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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.12.2018
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.2730 of 2018
and CMP.Nos.22466 of 2018

Karia Manicka Perumal Koil Street,
House Owners / Residents Welfare Association,
Rep. By its President,
C.Sundaramoorthy. .. Appellant

Vs.

- 1.The Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
- 2.The Joint Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
- 3.The Assistant Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
- 4.The Fit Person/Executive Officer,
Arulmigu Thiruvaleeswarar Thirukkivil,
Padi, Chennai-600 050.
- 5.S.Ramasamy Bhattachari,
- 6.S.Gopalakrishna Bhattachari,
...Respondents 1to6/Respondents 1to6 in WMP.16012/2018
... Respondents2to 7 in WMP.7099/18



7.S.Narasimha Bhattachari,

...7th Respondents/Petitioner in WMP.16012/18

8.M.Senthil Kumar

...1st Respondents/in WMP.7099/18

...8th Respondents/Petitioner in WMP.7099/18

...7th Respondents/in WMP.16012/2018

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the common order dated 12.11.2018 made in WMP.Nos.7099 & 16012 of 2018 in W.P.No.22533 of 2017.

WMP.Nos.7099 & 16012 of 2018 in W.P.No.22533 of 2017.

Petitions praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to vacate the interim order made in WMP No.29959 of 2017 and 23661 of 2017 in WP No.22533 of 2017 order dated 14.11.2017 (in WMP.7099 of 2018).

ii.To Modify the earlier Order dated 14.11.2017 made in WMP No.29959 of 2017 and 23661 of 2017 by allowing the 4th Respondent to take the charge of the temple administration and function as an Executive Officer of Kariamanika Perumal Temple may be modified to an extent that the Petitioner may be alone permitted to Administer the Kariamanika Perumal Temple instead of the 4th Respondent.(in WMP.No.16012 of 2018 respectively.

This writ Petition No.22533/17 filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for an entire records pertaining to the impugned order dated 07.08.2017 made in A.P. No.10 of 2017 D2 passed by the 1st respondent and quash that portion of the observation made in para 9 and 10 of the impugned order and pass Suitable order.

For Appellant : Mr.R.Manickavel

For Respondents: Mr.M.Maharaja,
Special Government Pleader (H.R. & C.E.)
for R1 to R4
Mr.E.sampath Kumar for R7
Mr.S.Venkatesan for R8

JUDGEMENT

(Judgement of the Court was delivered by M.SATHYANARAYANAN, J.)

By consent, this Writ Appeal is taken up for final disposal. Mr.M.Maharaja, learned Special Government Pleader (H.R.& C.E.) accepts notice on behalf of the respondents 1 to 4.



2. The main grievance expressed by the appellant Association is that though the writ petition in W.P.No.22533 of 2017 came to be filed relating to the affairs and administration of the temple, the learned Judge has travelled beyond the scope of the prayer and directed eviction of the alleged encroachers, and without affording any opportunity whatsoever to the members of the appellant Association, attempts are being made to evict/dispossess them and admittedly, none of the alleged encroachments were arrayed as parties to the said writ petition.

3. The primordial submission made by the learned counsel appearing for the appellant Association is that forefathers of the members of the appellant Association have been issued with ryotwari pattas and other pattas and they have put up superstructures, which are also subjected to statutory levies and they are having right, title and possession in respect of the land and superstructures in question and continuously enjoying the same for nearly several decades and by taking advantage of the impugned order passed in the writ petition, attempts are being made to dispossess them without adhering to due process of law.

4. Per contra, Mr.M.Maharaja, learned Special Government Pleader (H.R.&C.E.) appearing for the respondents 1 to 4 would submit that the learned Judge, by taking note of the encroachments in temple lands, merely directed the respondents to follow due process of law and to take appropriate action within a stipulated time frame and it cannot be faulted with.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. It is relevant to extract Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [H.R. & CE. Act]:

"78.Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers.-

(1) Where 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 (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment (hereinafter referred to as "the property"), he shall report the fact together with relevant



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particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.

Explanation.— For the purpose of this section, the expression “encroacher” shall mean any person who unauthorisedly occupies any tank, well, spring or watercourse or any property and to include—

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and

(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where, on a 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.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where after considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for reasons to be recorded, require the encroacher to remove the encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed.”



7. Attention of this Court is also invited to the typed of documents filed along with this writ appeal and the primordial submission made by the learned counsel appearing for the appellant is that if opportunities are given to members of the appellant Association, they would definitely be able to substantiate their right, title and possession in respect of the lands/sites as well as the superstructures.

8. Section 78 of the H.R. & C.E. Act mandates certain procedures to be followed and the learned Judge, in paragraph No.11 of the impugned order, has directed eviction proceedings as per the provisions contemplated under the H.R. & C.E. Act and also directed the Joint Commissioner, H.R. & C.E. to proceed swiftly under the provisions of the H.R. & C.E. Act. It need not be expressly said that the official respondents are expected to follow due process of law, especially by adhering to Section 78 of the H.R. & C.E. Act.

9. It is also brought to the notice of this Court that all the 70 members of the appellant Association, in response to the notices issued, had given individual representations with relevant supporting documents. Therefore, the jurisdictional Joint Commissioner, H.R. & C.E., shall consider the representations submitted by the members of the appellant Association and pass appropriate orders strictly in accordance within a period of ten weeks from the date of receipt of a copy of this judgement and till such time, the possession of the members of the appellant Association in respect of the land and superstructures in question shall not be disturbed. It is also made clear that the 70 members of the appellant Association, till the completion of exercise to be carried out by the jurisdictional Joint Commissioner, H.R. & C.E. under Section 78 of the said Act, shall not create any third party rights in respect of the lands/sites/superstructures in question and shall not alter it's physical features also.

10. This Writ Appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar



To

- 1.The Commissioner,
Hindu Religious & Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
- 2.The Joint Commissioner,
Hindu Religious & Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
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- 4.The Fit Person/Executive Officer,
Arulmigu Thiruvaleeswarar Thirukkivil,
Padi, Chennai-600 050.

+lcc to Mr.R.Manickavel, Advocate, S.R.No.85194

W.A.No.2730 of 2018

RSI (CO)
GSP(10/01/2019)