



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.10.2021

CORAM:

THE HONOURABLE Mr. JUSTICE M.SUNDAR

W.P.Nos.13434 & 13487 of 2021 and
W.M.P.Nos.14301 & 14353 of 2021

F.Charles

... Petitioner in WP.No.13434/2021

G.Venkatesan

... Petitioner in WP.No.13487/2021

Vs.

1. Principal Secretary / Commissioner of HR & CE
St. George Fort, Rajaji Road,
Chennai - 600 009.
2. The Joint Commissioner of HR & CE,
Nungambakkam, Chennai - 600 034.
3. Assistant Commissioner of HR & CE,
Nungambakkam, Chennai - 600 034.
4. The Executive Officer,
Arulmighu Agatheeswarar Thirukoil,
Nemellycherry, Pallavaram,
Chennai - 600 044.

... Respondents in both WPs

Prayer in WP.No.13434/2021: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for records pertaining to the order made in R.P.No.35 of 2019 D2 dated 06.03.2020 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to reopen the R.P.No.35 of 2019 D2 and pass orders after providing sufficient opportunities for the petitioner to advance arguments.

Prayer in WP.No.13487/2021: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for records pertaining to the order made in R.P.No.201 of 2019 D2 dated 09.03.2020 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to reopen the R.P.No.201 of 2019 D and pass



WEB COPY

orders after providing sufficient opportunities for the petitioner to advance arguments.

For Petitioners : Mr.S.Patrick (in both cases)
For Respondents : Mr.NRR.Arun Natarajan
Government Advocate (for R1 to R3)
: Mr.A.K.Sriram (for R4)
for M/s.A.S.Kailasam & Associates
(Law Firm)

COMMON ORDER

Captioned Writ Petitions have been filed assailing orders dated 06.03.2020 and 09.03.2020 vide R.P.No.35 of 2019 D2 and R.P.No.201 of 2020 D2 (hereinafter 'impugned orders' for the sake of convenience and clarity) made by the first respondent.

2. To be noted, impugned orders have been made by the first respondent Commissioner of 'Tamil Nadu, Hindu Religious and Charitable Endowments Department' which shall hereinafter be referred to 'TN HR & CE Dept.' and are orders made in exercise of revisional powers vested in the first respondent in and by Section 21 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22/1959)' which shall be hereinafter referred to 'TN HR & CE Act' for the sake of convenience and clarity.

3. Writ petitioners before this Court are the revision petitioners before first respondent qua impugned orders and the orders that were sought to be revised are orders dated 29.11.2018 and 09.11.2018 made by the second respondent (jurisdictional Joint Commissioner of TN HR & CE Dept.) in M.P.No.185 of 2017 and M.P.No.180 of 2017 being orders made by the second respondent inter alia under Section 78 of TN HR & CE Act which deals with removal of encroachments qua lands or buildings belonging to Charitable or Religious Institutions or Endowments. In other words, Section 78 deals with eviction of encroachers from temple properties. In the case on hand, temple that is subject matter of captioned writ petitions is 'Arulmighu Agatheeswarar Temple at Nemellycherry, Pallavaram, Chennai-600 044' ('said Temple' for the sake of convenience and clarity) and the property which is subject matter of the impugned orders is land admeasuring an extent of 2400 sq.ft. or thereabouts comprised in Survey Nos.108/3 and 108/4 in Jameen Pallavaram Village, Alandur Taluk, Kancheepuram District (hereinafter 'said property' for the sake of convenience and clarity).

4. Said temple and more particularly Executive Officer of said temple (fourth respondent in the captioned writ petitions)



initiated proceedings under Section 78 of the TN HR & CE Act for eviction of the writ petitioners from said property claiming that said property belongs to said temple and the writ petitioners are encroachers qua said property. Writ petitioners assailed the initiation of proceedings under Section 78 vide two successive writ petitions W.P.No.27770 of 2017 and W.P.No.34490 of 2018, but ultimately the writ petitioners were relegated to revision petitions before the first respondent viz., R.P.No.35 of 2019 and R.P.No.201 of 2019 in which the impugned orders came to be made.

