



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P.[MD]Nos.4574 and 4618 to 4623 of 2018andW.M.P.[MD]Nos.4663, 4697 to 4701 and 4703 of 2018

M.Muniammal : Petitioner in WP(MD)No.4574/2018
R.Pushpavalli : Petitioner in WP(MD)No.4618/2018
R.Saroja : Petitioner in WP(MD)No.4619/2018
A.Zaheera Banu : Petitioner in WP(MD)No.4620/2018
P.Panneer Selvam : Petitioner in WP(MD)No.4621/2018
V.M.Kathinjanjath Nooriya : Petitioner in WP(MD)No.4622/2018
M.Subburam : Petitioner in WP(MD)No.4623/2018

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
119, Utthamar Gandhi Saalai,
Nungampakkam, Chennai-14. : R-1 in all Petitions
- 2.The Deputy Commissioner / Executive Officer,
Hindu Religious and Charitable Endowments Board,
Arulmigu Subramaniaswami Thirukovil,
Thiruparankundram,
Madurai District. ..R-2 in WP(MD)Nos.4574, 4621, 4623
- 2.The Assistant Commissioner/Executive Officer,
Hindu Religious and Charitable Endowments Board,
Arulmigu Subramaniaswami Thirukovil,
Thiruparankundram,
Madurai District. ..R-2 in WP(MD)Nos.4618 to 4620, 4622
- 3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.



4.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.

5.The District Collector,
Madurai District,
Madurai.

: R3 to R-5 in all the Writ Petitions

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent vide his proceedings in Na.Ka.No.246/2018/E5, Na.Ka.No.262/2018/E5, Na.Ka.No.264/2018/E5, Na.Ka.No.278/2018/E5, Na.Ka.No.260/2018/E5, Na.Ka.No.278/2018/E5, Na.Ka.No.275/2018/E5 dated 16.02.2018 quash the same.

For Petitioner : Mr.M.C.Swami
for Mr.M.Gururaj

For R1 and R3 to R5 : Mr.D.Muruganantham,
Additional Government Pleader.

For R2 :Mr.Chandrasekar
(In all Writ Petitions)

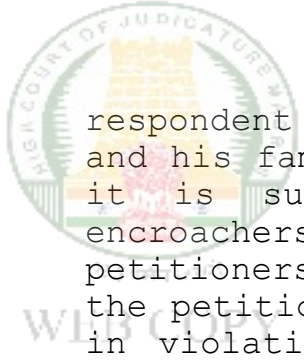
COMMON ORDER

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.M.C.Swami, learned counsel appearing for the petitioner, Mr.D.Muruganantham, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 and 3 to 5, and Mr.Chandrasekar, learned counsel, who accepts notice on behalf of the second respondent.

2.The petitioners have filed these writ petitions challenging the notice issued by the second respondent dated 16.02.2018. By the said notice, the second respondent has stated that the lands in question are owned by the second respondent temple and the petitioners have encroached into the said lands, contrary to the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, have constructed buildings on the said lands. Therefore, the petitioners have been called upon to remove the encroachments from the said lands and hand over the said lands to the temple, within a period of 15 days from the date of receipt of the notice. The second respondent further stated that upon failure on the part of the petitioners to comply with the demand made in the impugned notice, action will be initiated under Sections 78 and 79 of the HR & CE Act.

3.The petitioners claim to have purchased the lands in question from a person, who is serving as Archakar in the second

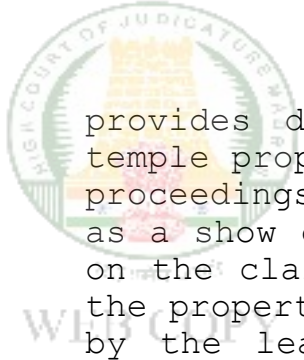


respondent temple and the properties are owned by the said Archakar and his family members and it is not a temple property. Therefore, it is submitted that the petitioners cannot be treated as encroachers. Further, the learned counsel appearing for the petitioners submitted that even without affording any opportunity to the petitioners and without issuing any show cause notice that too, in violation of Section 78(2) of the HR & CE Act, the impugned notice has been issued, which is not a show cause notice, but an eviction order. Further, it is submitted that the petitioners have been residing in the property for several years and all of a sudden, the impugned notice has been issued and the same is illegal especially, when the petitioners have purchased the property from the original owner as early as in the year 1961.

