



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.09.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .No.975 of 2019

and

C.M.P. (MD) .No.8753 of 2019

R.Jegathisan

... Appellant/Petitioner

Vs.

The Assistant Commissioner/
Executive Officer,
Arulmigu Thayumanaswamy Temple,
Rock Fort,
Trichy.

..Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.4337 of 2018 dated 04.06.2018.

Prayer in WP(MD). 4337/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari call by the records of the respondent in Na.Ka.No.1627/2018/ A 5 dated 19.02.2018 and quash the same as illegal and arbitrary.

For Appellants : Mr.P.Ganapathi Subramanian

For Respondent : Mr.M.Saravanan

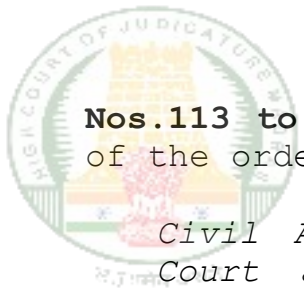
JUDGMENT

[Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.P.Ganapathisubramanian, learned counsel appearing for the appellant and Mr.M.Saravanan, learned counsel appearing for the respondent.

2.This appeal filed by the appellant/writ petitioner is directed against the order passed in W.P.(MD).No.4337 of 2018 dated 04.06.2018.

3.The learned counsel appearing on either side submitted that an identical issue was considered by this Court in **W.P(MD) .**



Nos.113 to 116 of 2019, dated 30.04.2019 and the operative portion of the order reads as follows:

"4. The matter was taken up to the Supreme Court in Civil Appeal Nos.3461 to 3505 of 2019. The Hon'ble Apex Court allowed the Civil Appeals by observing that the tenants could be evicted only under the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The relevant paragraphs which run thus:

"13. Section 77 of the Act, 1959 deals with transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases. Section 78 deals with encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers. Section 79 deals with mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner. Section 79-A deals with encroachment by groups of persons on land belonging to charitable religious institutions and their eviction. Section 79-B deals with penalty for offences in connection with encroachment. Section 79-C deals with recovery of moneys due to religious institutions, as arrears of land revenue. Section 80 deals with eviction of lessees, licensees or mortgagees with possession in certain cases. Section 81 provides for an appeal against Joint Commissioner or the orders of Deputy Commissioner passed under Section 80. Section 82 provides for payment of Compensation. Section 83 deals with constitution of Tribunal. Section 84 deals with suits against the award. Section 85 provides for protection of action taken under Chapter VII of the Act, 1959.

14. As mentioned above, the controversy, which is the subject matter of these appeals, is governed by the provisions of the Act, 1959. It is not in dispute that the respondents did not resort to the remedies provided to them under the Act against any of the appellants. In other words, it is not in dispute that the action taken by the respondents, which was impugned by the appellants in the writ petitions before the High Court, was not taken under the Act, 1959.

15. It is for this reason, we are inclined to allow these appeals, set aside the impugned order and grant liberty to the respondents to take recourse to the remedies provided to them against the appellants individually in relation to the controversy raised by them in these proceedings.



16. Needless to say, we have not gone into the merits of the claim raised by the appellants whether individually or / and severally. The respondents will, therefore, be at liberty to proceed in the matter in question against the appellants individually strictly in accordance with law uninfluenced by any observations made by this Court. "

4. Following the decision of the Hon'ble Apex Court, this Writ Appeal is allowed on the same terms and conditions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/TRUE COPY/

Sub Assistant Registrar

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To

The Assistant Commissioner/
Executive Officer,
Arulmigu Thayumanaswamy Temple,
Rock Fort,
Trichy.

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate (SR-89762[F] dated 26/09/2019)

+1 CC to M/s.M.SARAVANAN, Advocate (SR-90159[F] dated 27/09/2019)

ORDER MADE IN
W.A. (MD) .No.975 of 2019
and
C.M.P. (MD) .No.8753 of 2019
26.09.2019

JM/16.10.2019/3P/4C