



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.09.2016
C O R A M

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

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W.P. (MD) Nos. 5776 & 5777 of 2016
and
W.M.P. (MD) Nos. 5186 & 5187 of 2016

Somu @ Somasundaram .. Petitioner in
W.P. (MD) No. 5776 of 2016

E. Pari @ Mohammed Pari

.. Petitioner in
W.P. (MD) No. 5777 of 2016
Vs

1. The Commissioner,
Tamil Nadu Hindu Religious & Charitable
Endowment Board, Chennai.
 2. The Joint Commissioner,
Tamil Nadu Hindu Religious & Charitable Endowment Board,
Madurai.
 3. The Assistant Commissioner,
Tamil Nadu Hindu Religious & Charitable Endowments Board,
Dindigul, Dindigul District.
 4. The Executive Officer,
Arulmigu Natarajar Thirukoil,
Nilakottai, Dindigul District.
- .. Respondents
in both the petitions

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, challenging the impugned orders dated 03.03.2016 issued by the second respondent herein under Ref.Nos.Na.Ka.No.10592/2014/E1 and 10591/2014/E1 dated 03.03.2016 and to quash the same and further for forbearing the third respondent herein from taking possession of the property in Town Survey No.248 measuring to an extent of 652.5 Sq.ft., Nilakottai, Dindigul District in pursuance of the order dated 03.03.2016 passed by the second respondent herein pending disposal of the main Writ petition respectively.

For Petitioners : Mr.M.Valli Nayagam, Senior Advocate
For R-1 to R-3 : Mr.N.S.Karthikeyan
Additional Government Pleader
: Mr.M.Muthugeethaiyan



COMMON ORDER

These Writ Petitions have been filed challenging the impugned orders dated 03.03.2016 issued by the second respondent herein under Ref.Nos.Na.Ka.No.10592/2014/E1 and 10591/2014/E1 and quash the same and further forbearing the third respondent herein from taking possession of the property in Town Survey No.248, measuring to an extent of 652.5 Sq.ft., Nilakottai, Dindigul District, in pursuance of the order, dated 03.03.2016, passed by the second respondent herein pending disposal of the main Writ petitions.

2. Heard the learned senior counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth respondent.

3.The learned counsel appearing for the fourth respondent submitted that against the orders passed by the second respondent/Joint Commissioner under Section 78 of Tamil Nadu Hindu Religious and Charitable Endowment Act, an alternative remedy by way of Revision is available before the first respondent/Commissioner under Section 21 of Tamil Nadu Hindu Religious and Charitable Endowments Act, hence, the Writ petitions are not maintainable before this Court.

4. The learned senior counsel appearing for the petitioners would submit that under Section 21 of Tamil Nadu Hindu Religious and Charitable Endowments Act, the Commissioner is empowered to entertain the Revision petition only against the order which is not being the proceedings in respect of which a suit or an appeal to a Court as provided by this Act. Hence, against the order passed by the second respondent, the petitioner cannot maintain the Revision before the Commissioner.

5. The learned senior counsel would further submit that Section 79 (2) of Tamil Nadu Hindu Religious and Charitable Endowments Act permits the aggrieved person to institute a suit against the order passed by the Joint Commissioner under Section 78 (4) of Tamil Nadu Hindu Religious and Charitable Endowments Act. Since a suit is provided under Section 79(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act against the order passed by the Joint Commissioner under Section 78(4) of Tamil Nadu Hindu Religious and Charitable Endowments Act, a Revision under Section 21 of Tamil Nadu Hindu Religious and Charitable Endowments Act is not maintainable. In view of the same, Writ petitions alone are maintainable.

6. The contention of the learned senior counsel for the petitioners is not be countenanced for the following reasons:-

Section 79(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act reads as follows:-



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" (2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of section 78 from instituting a suit in a Court to establish that the religious institution or endowment has no title to the property:

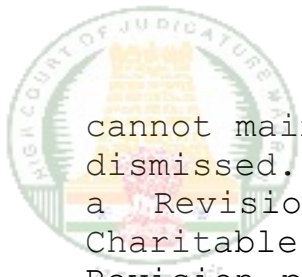
Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of section 78:

Provided further that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgages, of the religious institution or endowment."

Section 79 of Tamil Nadu Hindu Religious and Charitable Endowments Act provided the mode of eviction of encroacher on failure of removal of encroachment as directed by the Joint Commissioner under Section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act. Section 79(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act only enables the aggrieved person who is claiming title over the property to institute a suit to establish their title and deny the title of the religious institution, and Section 79(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act is not enable any person to file a suit against the order of eviction passed under Section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act. In the above circumstances only a Revision under Section 21 of Tamil Nadu Hindu Religious and Charitable Endowments Act is maintainable against the order passed by the Joint Commissioner under Section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act.

7. The learned senior counsel appearing for the petitioner now fairly submits that the petitioners are willing to file a Revision against the order passed by the second respondent. The learned senior counsel would further submit that since the petitioners are in possession till today and pending the Writ petitions, interim order was granted by this Court which also in force. Hence, the learned senior counsel submitted that till the filing of Revision before the Commissioner of Hindu Religious and Charitable Endowments, their possession must necessarily be protected.

<https://hcservices.courts.gov.in/hcservices/> In the above circumstances, considering the fact that against the order passed by the second respondent, only a Revision lies before the first respondent/Commissioner, the petitioners



cannot maintain the Writ petitions. Hence, the Writ petitions are dismissed. However, a liberty is given to the petitioners to file a Revision before the Commissioner of Hindu Religious and Charitable Endowments, and the petitioners are directed to file Revision petition within a period of four weeks from the date of receipt of a copy of this order, along with a petition to stay the order passed by the second respondent. In the event of any such Revision is filed, the first respondent/Commissioner of Hindu Religious and Charitable Endowments is directed to consider the said Revision petition and stay petition and pass orders on merits. Till the orders passed in the Stay petition, the respondents are directed not to disturb the possession of the Writ petitioners. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Record)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Tamil Nadu Hindu Religious & Charitable
Endowment Board, Chennai.
2. The Joint Commissioner,
Tamil Nadu Hindu Religious & Charitable Endowments Board,
Madurai.
3. The Assistant Commissioner,
Tamil Nadu Hindu Religious & Charitable Endowments Board,
Dindigul, Dindigul District.
4. The Executive Officer,
Arulmigu Natarajar Thirukoil, Nilakottai, Dindigul District.

+1CC to Mr.M.Muthugeethaiyan Advocate SR.No.57669

+2CC to Mr.D.Nallathambi Advocate SR.No.57816

pmu

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