

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.10075 of 2020

S.E.Ashokan

..Petitioner

Vs

1. The Joint Commissioner,
Hindu Religious and Endowment Board,
Thiruvarur and District.
2. The Assistant Commissioner,
Hindu Religious and Endowment Board,
Thiruvarur and District.
3. The Executive Officer,
A/m Venkatachalapathi Perumal and Dhakshina
Co-Karnaeshwarar Temple,
Pulivalam, Tiruvarur Taluk and District.
4. K.Venkatesan
S/o.Kannan
Kamarajar Street,
Pulivalam, Tiruvarur,
Tiruvarur District - 610 109.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents and in particularly the 1st respondent after getting information from the 3rd respondent about the encroachment and also considering the petitioner representation dated 29.06.2020 and to take necessary action against the 4th respondent in view of the section 78(1) of the HR and CE, Act, 1957.

For Petitioner
For RR1 and RR2
For RR3
For RR4

.. Mr.P.Vijendran
.. Mr.R.Venkatesh
.. Mr.Bharanidaran
.. Mr.P.Muthamizh Selvakumar

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner has come forward to file this writ petition seeking direction to the respondents to take appropriate action over the alleged encroachment made by the fourth respondent.

2. In the affidavit filed, the third respondent has made the following averments:

"4. This respondent states that the land in question is situate in Survey No.154/2 of Pulivalam Village, Thiruvarur Taluk and District which according to the temple record an extent of 75 cents is in the name of the temple and the same has been sub-divided, wherein 154/2/J measuring an extent of 5 cents is in possession of the 4th respondent which he is in occupation through his late grandmother who was a lessee under the temple and the 4th respondent had paid rents until 2018. This respondent further contends that the writ petitioner himself is in unauthorized occupation of 5 cents in S.No.154/2/K and there is no lease in favour of the writ petitioner. This respondent contends that totally 14 persons including the writ petitioner and the 4th respondent are in encroachment of the land owned by the Arulmighu Vedhapureeswarar Thirukoil and the temple administration have already taken steps under Section 78 of the Act, to evict the encroachers by sending a report to the Divisional Assistant Commissioner, HR & CE, Thiruvarur, on 25.08.2020, for sending a report to the Divisional Joint Commissioner, HR & CE, Thiruvarur as mandated under Section 78 of the Act.

4. The respondent further states that the petitioner is also an encroacher of the temple property owned by Arulmighu Vedhapureeswarar Thirukoil and steps have been taken to initiate proceedings under Section 78 of the Act, as against the writ petitioner also. It is contended that once the Divisional Assistant Commissioner files a report based upon the request of this respondent, to the Joint Commissioner, HR & CE, Thiruvarur, it is after same only the Joint Commissioner, HR & CE, Thiruvarur would initiate proceedings under Section 78 of the Act.

5. This respondent contends that the reasons for filing the present writ petition is only out of personal vendetta against the 4th respondent and therefore the petitioner has filed the writ petition obliviously with ulterior motive. The 4th respondent being an encroacher as he has been in possession of the property in question after the death of his grandmother who was a lessee under the Temple, has to be evicted by following the procedure contemplated under Section 78 of the Act.

6. This respondent further contends that in so far as the PULIVALAM PERUMAL KULAM is concerned the same is situate in Survey No.148/1 of Pulivalam Village and measuring an extent of 4 Acres and 18 cents and not 7 acres as claimed by the writ petitioner. It is stated that the said tank though is under the usage of temple, during re-survey it was entered into the revenue records as if it is under the control of the local Panchayat and the temple has been taking steps to restore the revenue records so as to bring the tank under the control of the temple."

3. In such view of the matter, we direct the Joint Commissioner, HR & CE, Thiruvarur, to initiate proceedings under Section 78 of the Hindu Religious and Charitable Endowment Act, 1959, upon perusal of the report of the third respondent.

4. The writ petitions stands closed accordingly. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner, Hindu Religious and Endowment Board, Thiruvarur and District.
2. The Assistant Commissioner, Hindu Religious and Endowment Board, Thiruvarur and District.

3. The Executive Officer, A/m Venkatachalapathi Perumal and Dhakshina Co-Karnaeshwarar Temple, Pulivalam, Tiruvarur Taluk and District.

+1cc to Mr.P.Vijendran, Advocate in SR.NO..30831

W.P.No.10075 of 2020

MG (CO)
RV (30/9/2020)



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