



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

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WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVANW.P(MD)No.10803 of 2016
and

W.M.P(MD)No.8389 of 2016

C.Kanagaraj

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.
4. The Executive Officer,
Arulmighu Swayambu Sanibhagavan Thirukovil,
Kuchanoor,
Uthamapalayam,
Theni District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records pertaining to the impugned order issued by the second respondent in his proceedings in Na.Ka.No.337/2014/E-1-4, dated 24.03.2016 and quash the same.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.VR.Shanmuganathan

Special Government Pleader for R.1 to R.3

Mr.M.Karuppasamy Pandian for R.4

O R D E R

This writ petition has been filed seeking a writ of Certiorari to quash the impugned order passed by the second respondent in his proceedings in Na.Ka.No.337/2014/E-1-4, dated 24.03.2016, in and by which, the petitioner has been directed to



vacate the premises in question and to hand over the same to the respondents 3 and 4.

2. According to the learned Counsel for the petitioner, the property comprised in S.No.583/3 situated at Kuchanoor Village, Uthamapalayam Taluk, Theni District, originally belonged to one R.Rajam, who, in turn sold the same in favour of one C.Lakshmi Ammal, mother of the petitioner herein and they are in continuous possession of the same and cultivated crops therein. Meanwhile, the petitioner has been issued with the notice dated 30.01.2014, to which, he also submitted an explanation on 20.02.2014. However, the impugned order came to be passed on 24.03.2016. Hence, the present writ petition.

3. Per contra, the learned Special Government Pleader appearing for the respondents 1 to 3, reiterating the averments in the counter affidavit filed by the second respondent, contended that the property in question belongs to the temple and the petitioner has illegally encroached the temple property and hence, the second respondent invoked his powers under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'the Act'). Further, it is contended that a notice under Section 78(4) of the Act has been issued to the petitioner, for which, he submitted his explanation on 20.02.2014, however, being not satisfied with the same, the impugned order came to be passed. Therefore, he prays for the dismissal of this writ petition.

4. Whereas the learned Counsel for the fourth respondent, on instructions, submits that the property in question is located within the premises of the fourth respondent temple and the petitioner has encroached upon the said property and thereby, is causing hindrance to the devotees of the temple. He has also drawn the attention of this Court to the Adangal Register to point out that the property in question stands in the name of Arulmighu Saneeswara Bagavan Temple Administration.

5. Heard the learned Counsel appearing for the parties and perused the materials available on record.

6. Since the title to the property as well as possession of the same were highly disputed, this Court, by order dated 22.08.2017, appointed an Advocate Commissioner to inspect the property in question and ascertain whether the said property is located/situated within the compounded area belonging to the temple or elsewhere and file a detailed report along with a sketch as well as photographs, before this Court on or before 05.09.2017. Accordingly, the Advocate Commissioner filed his report dated 04.09.2017 before this Court and the relevant portion of the said report is extracted hereunder:

"6. From our inspection, we ascertain that temple premises are situate in S.Nos.583/3 and 584/2 at Kuchanoor Village, Uthamapalayam Taluk, Theni



District. Further, we came to know that the disputed site is small portion of land (an extent of 7 Cents - out of 1 Acre 16 Cents) in S.No.583/3. Further it is found that the disputed site situate on the way to temple and the same is surrounded by temple premises. Further, Northern side of disputed site covered by brick compound wall (as shown in photographs No.1 & 2). Further, we have noticed that incompleated brick compound wall adjacent to disputed site area and adjacent to eastern and southern side of coconut grove (as shown in photographs No.13, 14 and 15). Further, it is found that road side temple premises and other temple areas are covered by stone and grill fencing (as shown in photograph No.15). Herewith I have enclosed photographs and Sketch."

(extracted as such)

7. Whereas a copy of the Adangal Extract relating to S.Nos.583/3, 584/2 and 584/3 at Kuchanoor Village, Uthamapalayam Talui, Theni District, has been produced before this Court and on perusal of the same, this Court finds that the property in dispute stands in the name of the fourth respondent temple. However, this Court is not inclined to delve deep into the disputed question of fact in exercise of the powers under Article 226 of the Constitution of India.

8. Though the claim of the petitioner with regard to the property in question is based on a registered sale deed of the year 1984, this Court holds that the right of the petitioner over the property in question shall only be agitated before a competent civil Court and hence, the present writ petition is not maintainable.

9. Therefore, this writ petition is dismissed, however, granting liberty to the petitioner to approach the competent civil Court for redressal of his grievance over the property in dispute. No costs. Consequently, the connected writ miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.



2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

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

+ 1 CC TO Mr.J.LAWRANCE, ADVOCATE IN SR No. 88916

RSB

TE/KK/SAR-3 : 08/12/2017 : 4P/5C

ORDER MADE IN
W.P(MD)No.10803 of 2016 and
W.M.P(MD)No.8389 of 2016
22.11.2017