5. Notwithstanding very many averments and very many grounds that have been raised in the writ affidavits, Mr.S.Patrick, learned counsel for writ petitioners, submits that the first respondent had not given adequate opportunity, therefore, the impugned orders deserve to be set aside and sent back to the first respondent.

6. To be noted, it comes to light from the counter affidavit of the Executive Officer of the said temple that the total extent of land comprised in these two survey numbers belonging to the said temple is 1.50 acres in S.No.5/2 (T.S.No.3/2) and 0.59 acres in S.No.6/2 (T.S.No.4/10) totalling 2.09 acres.

7. Writ petitioners are in occupation of a portion of this extent of 2.09 acres being 2400 sq.ft. or thereabouts.

8. A careful perusal of the impugned orders make it clear that the writ petitioners had not responded to the earlier Section 78 notice also and this is captured in paragraph 11 of the impugned orders which reads as follows:

'11.In the Proceedings under Section 78 of the HR & CE Act, 1959, conducted by the Joint Commissioner, HR & CE Department, Chennai-34, also the Petitioner had not bothered to appear either in person or through Counsel. Hence, a paper publication dated 29.08.2018 was given and even after that also the Petitioner had not appeared. The Joint Commissioner had conducted enquiries on 20.06.2018 and 18.07.2018 prior to newspaper publication of the notice and subsequently after publication of the notice on 29.08.2018, 19.09.2018, 12.10.2018. The Fit Person/ Executive Officer of the Temple in his proof Affidavit submitted before the Joint Commissioner has stated that in S.No.5/2 (T.S.No.3/2), Sri Bharathi Nagar, Nemilicherry, the Petitioner had encroached a portion to an extent of 2400 sq.ft. Considering all these facts, the Joint Commissioner had passed the detailed



order of eviction as per the provisions of the HR&CE Act 1959.'

9. This takes us to the procedure laid down for quasi judicial proceedings to be held by the first respondent in proceedings for removal of encroachments qua temple properties, more particularly under Section 78 of the TN HR & CE Act.

10. In the Scheme of TN HR & CE Act, Section 116 is the rule making power and vide Section 116, rule making power has been delegated to Government and in exercise of rule making power under Section 116 (2)(i) and (ii), the Government has made a set of Rules i.e., subordinate legislation which goes by the name 'The Removal of Encroachments on Lands or Buildings Belonging to Religious Institutions Rules' (hereinafter 'said Rules' for the sake of convenience and clarity).

11. A careful perusal of said Rules more particularly Paragraphs 3 to 6 make it clear that it is necessary that notice is given providing 30 days time to show cause and there is 15 days time for making an order under 78(2). To be noted, there is no complaint before this Court that said land has not been set out/described with specificity. To put it differently, it is nobody's case before this Court that the description qua said land has not been made with specificity and therefore, sub-rule (2) of Rule 4 also is not attracted. As all the provisions/rules adumbrated under said Rules have been adhered to, it cannot be gainsaid that there is any violation of procedure much less 'NJP' violation i.e. Natural Justice principles violation. Absent any demonstrable violation or infraction of Rules adumbrated in said Rules, this Court cannot interfere qua impugned orders on the ground that adequate opportunity has not been given to the writ petitioners.

12. There are two other very important aspects of the matter which unfurled in the hearing. The first aspect of the matter is, it is the case of the writ petitioners that they claim title qua said property. When a person alleged to be an encroacher in temple property claims title qua said property, the remedy to the said person is under Section 79(2) of TN HR & CE Act which provides for initiation of a suit in a Court to establish that the Religious Institution or Endowment has no title to the property. This sub-section (2) of Section 79, is circumscribed by two provisos. Provisos that we are concerned with viz., one of the two provisos i.e., first proviso says that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order in sub-section (4) of Section 78. In the case on hand, dates of the impugned orders are 29.11.2018 and 09.11.2018 and therefore, six months



therefrom had elapsed long ago.

