

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.5221 to 5224 of 2011 and
M.P.Nos.1,1,1,2 of 2011

1.R.Chandrika ... Petitioner in W.P.No.5221 of 2011
2.S.Thendral ... Petitioner in W.P.No.5222 of 2011
3.S.Manoharan ... Petitioner in W.P.No.5223 of 2011
4.P.Santhi ... Petitioner in W.P.No.5224 of 2011

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai 600 034.
2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Vellore-9.
3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Kancheepuram.
4.The Executive Officer,
Arulmigu Thirumetraleswarar Thiru Koil,
Hindu Religious and Charitable Endowments Department,
Pillayarpalayam, Kancheepuram-631 502.
Kancheepuram District. ... Respondents
in all W.Ps

PRAYER in all W.Ps: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned notice issued by the fourth respondent dated 20.12.2010 and the consequential order issued by the second respondent in No.511-1/2011/E1/dated 25.01.2011 under Section 78(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and quash the same.

For Petitioners : Mr.P.Manoj Kumar in all WPs

For Respondents : Mr.M.Maharaja,
Special Government Pleader for RR1 to 3 in all WPs
: Mr.P.V.Arul Phazam Nee for R4 in all WPs

C O M M O N O R D E R

Heard Mr.P.Manoj Kumar, learned counsel for the petitioners and Mr.M.Maharaja, learned Special Government Pleader appearing for the respondent Nos.1 to 3 and Mr.P.V.Arul Phazam Nee, learned counsel appearing for the fourth respondent.

2. The petitioners have approached this Court, seeking the following relief,

"To issue a Writ of Certiorari, to call for the records relating to the impugned notice issued by the fourth respondent dated 20.12.2010 and the consequential order issued by the second respondent in No.511-1/2011/E1/dated 25.01.2011 under Section 78(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and quash the same."

3. The case of the petitioners is as follows:-

The petitioners' father was in occupation and possession of the property situated in 19/21 A, Thirumetralithottam, Pillayarpalayam, Kancheepuram bearing S.No.1633/9, measuring an extent of 1701 Sq.ft. as a Lessee since 1982. Thereafter, the lease was transferred in favour of the petitioners. The subject land belongs to the fourth respondent herein.

4. While the petitioners were in occupation of the premises as aforementioned, they were issued with the notice dated 20.12.2010, by the fourth respondent under Section 78(2) of the HR & CE Act. The notice was purported to be issued on the basis of certain directions issued by this Court that encroachments in the property belonging to the temple, need to be removed. The petitioners were directed to submit their explanation as to why they cannot be removed from the place under their occupation.

5. The above show cause notice issued by the fourth respondent is put to challenge in the present writ petition on the ground that the petitioners were the lawful tenants and therefore, the fourth respondent's notice purported to be issued under Section 78(2) of the HR & CE Act, is incorrect, since that section can be invoked only in respect of removal of the encroachments of the temple property and not to remove the persons like the petitioners who are the lawful Lessees.

6. At this, learned counsel appearing for the respondents would submit that what is impugned in the writ petition is only a show cause notice. It is always open to the petitioners to urge whatever points which are in their favour before the authority and without exhausting the remedy of approaching the authority concerned, with proper explanation, the petitioners have directly approached this Court, invoking the extraordinary

jurisdiction of this Court under Article 226 of the Constitution of India.

7. This Court is in agreement with the submissions made by the learned counsel appearing for the respondents. What is impugned in the writ petition is merely a show cause notice calling for explanation from the petitioners. As rightly contended by the learned counsel appearing for the respondents that it is always open to the petitioners to raise all the contentions that are open to them including the action of the fourth respondent, invoking the wrong provision of law. Therefore, the writ petition as such is not maintainable, as the writ petitioners have not approached the authority in response to the show cause notice and directly approached this Court.

8. In the above circumstances, the writ petition is dismissed, but, giving liberty to the petitioners to approach the fourth respondent with appropriate representation raising all contentions as they may be advised. Such contentions may be considered by the fourth respondent and orders to be passed in pursuance of show cause notice dated 20.12.2010, on merits and in accordance with law.

9. It is also made clear that the petitioners shall file their objections, within a period of three weeks from the date of receipt of a copy of this order and the fourth respondent shall pass orders on such objection, after giving an opportunity of personal hearing to the petitioners, within a period of six weeks thereafter.

10. With the above direction, the writ petition is dismissed as not exhausting the remedy available under HR & CE Act. No costs. Consequently, connected miscellaneous petitions are disposed.

Sd/-

Asst.Registrar (Audit)

/true copy/

Sub Asst. Registrar

gsk

To

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

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Vellore-9.

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

+ 4 cc to Mr.P.V.Arul Phazam Nee Advocate,SR.11338 to 11341

+ 1 cc to M/s.J.Lakshmi Narayanan Advocate,SR.11524

+ 1 cc to The Govt.Pleader, SR.11406

WP.NO.5221 TO 5224 OF 2011

KAN(CO)
NR 22/03/2018



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