



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WEB COPY

W.P. (MD)No.19316 of 2019

and

W.M.P. (MD)No.15734 of 2019

S.Muniyandi

: Petitioner

Vs.

1. The Joint Commissioner,
O/o. the Joint Commissioner Office,
Hindu Religious and Charitable Endowment,
Thiruvanaikkovil,
Trichy District.

2. The Assistant Commissioner,
O/o. the Assistant Commissioner Office,
Hindu Religious and Charitable Endowment,
Pudukkottai,
Pudukkottai District.

3. The Executive Officer,
O/o. the Executive Office,
Hindu Religious and Charitable Endowment,
Pudukkottai,
Pudukkottai District.

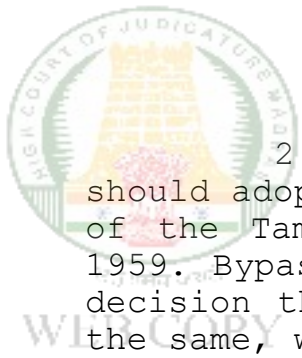
: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the third respondent in his proceedings in நக.எண்.330/2012/ஜே, dated 22.08.2019 and quash the same as illegal.

For Petitioner	: Mr.H.Mohammed Imran, For M/s.Ajmal Associates
For Respondents 1&2	: Mr.VR.Shanmuganathan, Special Government Pleader
For Respondent No.3	: Mr.G.Mathavan

ORDER

The petitioner challenges the order passed by the third respondent in his proceedings in நக.எண்.330/2012/ஜே, dated 22.08.2019, wherein the petitioner was directed to remove the encroachment, failing which, the administration by itself will remove the encroachment.



2. The grievance of the petitioner is that the respondents should adopt proper procedure, as laid down under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Bypassing that, the third respondent, by himself, has taken a decision that it is an encroachment and further, decided to remove the same, without giving any opportunity to the petitioner.

3. The learned counsel appearing for the petitioner would rely on the judgment of this Court in **W.P.(MD)Nos.4993 of 2018, etc., batch, dated 08.03.2018 [S.Petchiappan vs. The Commissioner, Hindu Religious and Charitable Endowments Board, 119, Utthamar Gandhi Saalai, Nungambakkam, Chennai]** , wherein, it is observed as under:

"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."

4. The learned Special Government Pleader appearing for the first and second respondents would fairly submit that the first and second respondents are ready to follow the proper procedure and the same is also accepted by the learned Standing Counsel appearing for the third respondent.



5. Considering the submissions, the impugned order dated 22.08.2019 passed by the third respondent is set aside, with liberty to the respondents to follow the proper procedure, in compliance with principles of natural justice.

6. The Writ Petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Joint Commissioner,
O/o. the Joint Commissioner Office,
Hindu Religious and Charitable Endowment,
Thiruvanaikkovil,
Trichy District.
2. The Assistant Commissioner,
O/o. the Assistant Commissioner Office,
Hindu Religious and Charitable Endowment,
Pudukkottai,
Pudukkottai District.
3. The Executive Officer,
Hindu Religious and Charitable Endowment,
Pudukkottai,
Pudukkottai District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-85390[F] dated 05/09/2019)

+1 CC to Mr.G.MATHAVAN, Advocate (SR-85547[F] dated 06/09/2019)

Order made in
W.P. (MD)No.19316 of 2019
Dated: 05.09.2019

SML

MK (23.09.2019) 3P 6C