

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.15584 of 2020
and WMP.No.19437 of 2020

G. Mani @ Kalaimani

.. Petitioner

Vs.

1. The Commissioner
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai 600 034
2. The Joint Commissioner
Hindu Religious and Charitable Endowments Department,
Vilupuram-605 602
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Cuddalore-607 002
4. Arulmighu Selvavinayagar & Arulmighu Dharmaraja Koil,
Rep. by its Executive Officer,
No.1, Sanjeevi Naidu Street,
Varadharaja Perumal Koil Premises,
Thirupandiripuliyur, Cuddalore-607 002

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records relating to RC No.10509/2019/b2 dated 10.12.2019 pending before the 2nd respondent and quash the same.

For Petitioner : Mr.M.Kaviveerappan

For Respondent : Mr.R.Venkatesh

Government Advocate

O R D E R

Mr.R.Venkatesh, learned Government Advocate accepts notice for the respondents and is armed with instructions to proceed with the matter.

2. The impugned notice in terms of Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act)

is dated 10.12.2019 and this writ petition has itself been presented only on 09.10.2020 after substantial elapse of time. Learned counsel for the petitioner states that pursuant to receipt of notice dated 10.12.2019, the petitioner has been appearing before the authorities regularly. The stand of the petitioner is that in civil proceedings where the temple was the plaintiff (O.S.No.165 of 2007), the Principal District Munsif, Cuddalore has by judgment dated 31.10.2012 recorded a finding of fact to the effect that the temple holds no title to the suit property. He would thus submit that the impugned notice is issued without any jurisdiction.

3. O.S.No.165 of 2007 had been filed by the Temple seeking recovery of possession and for damages and came to be dismissed on 31.10.2012. As against the dismissal of the suit, the Temple preferred an appeal before the Principal Sub Judge in A.S.No.5 of 2013 that also came to be dismissed. A Second Appeal was filed in S.A.No.1001 of 2014 and by judgment dated 23.05.2019, this Court dismissed the same taking into consideration the concurrent findings of fact of the Courts below to the effect that the Executive Officer of the Temple had not been authorized to file the suit. The Court also noted that the temple had not sought declaration of title in its favour. The substantial questions of law framed, as extracted below, came to be answered against the temple. The questions are:

"i) Whether the courts below were right in holding that the findings of issues of title of the suit properties rendered in OS.No.991 of 2004 is not resjudicate in the present proceeding contrary to the dictum in 2009 (1) MLJ 1001, 2004 (6) SCC 202 and 1994 (2) SC 147.

ii) Whether the courts below were in error in dismissing the suit filed by the Temple through its Executive Officer in the absence of proof of existence of duly constituted Board of Trustees to represent the Temple?"

4. This Court, at para 22, also left it open for the Commissioner to decide whether the matter fell within the ambit of Section 78 of the Act and if it did he was directed to follow the directions of this Court in P.Lakshmanan Vs. The Superintendent of Police, Sivagangai District, Sivagangai and others (W.P.(MD).14428 of 2007 dated 12.02.2018) or authorize the concerned Executive Officer to file a civil suit for a proper relief. Pursuant to this judgment, a legal notice came to be issued by the temple to the petitioner on 19.09.2019 to which a reply was filed on 08.10.2019 denying all the allegations made in the legal notice and calling upon the temple to withdraw its

notice. This was followed by the impugned notice dated 10.12.2019.

5. As noted earlier, the petitioner has approached this Court nearly a year after the date of impugned notice and has also been appearing before the authorities setting forth his grievances. In the aforesaid circumstances, I am not inclined to entertain this writ petition challenging a show cause notice as the petitioner has, rightly, responded to the same and is appearing before the authorities.

6. This writ petition is dismissed and the petitioner is granted full liberty to place such material as may be necessary to establish his case before the authorities. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sl

To

1.The Principal District Munsif, Cuddalore.

2.The Commissioner

Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai 600 034

3.The Joint Commissioner

Hindu Religious and Charitable Endowments Department,
Vilupuram-605 602

4.The Assistant Commissioner,

Hindu Religious and Charitable Endowments Department,
Cuddalore-607 002

5. The Executive Officer,

Arulmighu Selvavinayagar & Arulmighu Dharmaraja Koil,
No.1, Sanjeevi Naidu Street,
Varadharaja Perumal Koil Premises,
Thirupandiripuliyur, Cuddalore-607 002

+1 cc to M/s.M.Kavi veerappan, Advocate Sr.No. 35136

+1 cc to The Government Pleader, Sr.No. 35747

W.P. No.15584 of 2020

and WMP.No.19437 of 2020

KK (CO)

RMP (27/11/2020)