

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

C O R A M
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.31886 to 31888 of 2012
&
MP.Nos.1, 1, 1, 2, 2 & 2 of 2012

N.Vijayakumar ...Petitioner in W.P.No.31886 of 2012
N.Thirumoorthy ...Petitioner in W.P.No.31887 of 2012
Radha Natarajan (Deceased)
P2.Vijayakumar
P3.Thirumoorthy ...Petitioners in W.P.No.31888 of 2012

(Petitioners 2 & 3
substituted as per the
order of this Court dated
04.02.2020 in WMP.No.2666
of 2020)

Vs.

- 1.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.
- 2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.
- 3.The Executive Officer,
(Assistant Commissioner of HR & CE),
Arulmighu Thiagaraja Swamy Thirukkoil,
Thiruvotriyur,
Chennai - 600 019.

...Respondents in all W.Ps

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, for issuance of writs of certiorarified mandamus calling for the records of the 3rd respondent in his letter cum order in Na.Ka.No.34/2012 dated 18.07.2012 quash the same and to direct the respondents 2 & 3 to reconsider the entire matter afresh after granting a personal hearing to the petitioner who can be permitted to produce relevant records.

For Petitioners in all W.Ps.

: Mrs.G.Devi

For Respondents 1 & 2 : Mr.E.Neelakandan,
in all W.Ps. Government Advocate

For Respondent 3 : Mr.A.K.Sridhar,
in all W.Ps. for M/s.A.S.Kailasam Associates

COMMON ORDER

All these writ petitions have been filed challenging the impugned letter cum order in Na.Ka.No.34/2012 dated 18.07.2012 of the third respondent wherein they have called upon the respective petitioners to vacate the premises which was let out to them by the third respondent.

2. Heard Mrs.Devi, learned counsel for the petitioners in all W.Ps., Mr.E.Neelakandan, learned Government Advocate for the respondents 1 & 2 in all W.Ps. and Mr.A.K.Sridhar, learned counsel for the third respondent.

3. The learned counsel for the third respondent drew the attention of this Court to paragraph 5 of the counter affidavit filed by the third respondent in all the W.Ps. wherein they have categorically pleaded that they can evict the respective petitioners only in accordance with Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and it is made clear that the temple can only set the ball in motion as envisaged under Section 78(1) of the Act. Paragraph 5 of the counter affidavit filed by the third respondent in all the W.Ps. is extracted hereunder:

"5. I state that in any case, the question of discrepancies in measurement sought to be agitated before this Hon'ble Court will clearly show that it is a disputed question of fact, which cannot be the subject matter of a Petition under Article 226 of the Constitution of India. I reiterate that the impugned proceedings is not under Section 78 of the Act and the Temple can only set the ball in motion as envisaged under Section 78(1) of the Act. I state that if the Assistant Commissioner is satisfied, he will submit a report on the same to the Joint Commissioner who will then issue a Statutory notice to show cause. I state that the present petition attempts to preempt any action that may be taken under Section 78 as against the Petitioners and therefore the same is malafide."

4. As seen from the aforementioned paragraph, it is clear that the writ petitions are premature as till date, no steps have been taken by the Assistant Commissioner to evict the respective petitioners exercising his powers under Section 78(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

5. After recording the submissions made by the learned counsel for the third respondent as well as the statement made in paragraph 5 of the Counter affidavit filed by the third respondent referred to supra, these writ petitions are closed as the apprehension raised by the respective petitioners are uncalled for as no action for eviction has been initiated till date under 78(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.

3.The Executive Officer,
(Assistant Commissioner of HR & CE)
Arulmighu Thiyagaraja Swamy Thirukoil,
Thiruvotriyur, Chennai - 600019.

+3ccs to Mr.V.Raghupathi, Advocate, S.R.No.8523
+1cc to M/s.A.S.Kailasam & Associates, Advocate, S.R.No.8458
+1cc to Special Government Pleader, S.R.No.9527

W.P.Nos.31886 to 31888 of 2012

PM(CO)
KKV/07/08/2020