4. The learned counsel appearing for the second respondent would contend that after coming into force of the Tamil Nadu Minor Inams Act, 30 of 1963, no patta can be granted in respect of those lands and that lands are nanja lands and continue to vest with the temple and assuming that any sale deeds have been executed, the same are not valid in eye of the law. It is submitted that the second respondent temple is well within its jurisdiction to initiate action under the provisions of the Act and the present writ petitions are premature as the impugned proceedings is only a show cause notice.

5. After elaborately hearing the parties and carefully perusing the materials placed on record, we are inclined to agree with the submissions of the learned counsel appearing for the petitioners that the impugned proceedings is not a show cause notice, but an order of eviction by itself. This is so because the second respondent has directed the petitioners to remove the encroachment and hand over the property to the temple, within a period of 15 days. Though the impugned proceedings states that upon failure to do so, action would be initiated under Sections 78 and 79 of the HR & CE Act, in our opinion, will not cure the inherent defect, which has crept in the impugned proceedings. Admittedly, the impugned notice is not a notice under Section 78 of the HR & CE Act. Thus, if the second respondent has decided to proceed in accordance with the provisions of the Act to remove the encroachments in the temple property, proper procedures have to be followed. The prerequisite is to issue a show cause notice to the so-called encroachers. The second respondent is required to state as to how he comes to the conclusion, the lands in question are temple lands. This is more so, in the instant case, since some of the petitioners, who are stated to be in occupation of the property, claim to be residing there from 1961 onwards. The action initiated by the second respondent should satisfy the touch stone of reasonableness and should satisfy the requirements of the law under which the second respondent has exercised his power.

6. Admittedly, the second respondent has proceeded under the provisions of the HR & CE Act, which is the comprehensive Code and



provides detailed procedures as to how the encroachers from the temple property have to be evicted. Thus, we find that the impugned proceedings, being an order of eviction by itself, cannot be treated as a show cause notice. However, we are not expressing any opinion on the claim made by the petitioners with regard to the title over the property nor make any observation with regard to the stand taken by the learned counsel appearing for the second respondent with regard to the applicability of Act 30 of 1963, etc. These issues are left open to be raised by the parties as and when fresh show cause notice is issued in a proper manner namely, communicating as to how the temple claims right over the property in question so that the petitioners, who are termed as encroachers, can have an effective opportunity to put forth their defence by way of objections to the show cause notice.

7. For the above reasons, the impugned orders are set aside and the second respondent is directed to issue a comprehensive show cause notice clearly indicating as to how they claim right over the property or as to how the petitioners have no right over the property and such notice to be issued to the petitioners as well as the other persons, who are stated to be in occupation of the temple lands within a period of two weeks from the date of receipt of a copy of this order. The petitioners should be granted 30 days time to submit their reply, after which the second respondent is directed to follow the procedures under the provisions of the HR & CE Act, and conduct an enquiry and then proceed in accordance with law. Till then, the possession and enjoyment of the property in question by the petitioners shall not be disturbed and the *status quo* prevailing as on today, i.e. 05.03.2018 shall be maintained. We made it clear that the petitioners are not entitled to put up any further construction on the property nor they can create encumbrance over the property and *status quo* should be maintained, till the fresh proceedings are concluded.

8. Accordingly, these writ petitions are allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

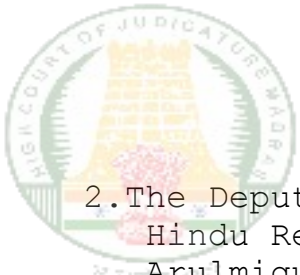
Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Board,
119, Utthamar Gandhi Saalai,
Nungampakkam, Chennai-14.



2.The Deputy Commissioner / Executive Officer,
Hindu Religious and Charitable Endowments Board,
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Thiruparankundram, Madurai District.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.

4.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.

5.The District Collector,
Madurai District, Madurai.

+One cc to The Special Government Pleader, SR.No.53339

Myr/ta

RL/7C/4P/JC/SAR1/27/3/2018

ORDER MADE IN

W.P.[MD]Nos.4574 and 4618 to 4623 of 2018

05.03.2018