



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.668 of 2020 and

C.M.P. (MD)No.4465 of 2020

S.K.Ganesaraja,

through its Power Agent,

V.K.Ramasamayraja.

: Petitioner

.. Vs ..

1.Arulmigu Mayurananthasamy Thirukovil,

through its Executive Officer,

Rajapalayam Nagar and Taluk,

Virudhunagar District.

2.The Deputy Commissioner,

Hindu Religious and Charitable Endowment,

Sivagangai.

3.The Government of Tamil Nadu,

through Virudhunagar District Collector,

Virudhunagar.

4.Tahsildar, Rajapalayam Taluk,

Rajapalayam.

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records of the Fair and Executable Order in I.A.No.1 of 2020 in O.S.No.250 of 2014, dated 25.06.2020 on the file of the Additional Subordinate Court, Srivilliputhur and to set aside the same.

For Petitioner :Mr.A.Haja Mohideen

For R1 :Mr.P.Mahendran

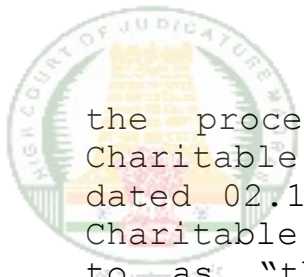
For R2 to R4 :Mr.J.Gunaseelan Muthiah,
Additional Government Pleader(AGP)

ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional Subordinate Judge, Srivilliputhur, in I.A.No.1 of 2020 in O.S.No.250 of 2014, dated 25.06.2020.

2.Heard the learned Counsel appearing for the petitioner.

3.The revision petitioner is the plaintiff in the suit in O.S.No.250 of 2014 on the file of the Additional Subordinate Court, Srivilliputhur. The suit is filed for a declaration that

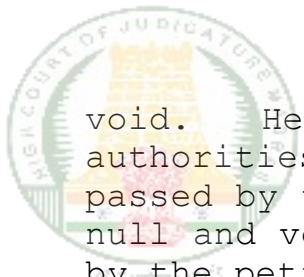


the proceedings of Joint Commissioner, Hindu Religious and Charitable Endowment Department, Sivagangai in Na.Ka.No.1080/2003, dated 02.11.2003 passed under Section 78 of Hindu Religious and Charitable Endowment Act 1959 (for brevity, herein after referred to as "the Act"), as null and void and for consequential injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit property.

4.It appears that the revision petitioner has suffered an order of eviction by the authorities under the Act. As against the order, it appears that the petitioner has filed a revision before the Commissioner, HR & CE Department, Chennai. It is now admitted that there was no interim order preventing the respondents from taking possession pursuant to the order of eviction and that therefore, the respondents took possession after evicting the petitioner. Since the petitioner has been dispossessed, the petitioner has filed an interlocutory application in I.A.No.1 of 2020 praying for restitution of possession and to provide electricity service connection to the petitioner for the premises, which is the subject matter of the suit.

5.It is admitted that the order of eviction was confirmed by the Commissioner, HR & CE Department, Chennai, by an order 01.08.2014 and the further revision filed before the Government was also dismissed on 13.01.2015. Thereafter, the petitioner was evicted and possession was taken by the first respondent. It is in these circumstances, the petitioner has filed an application for interim direction. The trial Court, by order, dated 25.06.2020, dismissed the application filed by the revision petitioner. As against the same, the present revision petition is filed.

6.The petitioner has exhausted the statutory remedy available to him pursuant to the order of eviction passed by the authorities under Section 78 of the Act. The suit was filed for a declaration that the proceedings of Joint Commissioner initiated under Section 78 of the Act is null and void. The said suit is clearly barred under Section 108 of the Act. Except the legal notice and paper publication effected by the petitioner, no other document is filed to prove that the petitioner has an independent right or title over the suit property. When proceedings was initiated under Section 78 of the Act, it shows that the petitioner is an encroacher and his possession is unauthorised. When the authorities have initiated action under the statute and the statute provides remedy to the petitioner, it is not open to the petitioner to file a suit for declaration that the proceedings initiated against him under Section 78 of the Act is null and



void. He may seek prayer to render the order passed by the authorities ineffective but cannot seek declaration that the order passed by the statutory authorities under Section 78 of the Act is null and void. Section 108 of the Act clearly bars the suit filed by the petitioner.

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7. *Prima facie*, this Court is of the view that the suit itself is not maintainable and hence the petitioner is not entitled to seek restoration of possession, by way of interim direction during the pendency of the suit. Hence, confirming the order passed by the learned Additional Subordinate Judge, Srivilliputhur, in I.A.No.1 of 2020 in O.S.No.250 of 2014, dated 25.06.2020, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

cmr

To

1.The Additional Subordinate Judge, Srivilliputhur.

2.The Deputy Commissioner,
Hindu Religious and Charitable Endowment,
Sivagangai.

3.The District Collector,
The Government of Tamil Nadu,
Virudhunagar.

4.Tahsildar, Rajapalayam Taluk,
Rajapalayam.

5.The Section Officer-2 copies
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to SPL GP (SR-17112[F] dated 16/09/2020)

C.R.P.(PD)(MD)No.668 of 2020

15.09.2020

(CO)

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