

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.03.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P. No. 5718 to 5723 of 2017 & connected WMPs

1 M. Kothandapani	.. Petitioner in WP 5718
2 Ulaganathan	Petitioner in WP.5719/2017
3 Mahalakshmi	Petitioner in WP.No.5720/2017
4 M. Kumar	Petitioner in WP.5721/2017
5 M. Kumarasamy	Petitioner in WP.5722/2017
6 Rani	Petitioner in WP.5723/2017

Versus

- 1) Commissioner
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
 - 2) The Joint Commissioner
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
 - 3) The Assistant Commissioner
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
 - 4) The Executive Officer
Arulmighu Thiyagarajaswamy Thirukkoil
Thiruvottiyur,
Chennai - 600 019.
- ... Respondents in WP 5718, 5719,
5720, 5721, 5722 & 5723/2017

WP No. 5718 of 2017:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from demolishing the superstructures and evicting the petitioner from the premises bearing Door No.47, Sannathi Street, Thiruvottiyur, Chennai 600 019 comprised in survey No237/1 except under due process of law namely initiating action under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act

Prayer in WP No. 5719 of 2017:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus

or any other appropriate writ, order, or direction in the nature of writ, forbearing the respondents from demolishing the superstructure and evicting the petitioner from the premises bearing Door No.47-D Sannathi Street Thiruvottiyur Chennai 600 019 comprised in Survey No.237/1 except under due process of law namely initiating action under section 78 of the Tamillnadu Hindu Religious and Charitable Endowments Act

Prayer in WP.No.5720/2017 Petition filed under article 226 of the constitution of India praying to issue writ of mandamus or any other appropriate writ, order, or direction in the nature of writ demolishing the superstructure and evicting the petitioner from the premises bearing Door No.47-H Sannathi Street Thiruvottiyur Chennai 600 019 comprised in Survey No.237/1 except under due process of law namely initiating action under section 78 of the Tamillnadu Hindu Religious and Charitable Endowments Act.

Prayer in WP.No.5721/2017 Petition filed under article 226 of the constitution of India praying to issue writ of mandamus or any other appropriate writ, order, or direction in the nature of writ forbearing the respondents from demolishing the superstructure and evicting the petitioner from the premises bearing Door No.47 Sannathi Street Thiruvottiyur Chennai 600 019 comprised in Survey No.237/1 except under due process of law namely initiating action under section 78 of the Tamillnadu Hindu Religious and Charitable Endowments Act

Prayer in WP.No.5722/2017 Petition filed under article 226 of the constitution of India praying to issue writ of mandamus or any other appropriate writ, order, or direction in the nature of writ forbearing the respondents from demolishing the superstructure and evicting the petitioner from the premises bearing Door No.47 Sannathi Street Thiruvottiyur Chennai 600 019 comprised in Survey No.237/1 except under due process of law namely initiating action under section 78 of the Tamillnadu Hindu Religious and Charitable Endowments Act,

Prayer in WP.No.5723/2017 Petition filed under article 226 of the constitution of India praying to issue writ of mandamus or any other appropriate writ, order, or direction in the nature of writ forbearing the respondents from demolishing the superstructure and evicting the petitioner from the premises bearing Door No.47 Sannathi Street Thiruvottiyur Chennai 600 019 comprised in Survey No.237/1 except under due process of law namely initiating action under section 78 of the Tamillnadu Hindu Religious and Charitable Endowments Act.

For Petitioner : Mr.S.Sadasharam
in all the Writ Petitions

For Respondents : Mr.M.Maharaja, Spl Govt. Pleader
for R1 to R3 in all the Writ Petitions

For Respondents : Mr. A.K. Sriram for R4
all the Writ Petitions

COMMON ORDER

The petitioners have come forward with these writ petitions praying for issuing a Writ of Mandamus forbearing the respondents from demolishing the superstructures and evicting the petitioners from the premises in their occupation in Sannathi Street, Thiruvottiyur, Chennai 600 019 comprised in survey No237/1 except under due process of law namely initiating action under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

2. The petitioners claims to be in possession and enjoyment of the respective leasehold property under the fourth respondent for more than 40 years where they are selling flowers. According to the petitioners, they have been remitting the lease rent to the fourth respondent till 2016. While so, without conducting any enquiry or without sending any prior notice, the petitioners are sought to be evicted from the property which are in their occupation. Therefore, the petitioners have come up with these writ petitions.

3. When the Writ Petitions are taken for hearing, the learned Special Government Pleader appearing for the respondents 1 to 3 brought to the notice of the Court that even as early as on 03.11.2008 and 10.09.2012, notices were issued by the fourth respondent calling upon the petitioners to explain as to why they should not be evicted from the premises in their occupation. It is also clearly stated that the petitioners have encroached upon the temple land. While so, it is incorrect on the part of the petitioners to state that they were not issued any notice or any enquiry was conducted against them. In fact, the petitioners in W.P.No.5718 & 5719 of 2017 have already filed a statutory appeal before the first respondent as against the eviction orders passed against them from the premises in their occupation and in those appeals the petitioners were given personal hearing and the Commissioner has posted the case for passing orders. In such circumstances, the learned Special Government Pleader would only pray for dismissal of these writ petitions as devoid of merits.

4. I heard the learned counsel for the petitioners as well

as the learned Special Government Pleader for the respondents. Even as per the typed set of papers produced on behalf of the petitioners, the petitioners have received several notices issued by the fourth respondent treating the petitioners as encroachers of the temple land. The petitioners only contend that even during the year 2017 namely on 01.07.2016, they have paid the lease rent and it was also received and acknowledged by the fourth respondent. The mere payment and receipt of the lease rent will not be a ground to restrain the respondents from proceeding further by invoking Section 78 of the Hindu Religious and Charitable Endowment Act which empowers the respondents to remove unauthorised occupants and/or encroachers after putting the encroachers on notice. Therefore, it cannot be said that the action resorted to by the respondents is in violation of principles of natural justice.

5. As far as petitioners in W.P.No.5718 & 5719 of 2017 are concerned, since they have already filed a statutory appeal before the first respondent as against the eviction orders passed against them and such appeals have been heard and orders to be passed by the first respondent, it is needless to mention that the petitioners in WP Nos. 5718 and 5719 of 2017 shall abide by the orders to be passed in their statutory appeal by the first respondent.

6. As regards the other petitioners, they have not so far preferred any appeal as against the orders of eviction passed against them by the fourth respondent. When there is an alternative remedy of appeal available, the present writ petitions filed by the petitioners are not maintainable. In any event, even as per Section 78 (2) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, if the Joint Commissioner of HR & CE prima facie finds that the temple lands have been encroached, he shall cause upon the encroacher a notice calling upon to show cause as to why action be not taken against such encroachers. Such a procedure has been followed in this case by the respondents and notices have already been issued to the petitioners even as admitted by the petitioners. In such circumstance, the relief sought for in these writ petitions cannot be granted. The writ petitions are therefore dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq/rsh

To

- 1) Commissioner
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
- 2) The Joint Commissioner
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- 4) The Executive Officer
Arulmighu Thiyagarajaswamy Thirukkoil
Thiruvottiyur,
Chennai - 600 019.

+6cc to Mr.S. Sadasharam, Advocate, S.R.No.14822

+1cc to the Government Pleader, S.R.No.15196

skv(CO)
md(24/03/2017)

सत्यमेव जयते

WP Nos. 5718 to 5723/2017

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