



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P. (MD) No.17648 of 2018

and

W.M.P. (MD) No.15519 of 2018

K.Subramanian
S/o.Kanthaiah Thevar
Managing Trustee
Sri Peruvembudayar Satha-
Thirukovil Annathana Trust
140A, Panchayat Union Road
Vallioor-627 117
Radhapuram Taluk
Tirunelveli District

... Petitioner

vs.

- 1.The Joint Commissioner
Hindu Religious and Charitable
Endowment Department
Palayankottai, Tirunelveli
- 2.The Assistant Commissioner
Hindu Religious and Charitable
Endowment Department
A.R.Line Road, Palayankottai
Tirunelveli
- 3.The Executive Officer
Arulmigu Sri Perumvempudayar-
Sastha Thirukkovil
Rajakkamangalam
Valliyoor Post-627 117
Tirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to proceedings of the first respondent in I.A.No.1/2018 in M.P.No.17/2018 and quash the order dated 20.07.2017 passed therein as unconstitutional and consequently directing the first respondent to decide the case in M.P.No.17 of 2018 on merits by considering counter and documents filed by the petitioner.

For Petitioner : Mr.P.Subbiah

For Respondents : Mr.C.M.Marichelliah Prabhu

<https://hcservices.ecourts.gov.in/hcservices/>

Additional Government Pleader for R1 & R2
Mr.M.Muthu Geethayan for R3

**ORDER**

The first respondent has initiated action against the petitioner, under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter, referred to as "the Act"), on the ground that the petitioner had encroached a portion of the property belonging to the third respondent - Temple. In the proceedings, on the given day, the petitioner was not represented and therefore, he was set ex parte. Thereafter, on representation of the petitioner's side, the first respondent passed a conditional order on 20.07.2018 that the petitioner should deposit a sum of Rs.5,05,120/- on or before 31.07.2018. The said conditional order passed by the first respondent is under challenge in this writ petition.

2. Mr.C.M.Marichelliah Prabhu, learned Additional Government Pleader, takes notice for the respondents 1 and 2 and Mr.M.Muthu Geethayan, learned counsel, takes notice for the third respondent.

3. The learned counsels appearing for the respondents would submit that Sub-Section (5) of Section 78 of the Act provides for passing of conditional order in respect of the encroachment. Even otherwise, the learned counsels would submit that under Section 21 of the Act, as against the orders passed by the subordinate officials a revision would lie before the Commissioner of H.R.&C.E.Department. The learned counsels also drawn the attention of this Court to the order, dated 21.03.2018, passed in W.P.(MD) No.6069 of 2018, by the Honourable Division Bench of this Court. The Honourable Division Bench has held that writ petition, even as against the ex parte order, is not maintainable and the proper remedy would only to approach the Commissioner, Hindu Religious and Charitable Endowment Department, under Section 21 of the Act. The operative portion of the said order is extracted hereunder:

"2.This writ petition has been filed challenging the order passed by the first respondent. Admittedly, the petitioner has an alternate remedy of filing a revision before the Commissioner, H.R. & C.E. Department under Section 21 of the Hindu Religious and Charitable Endowment Act. Without exhausting the said remedy, the petitioner is not justified in approaching this Court by way of this writ petition.

3.The learned counsel for the petitioner vehemently contended that the order passed by the first respondent is an exparte order and the petitioner should be granted an opportunity to go before the first respondent. However, from the findings recorded by the first respondent in the impugned order, we find that notice given to the petitioner is stated to have been refused. Therefore, substituted service has been resorted to and paper publication was effected and then only, order has been passed.



4.The contention raised by the petitioner is no ground to bypass the revisional remedy. Therefore, the writ petition is held to be not maintainable and accordingly, this writ petition stands dismissed, leaving it open to the petitioner to file a revision before the revisional authority in accordance with the provisions of the Act. No costs. Consequently, connected miscellaneous petitions are also dismissed."

4. In view of the specific provision as provided under Section 21 of the Act and also the legal principle as held in the aforesaid decision of the Honourable Division Bench, this Court finds that the writ petition is not maintainable and therefore, the same is dismissed.

5. It is always open to the petitioner to workout his remedies in the manner known to law, if he is so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Palayankottai, Tirunelveli.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
A.R.Line Road, Palayankottai,
Tirunelveli.

+1CC to Mr.M.Muthu Geethayan, Advocate, SR.No. 77760

+1CC to Mr.P.Subbiah, Advocate, SR.No.77762

+1CC to the Special Government Pleader SR.No. 77792

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