

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM

The Honourable MR. JUSTICE M.DURAI SWAMY

W.P.Nos.17983 & 17984 of 2017
& W.M.P.Nos.19545 & 19546 of 2017

1.Somu @ Somasundaram
2.M.Sundarapandi

... Petitioners in
W.P.No.17983/2017

1.E.Pari @ Mohammed Pari
2.Abdul Kuthoos
3.Sikkanthar Ali

... Petitioners in
W.P.No.17984/2017

Vs

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

... Respondents in
both W.Ps.

Writ Petition in W.P.No.17983 of 2017 filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus challenging the impugned order dated 12.06.2017 in R.P.No.99 of 2017 D2 issued by the first respondent herein, quashing the same and further forbearing the third respondent herein from taking possession of the property in Town Survey No.248/1B to an extent of 652.5 sq.ft. (actual measurement of the property is 888 $\frac{3}{4}$ sq.ft., in which, the extent of the shop is 765 sq.ft., and now the survey No.248/51B as per the patta) in pursuance of the order dated 03.03.2016 passed by the second respondent.

Writ Petition in W.P.No.17984 of 2017 filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus challenging the impugned order

dated 12.06.2017 in R.P.No.100 of 2017 D2 issued by the first respondent herein, quashing the same and further forbearing the third respondent herein from taking possession of the property in Town Survey No.248/2B to an extent of 652.5 sq.ft. (actual measurement of the property is $686 \frac{3}{4}$ sq.ft., in which, the extent of the shop is $648 \frac{1}{8}$ sq.ft., and now the survey No.248/1A as per the patta) in pursuance of the order dated 03.03.2016 passed by the second respondent.

For Petitioner : Mr.M.Vallinayagam, Senior Counsel for
in both W.Ps. Mr.V.Meenakshisundaram

For Respondents : Mr.M.Maharaja,
in both W.Ps. Special Government Pleader for
H.R. & C.E.,

COMMON ORDER

The petitioners in W.P.No.17983 of 2017 have filed above writ petition to issue a writ of certiorarified mandamus challenging the impugned order dated 12.06.2017 passed in R.P.No.99 of 2017 D2 issued by the first respondent, quashing the same and further forbearing the third respondent herein from taking possession of the property in Town Survey No.248/1B to an extent of 652.5 sq.ft. (actual measurement of the property is $888 \frac{3}{4}$ sq.ft., in which, the extent of the shop is 765 sq.ft., and now the survey No.248/51B as per the patta) in pursuance of the order dated 03.03.2016 passed by the second respondent.

2.The petitioners in W.P.No.17984 of 2017 have filed above writ petition to issue a writ of certiorarified mandamus challenging the impugned order dated 12.06.2017 in R.P.No.100 of 2017 D2 issued by the first respondent, quashing the same and further forbearing the third respondent herein from taking possession of the property in Town Survey No.248/2B to an extent of 652.5 sq.ft. (actual measurement of the property is $686 \frac{3}{4}$ sq.ft., in which, the extent of the shop is $648 \frac{1}{8}$ sq.ft., and now the survey No.248/1A as per the patta) in pursuance of the order dated 03.03.2016 passed by the second respondent.

3. According to the petitioners in both writ petitions, they have purchased the properties mentioned in the writ petitions from one Kasi Viswanathan by deeds of sale dated 25.02.2004 and 01.01.2002 respectively, and that they are in possession and enjoyment of the properties by running an Electrical Shop in the name of S.K. Electricals and a Departmental Store in the name of A.S.B Departmental Store respectively. The vendor of the petitioners had already filed the suit in O.S.No.19 of 2003 on the file of District Munsif Court, Nilakottai, and the same was decreed in favour of him on 11.11.2005. As against the judgment and decree of the

trial Court, the fourth respondent herein preferred an appeal in A.S.No.10 of 2006 on the file of Additional Sub Court, Dindigul, and the same was allowed by the lower Appellate Court on 17.09.2010. Aggrieved over the same, the petitioners' vendor preferred second appeal in S.A.(MD)No.484 of 2011 and the same is still pending on the file of Madurai Bench of Madras High Court.

4. On 23.01.2004, the fourth respondent issued notices and the same were challenged by the petitioners in W.P.(MD) Nos.1766 and 1767 of 2014. The Madurai Bench of this Court, by a common order dated 04.02.2014, disposed of the writ petitions protecting the possession of the petitioners. Subsequently, the second respondent had initiated proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the "H.R. & C.E., Act").

5. According to the petitioners, since the civil proceedings are pending before the Madurai Bench of this Court in the form of second appeal, the respondents are not entitled to initiate the said action. However, the second respondent has passed an order and directed the third respondent to vacate the petitioners from the properties and take possession by treating the petitioners as encroachers. Thereafter, the petitioners have filed writ petitions in W.P.(MD) Nos.5776 and 5777 of 2016 before the Madurai Bench of this Court and the same were also disposed of by a common order dated 30.09.2016 with liberty to file a revision before the Commissioner of H.R. & C.E. Accordingly, the petitioners preferred revision petitions in R.P.Nos.99 and 100 of 2017 / D2 before the first respondent under Section 21(1) of the H.R. & C.E., Act. The first respondent dismissed the revision petitions by the orders dated 12.06.2017. Challenging the said orders, the petitioners have filed the above writ petitions.

6. Mr.N.Vallinayagam, learned Senior Counsel appearing for the petitioners, submitted that pursuant to Section 79 (2) of the H.R. & C.E. Act, the petitioners have also filed suits against the respondents in O.S.Nos.361 and 363 of 2016 on the file of Subordinate Court, Dindigul. Further, the learned Senior Counsel submitted that since the petitioners have filed the civil suits before the subordinate Court, Dindigul, for declaration and injunction, the impugned orders dated 12.06.2017 may be kept in abeyance and the trial Court may be directed to dispose of the suits within the time frame. He also submitted that the respondents may be directed not to disturb the possession of the petitioners till the disposal of the civil suits.

7. Mr.M.Maharaja, learned Special Government Pleader appearing for the respondents, also agreed for the proposal made by the learned Senior Counsel appearing for the petitioners.

8. In view of the submissions made by the learned counsel on either side, I direct the Subordinate Judge, Dindigul, to dispose of the suits in O.S.NOs.361 and 363 of 2016 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The impugned orders dated 12.06.2017 passed by the second respondent are kept in abeyance till the disposal of the suits. Further, the respondents are directed not to disturb the possession of the petitioners till the disposal of the suits. The trial Court is also directed to dispose of the suits without being influenced by any of the observations made in the writ petitions.

With these observations, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

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

5. The Subordinate Judge, Dindigul

+2 Ccs to Mr.V. Meenakhi Sundaram, Advocate sr 60650.

+1 Cc to Govt. Pleader sr 60820.

W.P.Nos.17983 & 17984 of 2017

VGII(CO)
sp(06/09/2017)