. Further, if that is the case, the property locked and sealed by the Respondents is their house, which is in Mariamman Koil Street, and if their claim is correct, then, they ought to have locked and sealed a wrong place.

26. Further, it is represented on behalf of the Petitioner that the Fourth Respondent / Executive Officer of the Temple had sent a Notice, calling upon the Petitioner's brother to pay arrears of rent and having received the same his brother failed to pay the same and in fact, the Fourth Respondent / Executive Officer of the Temple had sent the above Notice, dated 01.12.2013, to a wrong address and the same was returned as, 'Insufficient Address', which was misinterpreted and stated that it was returned as, 'Deceased'. In fact, his brother is very much alive and that apart, since there was no such person, by name,



Jeganathan, available in the locality and the address was also wrong, the same was returned as, 'Insufficient Address'.

27. The prime plea taken on behalf of the Petitioner is that the Third Respondent / Joint Commissioner, HR&CE Department, Madurai, had passed an order on 03.03.2016, under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, by recording the Petitioner's brother as 'Deceased' and the above Jeganathan had encroached the aforesaid house, without any material evidence to substantiate the same and in this regard, without serving Notice to them and without their presence, the Third Respondent / Joint Commissioner, HR&CR Department Madurai, had conducted an enquiry and passed an order. Since the said order was not on merits and it was passed on a wrong person, in wrong address, the same would not stand in way pertaining to the claim made by the Petitioner.

28. Finally, it is represented on behalf of the Petitioner that they are bonafide tenant and residing in the above house from the time immemorial and if at all a fair enquiry, is to be conducted, they ought to have followed the procedures prescribed under Section 34(B) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, further, if opportunity is afforded to the Petitioner, they could regularize the arrears of rent in respect of their house and that failure of payment of rent was neither willful nor wanton. Also that, it is a only house for living and due to arbitrary act of the Respondents, they are now homeless.

29. This Court has heard the Learned Senior Counsel for the Petitioner, the Learned Special Government Pleader for 1 to 3 and 5 and the Learned Counsel for the R4/ Executive Officer of the Temple.

30. At this stage, on behalf of Respondent Nos.1 to 3, it is brought to the Notice of this Court that on 21.06.2016, in **W.P. (MD)No.10840 of 2016** between **V.Subramanian Vs. Joint Commissioner, Hindu Religious and Charitable Endowments Department, Theni, Dindigul and Madurai Administration, Madurai and two Others**, this Court, at paragraph 7, had observed the following:-

"7. It is to be noted that the above said Act is a self-contained and in-built 'Act'. It has also gives right to the aggrieved to move before the appropriate forum under the 'Act'. As such, this Court is of the considered view that the Petitioner can very well seek appropriate remedy as against the impugned order, dated 16.03.2016 of the First Respondent and the consequential order, dated 06.06.2016 of the second Respondent, under the Tamil Nadu Hindu Religious and Charitable Endowments

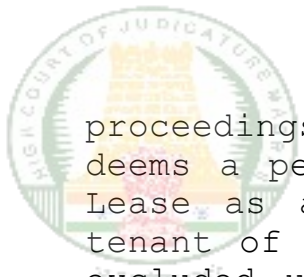


Act, 1959. Viewed in that perspective, this Court directs the Petitioner to approach the concerned authorities for initiating further proceedings by filing an appeal raising all factual and legal pleas in the manner known to Law and in accordance with Law. In this regard, the Petitioner is granted three weeks time. Till such time, the Petitioner shall not be dispossessed from the property in question. It is needless for this Court to make a significant mention that if the Petitioner files an 'Appeal' before the appropriate authority under the Act, then the authorities concerned shall dispose of the appeal after providing due opportunity to the Petitioner and others concerned, if any, in the manner known to law and in accordance with law."

