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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.12.2017**

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD)No.23410 of 2017

and

W.M.P (MD)No.19682 of 2017

P.Kathirvel

: Petitioner

.vs.

1. The Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowment Board,
Nungambakkam High Road,
Chennai - 600 005.
2. The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowment Board,
Trichy 620 006.
3. The Executive Officer,
Arlumighu Kalyana Pasupatheeswara
Swamy Thirukkoil,
Karur Town,
Karur - 639 001.
4. The District Revenue officer,
District Revenue office(DRO),
Karur, Karur District.
5. The Revenue Divisional Officer,
Revenue Divisional Office(RDO),
Karur, Karur District.
6. The Tahsildar,
Taluk Office,
Karur, Karur District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records pertaining to the impugned notice passed by the Third Respondent, dated 11.12.2017, on the file of the Third Respondent and to quash the same as illegal.



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For Petitioner

: Mr.T.Lajapathi Roy
for Mr.R.Karunanidhi

For Respondents
1,2 and 4 to 6

: Mr.M.Govindan
Special Govt.Pleader

For Respondent-3

: Mr.P.Athimoolapandian

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records pertaining to the impugned notice passed by the Third Respondent, dated 11.12.2017, on the file of the Third Respondent and to quash the same as illegal.

2.Heard both sides. No counter is filed on behalf of the respondents.

3.By consent, the main Writ Petition itself is taken up for final disposal.

4.The Learned Counsel for the Petitioner assails the impugned notice, dated 11.12.2017 issued by the Third Respondent/The Executive Officer, Arulmighu Kalyana Pasupatheeswara Swamy Thirukkcoil, Karur Town, Karur - 639 001, whereby and where-under, the Petitioner was directed to hand-over the possession of the land of the temple because of the reason that in W.P(MD)No.13323 of 2013, this Court, on 6.7.2017, had stated that the land belongs to the Third Respondent/Temple and accordingly dismissed the Writ Petition. Further, the Petitioner was informed that if he fails to hand-over the possession of the land in question, then proper action will be taken on 26.12.2017 etc.

5.At this juncture, this Court, on a perusal of the impugned notice, dated 11.12.2017 of the Third Respondent/The Executive Officer, Arulmighu Kalyana Pasupatheeswara Swamy Thirukkcoil, Karur Town, Karur - 639 001 indicates that the said notice was issued by the Third Respondent. In this connection, the Learned Counsel for the Petitioner submits that as per Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Assistant Commissioner having jurisdiction either suo-motu or upon a complaint made by the Trustee has reason to believe that any person has encroached upon(herein after in this section referred to as 'encroacher') any land, building, tank, well, spring or water course or endowment(herein-after referred to as 'the property'), he shall report the fact together with relevant



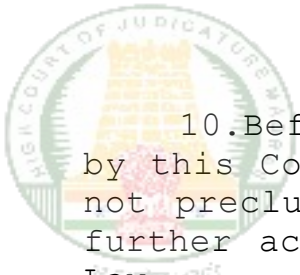
particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated. Further, as per explanation to Section 78(2) of the above 'Act', on perusal of the report received by him under sub-section(1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher, a notice specifying the particulars of the encroachment and calling on him to show-cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not be made. A copy of the notice shall also be sent to the Trustees of the religious institution or endowment concerned.

6. Therefore, a mere glance of the ingredients of Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 clearly points out that the Assistant Commissioner was specified about the concerned encroachment and submit the relevant particulars before the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated. Only on perusal of the report of the Assistant Commissioner of the Hindu Religious and Charitable Endowment Department, the Joint Commissioner, if he finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher, a notice specifying the particulars of encroachment and calling on him to show-cause before a certain date etc.

7. In short, the Third Respondent/The Executive Officer, Arulmighu Kalyana Pasupatheeswara Swamy Thirukkoil, Karur Town, Karur - 639 001, who issued the impugned notice, dated 11.12.2017 is not empowered as per Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 to issue the impugned notice to the Petitioner.

8. When there is no competency on the part of the Executive Officer of the Third Respondent/Temple to issue the impugned notice, dated 11.12.2017, then this Court, without any haziness or hesitation, comes to a consequent conclusion that the impugned notice, dated 11.12.2017 issued by the Executive Officer of the Third Respondent/Temple is an illegal one and the same is set aside in furtherance of substantial cause of justice. Consequently, the Writ Petition succeeds.

9. In fine, the Writ Petition is allowed, leaving the parties to bear their own costs. Resultantly, the impugned notice of the Third Respondent/The Executive Officer, Arulmighu Kalyana Pasupatheeswara Swamy Thirukkoil, Karur Town, Karur - 639 001 dated 11.12.2017 is set aside by this Court, of course, for the reasons stated above. No costs. Consequently, connected Miscellaneous Petition is closed.



10. Before parting with the case, it is abundantly made clear by this Court that the allowing of the present Writ Petition will not preclude the the Third Respondent/Temple Authorities to take further action in the manner known to law and in accordance with Law.

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/True Copy/

Sd/-

Assistant Registrar(CS-II)

Sub Assistant Registrar

To

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Taluk Office,
Karur, Karur District.

+1cc to Mr.R.Karunanidhi, Advocate Sr.No.94484

+1cc to Spl.Government Pleader Sr.No.94779

VSN

VB/SV/MMS/SAR4/05/01/2018/4P/9C