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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.38366 of 2015

&

M.P.No.1 of 2015

1.L.Murugasamy
2.K.Rajamanickam,
3.K.Ramasamy
4.K.Subramaniam
5.K.Sundaramoorthi,
6.K.Chinnasamy

...Petitioners

Vs

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

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

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

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.25/2 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

'Land admeasuring 2.64.0 hectares comprised in R.S.No.25/2, Sullipalayam Village, Perundurai Taluk, Erode District' (hereinafter 'said land' for the sake of convenience and clarity) is the subject matter of the captioned writ petitions and the temple we are concerned is 'Arulmigu Vijayapuriamman Temple at Sullipalayam, Perundurai Taluk, Erode District' (hereinafter 'said temple' for the sake of convenience and clarity).

2. Mr.L.Chandra Kumar, learned counsel appearing on behalf of the counsel on record for the writ petitioners and Mr.NRR.Arun Natarajan, learned State Counsel on behalf of respondents 1 to 3 hereinafter collectively referred to as 'TN HR&CE Dept.' and also representing the State Public Prosecutor's Office on behalf of 4th respondent are before me.

3. Learned Counsel for writ petitioner submits that said temple is disturbing the writ petitioners' possession qua said land de hors due process of law.

4. Responding to the above and advertng to the detailed counter affidavit filed by TN HR&CE Dept., learned State counsel submits that due process of law has been adhered to as said temple has initiated proceedings under Section 78 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act.22 of 1959)' which shall hereinafter be referred to 'TN HR&CE Act' for the sake of convenience and clarity. Learned Counsel submits that this position stands admitted by the writ petitioners as there is an averment in this regard in paragraph 3 of the writ affidavit which reads as follows:

'3) The petitioners further submits that when that be the position, in the year 2012, the 3rd respondent, the Executive Officer of A/m. Vijayapuriamman temple of Sullipalayam, took steps to evict them forcibly and on enquiry, it revealed that the Joint Commissioner, H.R & C.E., the 1st respondent herein passed order for eviction under Sec.78 of Tamil Nadu H.R & C.E. Act as if the above land belongs to the 4th respondent temple on 15.02.2012 without conducting any proper enquiry. As the respondents took hectic steps to evict them, O.S.No.17 of 2013 on the file of District Munsiff Court, Perundurai, came to be filed against the respondents herein and sought for a declaration of the title based on their long possession and enjoyment apart from the valid sale deed of the same and for a permanent injunction restraining the



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respondents from dispossessing the petitioners from the application was also taken up for interim injunction in I.A.No.89 of 2013 against the respondents in the above suit in which notice was ordered and the same is pending enquiry. In the above suit, the respondents also filed written statement contesting the suit property. That apart, we have also sought for a declaration that the order passed by the 2nd respondent dated 15.02.2012 as null and void and not binding upon the petitioners.'

5. Interestingly and intriguingly, after 78 proceedings, the writ petitioners have filed a civil suit in the jurisdictional Civil Court vide O.S.No.17 of 2013 on the file of the District Munsif's Court, Perundurai. The prayer paragraph in the plaint is paragraph 11 and a perusal of the prayer reveals that the writ petitioners have inter alia sought declaration of orders made in Section 78 proceedings being order dated 15.02.2012 bearing file number 76/2011/B1 made by the Joint Commissioner (first respondent in captioned writ petition and second defendant in the suit) as null and void. Such a suit is clearly impermissible, as suit if any can only be under Section 79 (2) of TN HR&CE Act assailing title of said temple, but that is not the case here.

6. Therefore, proceedings under Section 78 of TN HR&CE Act initiated by said temple and orders made in the same, have to be assailed in the manner provided in TN HR&CE Act, which has been repeatedly held to be a self-contained Statute by this Court in a long line of authorities, more importantly, if the writ petitioners have a rival claim, there is a provision for the same vide Section 79(2) of TN HR&CE Act (as alluded to supra) and therefore, the suit is clearly not misconceived. However, learned counsel for writ petitioners very fairly on instructions, submits that the suit as of today has been dismissed for default and date of dismissal for default is 04.04.2018. In the light of narrative thus far and the obtaining legal position, the question of restoration of the suit does not arise.

7. It is open to the said temple to carry Section 78 proceedings to its logical end. As this Court is parens patriae inter alia in the light of observations made by Hon'ble Supreme Court in A.A.Gopalakrishnan case law [A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Ors., reported in (2007) 7 SCC 482], this Court deems it appropriate to observe that said temple will do well to carry Section 78 proceedings to its logical end as expeditiously as possible and in any event, within two months from today i.e., on or before 08.12.2021.



8. Therefore captioned writ petition is dismissed. Consequently connected M.Ps are also dismissed. There shall be no order as to costs.

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Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

gpa/nst

To

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

+1cc to Mr.L.Chandrakumar, Advocate SR.No.53066

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