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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.38365 of 2015

and

M.P.No.1 of 2015

1.R.Thangaraj,
2.R.Gunasekaran,

...Petitioners

Vs

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department
Coimbatore.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department
Erode

3.The Executive Officer,
Arulmigu Vijayapuriamman Temple,
Sullipalayam, Perundurai Taluk,
Erode District.

4.The Inspector of Police,
Perundurai Taluk, Erode District.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents not to interfere with the peaceful possession and enjoyment of property and to evict them from the property situated in R.S. No.13/2 in Sullipalayam Village, Perundurari Taluk, Erode District without adhering the due process of law and without affording any opportunity of hearing.

For Petitioners : Mr.L.Chandra Kumar
for Ms.N.R.Jasmine Padma

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate

ORDER

Captioned writ petition turns on a very narrow compass.



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2. '1.055.0 hectares of land in R.S.No.13/2 in Sullipalayam village, Coimbatore District' (hereinafter 'said land' for the sake of convenience and clarity) is the subject matter and the temple concerned is 'Arulmigu Vijayapuriamman Temple, Sullipalayam, Perundurai Taluk, Erode District' (hereinafter 'said temple' for the sake of convenience and clarity).

3. Learned counsel for writ petitioners submits that said land was purchased by his father Late Ramasamy in and by a registered sale deed dated 09.02.1987 and he bequeathed it inter-alia to the writ petitioners by a Will dated 12.09.2000. The writ petitioners case is that the said temple is interfering with the possession of said land de-hors due process of law. On this basis, a Mandamus has been sought directing the said temple to not to evict the writ petitioners qua said land and not to disturb the peaceful possession of the petitioners qua said land.

4. Mr. L. Chandra Kumar, learned counsel appearing on behalf of counsel on record for writ petitioners submits that said temple cannot disturb the possession of the writ petitioners de-hors due process of law.

5. Mr. NRR. Arun Natarajan, learned State counsel appearing on behalf of respondents, who shall collectively be referred to as 'Tamil Nadu Hindu Religious and Charitable Endowments Department' (hereinafter 'TN HR&CE Dept.' for the sake of convenience and clarity), adverting to counter-affidavit filed by the 3rd respondent (Executive Officer of said temple) submits that it is not correct to say that the said temple has not followed due process of law. Learned State Counsel submits that proceedings under Section 78 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22/ 1959)', which shall hereinafter be referred to as 'TN HR&CE Act' have been duly initiated vide M.P.No.77 of 2011/B1 on 15.02.2012.

6. Learned Counsel for the writ petitioners submits, on instructions, that the writ petitioners have not received notice in the 78 proceedings. The records of the respondents demonstrate that proceedings have been initiated under Section 78 of TN HR&CE Act, but it is not clear 'beyond doubt' as to whether the proceedings/notice has been duly served on the writ petitioners.

7. Therefore, giving the benefit of this doubt to the writ petitioners, this Court is of the view that it is only appropriate that the proceedings initiated vide M.P.No.77 of 2011/B1 are done de novo i.e., by sending notice in the same i.e., M.P.No.77 of 2011/B1 on the file of the first respondent



(Joint Commissioner) afresh. Learned counsel for writ petitioners, on instructions, submits that the writ petitioners will cooperate with the proceedings and not delay the same by seeking unnecessary adjournments. The proceedings thus far in M.P.No.77 of 2011/B1 will stand effaced. The first respondent shall issue notice afresh in M.P.No.77 of 2011/B1 (proceedings under Section 78 of TN HR&CE Act) and conclude the same as expeditiously as his official business would permit and in any event, within four months from today i.e., by 08.02.2022. All questions including the questions raised in the captioned writ petition are left open with regard to both sides as the same would be available to the extent permissible qua scope of Section 78 of TN HR&CE Act before the first respondent.

Captioned writ petition is disposed of with the above directives. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

gpa/nst

To

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department
Coimbatore.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department
Erode
- 3.The Inspector of Police,
Perundurai Taluk,
Erode District.
- 4.The Executive Officer,
Arulmigu, Vijayapuriamman Temple,
Sullipalayam, Perundurai Taluk,
Erode District.

+1cc to Mr.L.Chandra Kumar, Advocate SR.No.53065

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M.P.No.1 of 2015

PCH(CO)
RVM(02/11/2021)