



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. No.16229 of 2016
and WMP. No.14016 of 2016

M.Soundararaj

...Petitioner

Vs.

1. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
2. The Executive Officer,
Arulmighu Ekambaraeswarar Thirukoil,
Having its office at the Temple Premises,
Aminjikarai, Chennai -29.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the order of the first respondent bearing Na.Ka.No.14746/2013/A2 Dated 04/03/2016 and quash the same and consequently forbear the respondents 1 & 2 from interfering with the peaceful possession of the petitioner's property situated at No.229 (Old No.131), Poonamalle High Road, Aminjikarai, Chennai - 600 029.

For Petitioner : Mr.S.Velmurugan

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate for R1
Ms.G.Vaishali for
Mr.K.V.Dhanapalan for R2

O R D E R

Heard Mr.S.Velmurugan, learned counsel for the petitioner, Mr.NRR.Arun Natarajan, learned Government Advocate for the Joint Commissioner/R1 and Ms.G.Vaishali, learned counsel for Mr.K.V.Dhanapalan, learned counsel for the Executive Officer of the Arulmighu Ekambaraeswarar Thirukoil/R2.



2. The petitioner challenges notice dated 04.03.2016 issued under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act'), calling upon him to appear and show cause why he not be treated as an encroacher in respect of the property at No.229 (Old No.131), Poonamalle High Road, Aminjikarai, Chennai - 600 029 comprised in O.S.No.70-/A1, R.S.No.70/5, TS.No.11, Block No.30 (property in question).

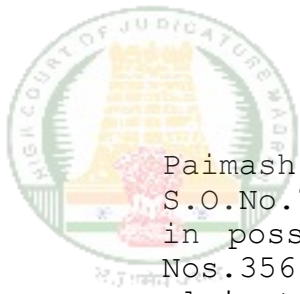
3. The petitioner refers to documentary evidence such as Re-survey and Re-settlement register of the year 1910 to establish that the property in question is Grama Natham and that he holds valid title to the same. Counter of R1 refers to a history of litigation in respect of the property in question, measuring 34.68 cents. A civil suit had been instituted in OS. No.428 of 1944 on the file of the District Munsif Court, Poonamallee seeking a declaration that the property in question, occupied by several tenants, belonged to the temple. Even assuming that the property would not vest in the temple, they had perfected their title by adverse possession.

4. The suit came to be dismissed and an Appeal in A.S.No.330 of 1946 filed before the District Judge, Chengalpattu, confirmed the decision of the trial Court observing as follows:

' The substance of the documentary and oral evidence makes out beyond all court that the temple has been in possession of the suit property even before 1924 that after 1924 the temple has made this disputed area habitable by letting it out to tenants and that too to the knowledge of the Government ... in such a case under the Board's Standing Orders, the temple beyond a shadow of doubt has got a preferential claim to be assigned this property. This is however a matter for the revenue authorities and not for this Court'

5. A representation before the Government had come to be made by the tenant who had formed an association viz., Rate Payers Association of Aminjikarai for the grant of patta. G.O.679, Revenue Department dated 20.02.1958 had come to be issued, to the effect that an extent of 4.61 cents in the land in question would be assigned to the existing occupants subject to the collection of rents among other conditions.

6. The temple, for its part filed representation requesting the grant of patta. Upon consideration of the same, G.O. Ms. No.3493 dated 13.12.1963, came to be passed by the Government stating that the trustees of the temple had adduced evidence to prove the temple's title by adverse possession in respect of



Paimash Nos.361, 375, 419, 420 to 423, 428 and 429 comprised in S.O.No.70/5 of Aminjikarai Village and as the temple had been in possession and enjoyment of the lands comprised in Paimash Nos.356, 357, 371 and 372 for long, it would hold a preferential claim to this property.

7. G.O. No.679 Revenue, dated 20.02.1958, thus came to be modified accepting the claim of the temple to the entirety of the lands including 4.61 cents. The patta issued to the tenants came to be rejected, as a consequence, patta for the land in question was granted to the temple.

8. Challenging the same, a writ petition had been filed by some of the tenants, which came to be allowed. The order of the learned single Judge was carried in appeal and modified in W.A. No.155 to 159 of 1967 (order dated 17.01.1973) to the following effect,

' As far as possession is concerned, it is agreed now between the parties as reported by counsel, on either side to us, that the temple will allow the tenants and their successors-in-interest to be in possession in perpetuity. But this will be only subject to the liability of the tenants praying to the temple rent at the rate of Rs.2/- per ground, per month. If the rent falls in arrears for more than a couple of months, the temple will of course, be at liberty to bring suitable action for recovery of the same and in the process for attachment and sale of whatever interest and the particular tenant in arrears any held. So far as the quantum of rent is concerned we have fixed it at Rs.2/- per ground per month taking into account the present rent obtaining both old and new rents.

The order of the Government sought to be quashed will stand modified accordingly. No Costs.'

The temple has, thereafter, initiated proceedings under Section 78 of the Act, impugned in this writ petition.

9. What is impugned is a notice, and that too involving disputed questions relating to title. It would thus be appropriate to allow the proceedings to continue and be concluded by the authorities after taking note of the submissions of the petitioner and all/any documentary evidence that may be relied upon by him. The petitioner shall, for this purpose, appear before the 1st respondent on Monday 19th day of July, 2021 at 10.30 a.m without awaiting any further notice in



this regard. An order shall be passed by the authority within a period of eight (8) weeks from 19.07.2021, that is on or before 20.09.2021.

10. The order of status quo granted on 28.04.2016 shall stay effective till 20.09.2021 or till date of order passed by the authority as set out in paragraph 9 above, whichever is earlier.

11. As far the recovery of outstanding arrears is concerned that is a different matter altogether and full liberty is granted to the respondents to proceed in regard to the recovery of the arrears. If the petitioner is held to be an encroacher, necessary and expeditious action shall be taken for recovery of the arrears for the period of unlawful occupation.

12. The Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

13. List for complainance on 22.09.2021.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RKP

To

1. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road, Chennai - 600 034.

2. The Executive Officer,
Arulmighu Ekambaraeswarar Thirukoil,
Having its office at the Temple Premises,
Aminjekarai, Chennai -29.

+1cc to the Government Pleader, S.R.No.33650

W.P. No.16229 of 2016
and WMP. No.14016 of 2016

LN(CO)
BE(27/07/2021)