13. In this regard, this Court also remains itself of the G.Rukmani Ganesan's principle being law laid down by Hon'ble Supreme Court in Ganesan represented by its Power Agent G.Rukmani Ganesan Vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and others reported in 2019 7 SCC 108.

14. I have held vide order dated 31.08.2021 in W.P.No.17948 of 2021 that this G.Rukmani Ganesan principle will apply to statutory revisions under Section 21 of TN HR & CE Act also.

15. The second aspect of the matter which unfurled in the hearing is that this Court is informed without any disputation or disagreement that possession of said property has been taken by said temple before the institution of the writ petitions. This Court is informed that it is one day before the institution of captioned writ petitions, but that hardly matters as the factual position or in other words, the undisputed factual position before this Court is that said temple has taken possession of said property.

16. Therefore in the case on hand, nothing really survives.

17. Before concluding, this Court records the submission of learned counsel for Executive Officer of said temple and writ petitioners that similar proceedings have been initiated against other encroachers qua 2.09 acres extent of land and all of them have been evicted. The law is well settled that the Presiding Deity is in the status of a minor and this Court is the Guardian / Parens Patriae, the lead case law in this regard being A.A. Gopalakrishnan's case (A.A.Gopalakrishnan Vs. Cochin Devaswom Board and others) reported in 2007 (7) SCC 482, wherein Hon'ble Supreme Court held that it is the duty of the Courts to protect and safeguard the properties of religious and charitable institutions.

18. This Court has followed the above principle which forms part of a long line of case laws including but not limited to an order made in W.P.No.18325 of 2004 dated 20.07.2017 wherein relevant paragraph is paragraph No.5 and the same reads as follows:

'5.The writ petition is of the year 2004. It has been filed on 28.06.2004 to be precise. It is pending for more than 13 years in this Court. There is also an interim direction that was given to the third respondent, District Collector, in a miscellaneous petition, being



WEB COPY

W.M.P.No.21828 of 2004, on 29.06.2004. Furthermore, as alluded to supra, the demised land, which is subject matter of this writ petition, ad-measures an extent of 2 acres and it belongs to the said temple. When the property belongs to a temple, particularly an institution, in the nature of said temple, law is well settled that property vests in the idol, which is the Presiding Deity. The law is also indisputably well settled that such idol is akin to a minor and therefore, the Courts are parentis locus qua the idol and custodia legis qua the properties of the idol, which is construed to be a minor. It has been repeatedly held by the Hon'ble Supreme Court and various High Courts that such properties vested in idols have to be protected and that Courts, being parentis locus, have a sanctus duty in this regard. '

(Underlining made by this Court to highlight, ease of reference and emphasis)

19. Following A.A.Gopalakrishnan's principle, taking recourse to the residuary limb of the prayer in the captioned writ petitions, this Court deems it appropriate to observe that the fourth respondent Executive Officer will do well to ensure that encroachers if any (remaining) qua aforementioned 2.09 acres of land shall be proceeded against and proceedings shall be carried to its logical end expeditiously albeit in accordance with due process of law.

20. Captioned writ petitions cannot but fail owing to narrative, discussion and dispositive reasoning supra and therefore, the same are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl



To

1. Principal Secretary / Commissioner of HR & CE
St. George Fort, Rajaji Road,
Chennai - 600 009.

2. The Joint Commissioner of HR & CE,
Nungambakkam, Chennai - 600 034.

3. Assistant Commissioner of HR & CE,
Nungambakkam, Chennai - 600 034.

4. The Executive Officer,
Arulmighu Agatheeswarar Thirukoil,
Nemellycherry, Pallavaram,
Chennai - 600 044.

+2CCs to M/s.A.S.Kailasam & Associates, Sr.Nos.52062, 52063
+1CC to Mr.Government Pleader, Sr.No.52179

W.P.Nos.13434 & 13487 of 2021

CP (CO)
K.RK. (01.11.2021)