

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.17123 of 2018
and
W.M.P.No.20385 of 2018

A.Radhakrishnan .. Petitioner

-vs-

- 1.The Secretary to Government,
Tourism Culture & Endowments
Dept., Secretariat, Chennai 600 009.
- 2.The Commissioner,
Hindu Religious & Charitable Endowments
Dept., 119, Nungambakkam High Road,
Chennai 600 034.
- 3.The District Collector,
Salem 636 001.
- 4.The Commissioner of Police,
Salem 636 006.
- 5.The Joint Commissioner,
Hindu Religious & Charitable Endowments
Dept., Salem 636 001.
- 6.The Executive Engineer,
Hindu Religious & Charitable Endowments
Dept., Salem 636 001.
- 7.Fit Person,
Arulmigu Thimmarayaperumal Temple,
Jagirkammanaickenpatty,
Salem 636 005.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct respondents 3 to 7 to identify the encroachers who are encroached in the 7th respondent temple land situated in S.F.No.55/1 and 56/2, Jagirkammanaickenpatty Village, Salem West Taluk, Salem District and remove the encroachers in accordance with law in a time bound manner and consequentially issue direction directing the 1st respondent to take appropriate action against the erring officials of the 2nd respondent department, who failed to remove the encroachers right from the year 2013.

For Petitioner : Mr.A.Radhakrishnan
Party-in-person

For Respondents : Mr.S.Kamalesh Kannan
Govt. Advocate for RR 1, 3 and 4
: Mr.M.Maharaja
Spl. Govt. Pleader for RR 2, 5 & 6
: Mr.Sriram
for M/s.A.S.Kailasam & Asso/R-7

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice and M.Duraiswamy, J.)

The petitioner has filed the above writ petition to issue writ of mandamus directing respondents 3 to 7 to identify the encroachers who have encroached in the 7th respondent temple in the land in S.Nos.55/1 and 56/2, Jagirkammanaickenpatty Village, Salem West Taluk, Salem District and remove the encroachers in accordance with law in a time bound manner and consequentially, issue direction directing the first respondent to take appropriate action against erring officials of the second respondent department who failed to remove the encroachment right from the year 2013.

2.The petitioner though has filed the writ petition for the removal of encroachments in the land belonging to the seventh respondent temple in S.F.Nos.55/1 and 56/2, in paragraph 7 of the affidavit filed in support of the petition, the petitioner himself has stated that the fifth respondent had issued show cause notices to the encroachers by following the provisions of Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, regarding the encroachments and on receipt of the show cause notices by the encroachers, they have submitted their

representations and made a request for considering their long period of possession in the temple property and following G.O.No.340, dated 06.08.2007, they sought to treat them as tenants and to fix appropriate rent. On receipt of the said representations, the fifth respondent through his proceedings dated 17.08.2016, requested to regularise the encroachments by fixing appropriate rent and accordingly, on 29.11.2017 the Fixation Committee had fixed the rent for 148 encroachers.

3. When the petitioner himself has admitted that the possession of 148 encroachers have been regularised and they were recognised as tenants and the Fixation Committee had also fixed the rent for the premises which are in occupation of the encroachers, the prayer sought for in the writ petition by the petitioner cannot be granted.

4. Mr. M. Maharaja, learned Special Government Pleader appearing for respondents 2 and 5, submitted that in respect of other encroachers, the department would take appropriate action in accordance with law.

5. The learned counsel appearing for the seventh respondent temple also relied upon the averments made in paragraph 7 of the affidavit filed in support of the writ petition and submitted that since the petitioner himself has admitted that the possession of the encroachers were regularised, the writ petition is liable to be dismissed.

In view of the statement made by the petitioner and the learned counsel appearing for the respondents and in view of the averments made in paragraph 7 of the affidavit filed in support of the writ petition, we are not inclined to entertain the writ petition and accordingly, the same is dismissed. No costs. Consequently, W.M.P.No.20385 of 2018 is also dismissed.

sra

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Tourism Culture & Endowments
Dept., Secretariat, Chennai 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowments
Dept., 119, Nungambakkam High Road,
Chennai 600 034.

3.The District Collector,
Salem 636 001.

4.The Commissioner of Police,
Salem 636 006.

5.The Joint Commissioner,
Hindu Religious & Charitable Endowments
Dept., Salem 636 001.

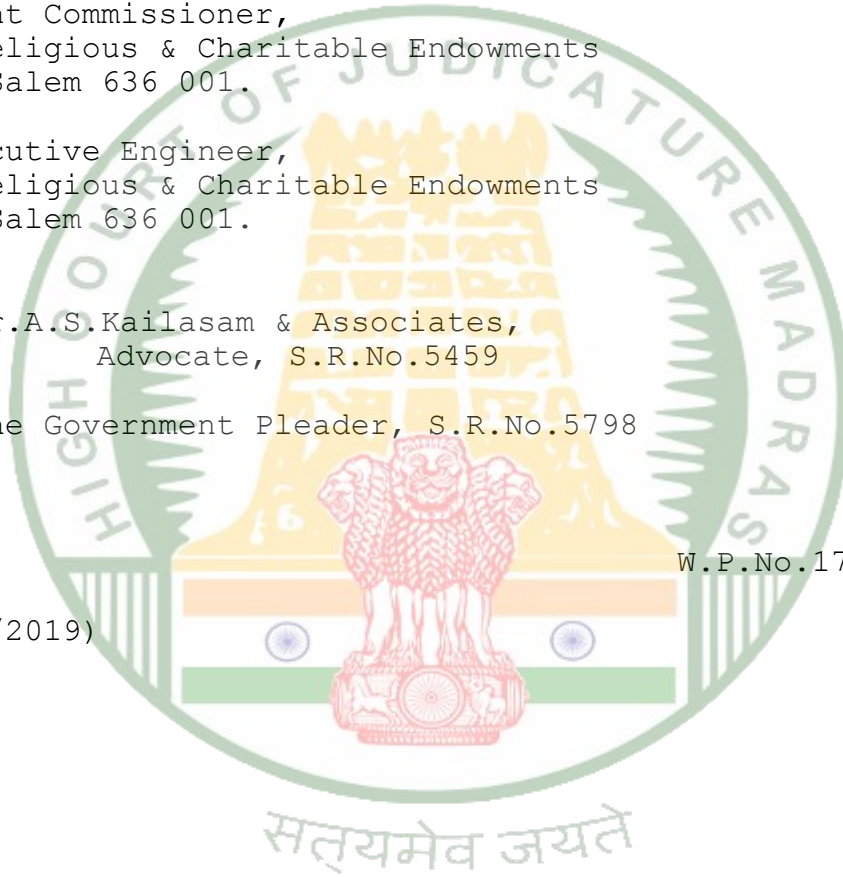
6.The Executive Engineer,
Hindu Religious & Charitable Endowments
Dept., Salem 636 001.

+1cc to Mr.A.S.Kailasam & Associates,
Advocate, S.R.No.5459

+1cc to the Government Pleader, S.R.No.5798

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W.P.No.17123 of 2018



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