

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :04.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No. 1295 of 2019
&
C.M.P.No.8814 of 2019

1. A.Dakshinamurthy

2. D.Anburaj

3. M.Armuganayanar

4. J.Joseph Jayaprakash

5. Loganayagi

6. P.Rajasekar

7. R.Usharani

8. S.Padmavathy

9. B.Suresh Chand

...Appellants

-vs-

1. The Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

2. The Joint Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

3. The Assistant Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

4. The Fit Person/Executive Officer,
Arulmigu Thiruvalléeswarar Thirukkóvil
Padi, Chennai - 600 050.
5. S.Ramasamy Bhattachari
6. S.Gopalakrishna Bhattachari ... Respondents 1 to 6/
Respondents 1 to 6
7. S.Narasimha Bhattachari ... 7th Respondent/
7th Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court in W.M.P.No.16012 of 2018 in W.P.No.22533 of 2017 dated 12.11.2018.

Prayer in W.P.No.22533 of 2017:-

Petition praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to modify the earlier order dated 14.11.2017 passed in WMP No.29959 of 2017 ad 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.16012/2018) respectively.

For appellants : Mr.K.R.Ramesh Kumar

For Respondent : Mr.M.Maharaja
1 to 4 Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

The appeal by the writ petitioner is directed against the order in W.M.P.No.16012 of 2018 in W.P.No.22533 of 2017 dated 12.11.2018.

2. We have heard Mr.K.R.Ramesh Kumar, learned counsel for the appellants and Mr.M.Maharaja, learned Special Government Pleader (HR & CE) for the respondents.

3. 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.

4. 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.

5. Per Contra, Mr.M.Maharaja, learned Special Government Pleader (HR & CE) 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.

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

7. 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 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."

8. Attention of this Court is also invited to the typed set of documents filed along with this writ appeal and the primordial submission made by the learned counsel appearing for the appellant is that if opportunity is 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.

9. 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.

10. 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.

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

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrm

To

1. The Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

WEB COPY

2. The Joint Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

3. The Assistant Commissioner,
Hindu Religious & Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

4. The Fit Person/Executive Officer,
Arulmigu Thiruvalléeswarar Thirukkovi
Padi, Chennai - 600 050.

Writ Appeal No. 1295 of 2019
&
C.M.P.No.8814 of 2019

SSP(CO)
CSL/13.05.2019



WEB COPY