



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.21375, 21378 to 21380, 21382, 21385 and 21387 of 2019

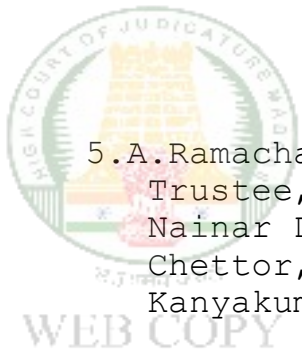
and

WMP(MD)Nos.18028, 18029, 18033 to 18039, 18042, 18047, 18048, 18052
and 18053 of 2019

V.Ramasubramanian	.. Petitioner in WP(MD).21375 of 2019
J.Gnanaprakasam	.. Petitioner in WP(MD).21378 of 2019
S.Srinivasan	.. Petitioner in WP(MD).21379 of 2019
R.Desiappan	.. Petitioner in WP(MD).21380 of 2019
G.Naveenraj	.. Petitioner in WP(MD).21382 of 2019
G.Ramasamy	.. Petitioner in WP(MD).21385 of 2019
P.Selvam	.. Petitioner in WP(MD).21387 of 2019

Vs.

- 1.The District Collector,
Kanyakumari District,
Nagercoil - 629 001,
Kanyakumari District.
- 2.The Commissioner,
Hindu Religious & Charitable Endowments
Department (HR & CE)
119, Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.
- 3.The Joint Commissioner/Executive Officer,
Kanyakumari Devosom Board,
Kanniyakumari District Temples,
Suchindram,
Kanyakumari District.
- 4.The Executive Officer,
Arulmigu Isakkiyamman Thirukovil
Muppandal (East),
Aralvaimozhi post - 629 301,
Kanyakumari District.



5.A.Ramachandaran
Trustee,
Nainar Desika Vinayagar Devasthanam Trust,
Chettor, Kottar, Nagercoil,
Kanyakumari District - 629 002.

6.V.Nagarajan
Trustee,
Nainar Desika Vinayagar Devasthanam Trust,
Chettor, Kottar, Nagercoil,
Kanyakumari District - 629 002.

7.M.C.Manikavasagam
Trustee,
Nainar Desika Vinayagar Devasthanam Trust,
Chettor, Kottar, Nagercoil,
Kanyakumari District - 629 002.

8.C.S.Kumaraswamy
Trustee,
Nainar Desika Vinayagar Devasthanam Trust,
Chettor, Kottar, Nagercoil,
Kanyakumari District - 629 002.

9.M.Kolappan
Trustee,
Nainar Desika Vinayagar Devasthanam Trust,
Chettor, Kottar, Nagercoil,
Kanyakumari District - 629 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the impugned Notice issued by the 4th respondent Executive Officer vide proceedings in Ref.No.Nil dated 26.09.2019 and quash the same.

For Petitioner : Mr.T.Cibi Chakrobarthy
for M/s.Isaac Chambers

For R1 to R4 : Mr.V.R.Shanmuganathan
Special Government Pleader

COMMON ORDER

By consent, the writ petitions are taken up for final disposal at the stage of admission itself.

2.The notice issued by the Executive Officer of Arulmigu Esakkiamman Thirukovil, Muppandal, to the petitioners is under challenge in these writ petitions.



3. According to the petitioners, the Hon'ble Division Bench of this Court in a Public Interest Litigation in WP(MD)No.8885 of 2012, dated 03.10.2016, issued a direction to the District Collector, Kanyakumari to hold an enquiry after notice to all concerned and pass orders in accordance with law, in case, it is found that it is such an encroachment on tank. On the other hand, the Executive Officer, without conducting any enquiry as to whether there is encroachment on land, lest, on a water body, on his own, presumed that it is a water body and the petitioners have encroached it and issued notice. Therefore, the impugned notice is violative of the orders passed by the Hon'ble Division Bench of this Court and in violation of the principles of natural justice. Therefore, the decision taken by the Executive Officer is liable to be set aside.

4. The learned Special Government Pleader appearing on behalf of the respondents would submit that the Executive Officer can only submit a report to the Assistant Commissioner and in turn, the Assistant Commissioner shall make an application to the Joint Commissioner for initiating eviction proceedings.

5. Considering the above submission, this Court can infer that the Executive Officer is not empowered to issue notice directly to the petitioners and he has to follow the procedures contemplated under Section 78 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Under such circumstances, the impugned notice issued by the fourth respondent dated 26.09.2019 is without jurisdiction and accordingly it is set aside and the Executive Officer / fourth respondent herein is directed to submit a report to the Assistant Commissioner, who, in turn, file an application to the Joint Commissioner for initiating eviction proceedings. The petitioners are entitled to raise all their objections before the Joint Commissioner, when procedure under Section 78 of the HR & CE Act, is initiated.

6. The writ petitions are disposed of with the above directions. No costs. Consequently, WMP(MD)Nos.18028, 18029, 18033 to 18039, 18042, 18047, 18048, 18052 and 18053 of 2019 are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

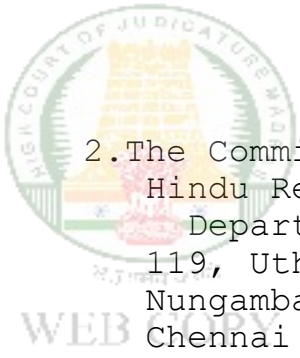
Sub Assistant Registrar(CS)

mj

To

1. The District Collector,
Kanyakumari District,
Nagercoil - 629 001,
Kanyakumari District.

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



2. The Commissioner,
Hindu Religious & Charitable Endowments
Department (HR & CE)
119, Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3. The Joint Commissioner/Executive Officer,
Kanyakumari Devosom Board,
Kanniyakumari District Temples,
Suchindram,
Kanyakumari District.

4. The Executive Officer,
Arulmigu Isakkiyamman Thirukovil
Muppandal (East),
Aralvaimozhi post - 629 301,
Kanyakumari District.

+7CC TO MR. ISAAC CHAMBER, Advocate Sr. No. 91501 TO 91507

W.P (MD) Nos. 21375, 21378 to 21380,
21382, 21385 and 21387 of 2019
04.10.2019

SGS (CO)
TR(10.10.2019) 4P 12C