31. In this connection it is to be pointed out that "disputed questions of fact" should be left with the fact finding Authorities. In general, a disputed fact is not investigated in a proceeding, under Article 226 of the Constitution of India, wherein, an effective, efficacious, adequate and alternative remedy is available, Writ is not the proper forum, as opined by this Court. Moreover, Article 226 of the Constitution of India, is not intended to circumvent statutory procedures, where, statutory remedies are very much available a Petition under Article 226 of the Constitution of India should not be entertained. Also that, in exercise of discretionary jurisdiction, the High Court should not act as, 'Court of Appeal or Revision' to correct mere errors of Law or fact. Besides that, under Article 226 of the Constitution of India, the High Court does not generally entered upon a determination of question, which demand an elaborate examination of evidence to establish the right and to enforce to which the Writ is claimed.

32. Ordinarily, the Competent Authority under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is to issue show-cause notice for removal of encroachment and thereafter, considering the objections and conducting an enquiry, after recording the reasons, has to pass an order of eviction. As a matter of fact, 'an opportunity of hearing to the parties' is to be given and reasons must be assigned for arriving at a certain conclusion.

33. Also, it is quite evident that, as per Section 78(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, an individual, who continues to remain in the property after termination of Lease also comes under the definition of 'Encroacher' for the removal of whom, the Joint Commissioner can ~~cases and services~~ under Section 78(4) of the Act. Section 78(5) of the Act speaks of depositing the amount decided by the Joint Commissioner for use and occupation pending disposal of the



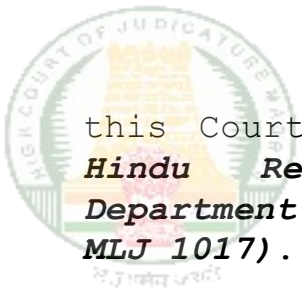
proceedings for eviction. In fact, Section 78(1) of the Act, deems a person to squat on the property after the expiry of the Lease as an encroacher. As such, treating an individual as a tenant of property holding over after the expiry of the Lease is excluded under Section 78 of the Act. To put it precisely, in this regard, the general Right under the Transfer of Property Act, 1882, is inapplicable, in the considered opinion of this Court.

34. It is to be noted that the procedures contemplated under Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, is a specific procedures and admittedly, it is not a summary in character. Therefore, an enquiry is to be conducted 'as far as practicable' like that of a Suit. In fact, Section 78(4) of the said Act, prescribes three statutory mandates on the competent authority viz., (i) An Authority should conduct an enquiry (ii) An Authority should satisfy that there is an encroachment in property and (iii) An Authority should pass an order / speaking order recording reasons for removal of encroachment. Suffice it for this Court to clearly point out that the procedures prescribed under Section 78(3) of the Act, are more or less a full pledged Enquiry, as the one prevailing in a civil Court.

35. Section 78(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, speaks of encroachers being ordered to deposit the amount determined by the Joint Commissioner, for use and occupation, pending disposal of the proceedings for eviction. As per Section 78(1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, a person, who continues to remain in the property after termination of Lease also comes under the definition of 'Encroacher' and for the removal of the whom, the Joint Commissioner can pass an order, under Sub Section 4 of Section 78 of the Act.

36. It is to be borne in mind that a Competent Authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, cannot pass an order, according to his whims and fancies on in an ordinary or capricious manner. Before passing an order of eviction, he is to necessarily consider the objections raised by the encroachers and should conduct an enquiry after providing an opportunity of hearing to the parties and after recording the reasons for coming to such a conclusion, he has to pass a reasoned order, on merits. If a person is aggrieved against an order passed by a Competent Authority, then, he is to exhaust his remedies first under a particular statute.

37. At this stage, this Court aptly points out that the 'Principle of Estoppel' will prevent the Lessees from raising the issue of encroachment, after having allowed the Temple Administration / Authorities to proceed under Sections 76 and 78 of the said Act, which are applicable to encroachers also, as per the decision of



this Court in **N.S.Ramachandra Iyer and Others Vs. Commissioner, Hindu Religious and Charitable Endowment Administrative Department, Nungambakkam, Chennai and Others** reported in (2010 (7) MLJ 1017).

