



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.11.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.15677 of 2020

and

W.M.P. (MD) .No.13157 of 2020

WEB COPY

M.Periyaiah

... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungampakkam Highway, Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thiruvanaikoil, Trichirappalli.

3.The Executive Officer,
Arulmigu Kasiviswanathaswamy Temple,
Thenipatti (Agavayal),
Thirumayam Taluk,
Pudukkottai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the order passed by the second respondent in Miscellaneous Petition No.36/2019, dated 04.10.2019 and quash the same as it was initiated and passed against dead person, who died in the year 2014,

For Petitioner : Mr.N.S.Karthikeyan

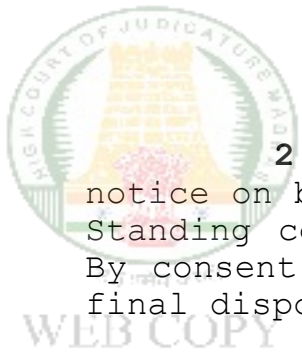
For R-1 & R-2 : Ms.Lakshmi Prasanna
Government Advocate

For R-3 : Mr.Madhavan
Standing Counsel

ORDER

(This Petition was heard through the Video Conferencing)

This writ petition has been filed challenging the order dated 04.10.2019, passed by the second respondent in Miscellaneous Petition No.36 of 2019, under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951, treating the petitioner as an encroacher and calling upon him to vacate and hand over the possession of the property to the respondents.



2. Ms.Lakshmi Prasanna, learned Government Advocate accepts notice on behalf of the respondents 1 and 2 and Mr.Madhavan, learned Standing counsel accepts notice on behalf of the third respondent. By consent of both parties, the main Writ Petition is taken up for final disposal at the admission stage itself.

3. Heard Mr.N.S.Karthikeyan, learned counsel appearing for the petitioner, Ms.Lakshmi Prasanna, learned Government Advocate, appearing for the respondents 1 and 2 and Mr.Madhavan, learned Standing counsel appearing for the third respondent.

4. The primary ground for challenging the impugned order in this Writ Petition is that no notice was given to the petitioner before passing the impugned order. According to the petitioner, originally, the petitioner's mother Meenakshi was a tenant under the third respondent Temple. It is his case that his mother Meenakshi died on 24.12.2014. However, under the impugned order, it is stated that a notice was served on Meenakshi and that she appeared before the second respondent on 22.04.2019.

5. According to the petitioner, the impugned proceedings has been initiated against a dead person, who died in the year 2014 and therefore, the impugned order passed by the second respondent is arbitrary, illegal and without jurisdiction. In such circumstances, this Writ Petition has been filed.

6. The petitioner in his typed set of papers has produced the death certificate of the petitioner's mother Meenakshi, issued on 19.01.2015, which discloses that Meenakshi died on 24.12.2014. However, under the impugned order, the second respondent has observed that notice was issued to Meenakshi and she appeared before the second respondent on 22.04.2019. When Meenakshi died on 24.12.2014 itself, it is impossible for her to appear before the second respondent on 22.04.2019 as observed by the second respondent in the impugned order.

7. Ms.Lakshmi Prasanna, learned Government Advocate appearing for the respondents 1 and 2 would submit that the petitioner had appeared before the second respondent on 22.04.2019 and only the presence of the petitioner was recorded and the said Meenakshi was not present. However, as seen from the impugned order, the order has been passed only against the said Meenakshi and not against the petitioner, who is her son. The subject property was let out only to Meenakshi by the third respondent. The petitioner claims that he is the son of Meenakshi and as a legal heir, he claims that he is in possession of the subject property.

8. An order passed against a dead person is nullity. As seen from the records placed before this Court by the petitioner,
<https://hcservices.ecourts.gov.in/hcservices/>



the said Meenakshi died as early as on 24.12.2014, whereas, the impugned order was passed against the same Meenakshi on 04.10.2019. Hence, the impugned order is a nullity, since it has been issued against a dead person. No prejudice will be caused to the respondents if the legal heir of the deceased Meenakshi, who was the original tenant under the third respondent, is given an opportunity by the second respondent in the enquiry proceedings and thereafter, the second respondent passes final orders under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

9. For the foregoing reasons, the impugned order dated 04.10.2019 passed by the second respondent is a nullity, since the same has been issued against a dead person and accordingly, this Court quashes the same. However, the matter will have to be remanded back to the second respondent for fresh consideration, after issuing notice to the petitioner as well as the other legal heirs of the deceased Meenakshi.

10. In the result, the impugned order dated 04.10.2019, passed by the second respondent is hereby quashed and the matter is remanded back to the second respondent for fresh consideration, after hearing the petitioner as well as the other legal heirs of the deceased Meenakshi and pass final orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the aforesaid direction, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungampakkam Highway, Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thiruvanaikoil, Trichirappalli.

+1 CC to M/s.GP (SR-21787[F] dated 10/11/2020)

+1 CC to M/s.N.S. KARTHIKEYAN, Advocate (SR-21826[F] dated
11/11/2020)

W.P. (MD) No.15677 of 2020
09.11.2020

CK(CO)

AP(23/11/2020) 4P 5C