



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) Nos.21361, 21333, 21338, 21365 and 21369 of 2019
and

WMP (MD) Nos.18007, 17980, 17987, 18011 and 18016 of 2019

C.Selvaraj	... Petitioner	in WP(MD)No.21361/2019
K.A.Siluvaidhas Fernando	... Petitioner	in WP(MD)No.21333/2019
J.Sahaya Rosely	... Petitioner	in WP(MD)No.21338/2019
A.P.Manonmony	... Petitioner	in WP(MD)No.21365/2019
S.Gopalakrishnan	... Petitioner	in WP(MD)No.21369/2019

Vs.

1.The Executive Officer,
Arulmigu Esakkiamman Thirukovil,
Muppandhal (East),
Aralvoimozhi Post - 629 301,
Kanyakumari District.

2.Kottar Chettu Nainar Desiga Vinayagar
Devasthanam Trust,
Nagercoil,
Kanyakumari District,
through its present Secretary,
V.Nagarajan

... Respondents in all

W.Ps.

COMMON PRAYER: Writ Petitions are 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 proceedings dated 26.09.2019 and 25.09.2019 respectively passed by the 1st respondent and quash the same as illegal.

For Petitioners	: Mr.M.P.Senthil
For Respondents	: Mr.V.R.Shanmuganathan Special Government Pleader in all the writ petitions.



COMMON ORDER

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

2.The notices issued by the Executive Officer of Arulmigu Esakkiamman Thirukovil, Muppandhal, to the petitioners are 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 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 notices. Therefore, the impugned notices are 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 notices 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 notices issued by the first respondent dated 26.09.2019 and 25.09.2019 are without jurisdiction and accordingly, the same are set aside and the Executive Officer/first 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.18007, 17980, 17987, 18011 and 18016 of 2019 are closed.

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Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Assistant Commissioner,
HR and CE, Nagercoil,
Kanniyakumari district.

2. The Joint Commissioner,
HR and CE,
Nagercoil, Kanyakumari district.

+5CC TO MR.M.P.SENTHIL, Advocate Sr. No. 91430 to 91434

W.P(MD)Nos.21361, 21333, 21338,
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TR(14.10.2019) 3P 8C