38. On a careful consideration of respective contentions and also this Court taking note of the attendant facts and circumstances of the present case in an integral manner, is of the considered view that the Petitioner has only challenged the present consequential impugned order, dated 29.06.2016, passed by the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul. In fact, the Petitioner had failed to question the order passed under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, by the Third Respondent / Joint Commissioner / HR&CE Department. Further, in the instant case, it is represented on behalf of the Fourth Respondent / Executive Officer of the Temple that the Petitioner had produced all documents in respect of the property viz., Door No.41 of Mariamman Koil Street, which is no way connected with the property in question. In fact, the impugned Notice, dated 29.06.2016 of the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul, had been sent to one Jeganathan and not to the Petitioner.

39. Moreover, it is represented on behalf of the Petitioner that on the basis of a 'Spot Enquiry', an action was initiated against the encroacher one Jeganathan and pursuant to the said order, an order was also passed by the Third Respondent/ Joint Commissioner, HR&CE Department, Madurai, under Section 79(1) of the Act, wherein, it was mentioned that the encroacher should be vacated on 13.07.2016 at 11.00 a.m., and that possession of the property should be handed over to the Fourth Respondent / Executive Officer of the Temple.

40. It is also brought to the notice of this Court on behalf of the Fourth Respondent / Executive Officer of the Temple that the said encroacher Jeganathan had refused to receive the postal letter and therefore, it was directed to hand over the said order, in person, to the encroacher, by the Second / Third Respondents, as per proceedings, dated 04.07.2016. In fact, the Fourth Respondent / Temple had taken possession of the property on 13.07.2016 and that the encroacher was removed.

41. In view of the forgoings, this Court comes to an inevitable and irresistible conclusion that the Petitioner in the present Writ Petition has challenged only the consequential order passed by the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul, dated 29.06.2016 and it fact, had not challenged the order passed under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, by the Third



Respondent / Joint Commissioner, HR&CE, Madurai. As such, the filing of the present Writ Petition by the Writ Petitioner, based on the consequential order passed by the Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul, dated 29.06.2016, is *per se* not maintainable.

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42. Even otherwise, when the consequential order, dated 29.06.2016, passed by Second Respondent / Assistant Commissioner, HR&CE Department, Dindigul, pertains to one Jeganathan S/o.Subramanian, Door No.41, Kambaraya Perumal Koil Street, Cumbum, then, the Petitioner has no *locus standi*, to file the present the Writ Petition, in the considered opinion of this Court. Further, as per the stand of the Fourth Respondent / Executive Officer of the Temple, one Murugesan was the original tenant of the Temple and he has failed to pay the rent to the Temple and fell due, as arrears amounting to Rs.77,978/- as on 30.11.2013. Even when the final Notice, dated 01.12.2013, sent by the Fourth Respondent / Executive Officer of the Temple, addressed to the said Murugesan, on 09.12.2013, also got returned. From the spot enquiry, it also came to light that one Jeganathan S/o.Subramanian, is residing in the property in question and therefore, the said Jeganathan was treated as encroacher / unauthorised person, by the Fourth Respondent / Executive Officer of the Temple. Looking at from any angle, the Writ Petition is devoid of merits.

43. In fine, the Writ Petition stands dismissed. Leaving the parties to bear their own costs. It is made clear that the dismissal of the present Writ Petition will not preclude the Writ Petitioner, to prefer an Appeal raising all factual and legal pleas, before the Competent Authority, under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, assailing the validity and legality of the order passed under Section Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, by the Third Respondent / Joint Commissioner, HR&CE Department, Madurai, if he so desires / advised (of course in the manner known to Law and in accordance with Law). Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar



To

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Road,
Chennai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.

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Sri Kambarayar Perumal Thiru Koil,
Cumbum, Theni District.

5.The Inspector,
Hindu Religious and Charitable Endowments Department,
Periyakulam, Theni District.

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 46545

+1cc to M/S.G.VANJINATHAN,ADVOCATE, SR NO: 46361

MPK

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