

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.16001 of 2020 and
WMP.Nos.19912 & 19913 of 2020

Sri La Sri Sivanandha Mouna Swamigal Arakkattalai,
Rep. by its Joint Secretary,
A.Kirupanandam,
Thiruvalam, Sannathi Street,
Katpadi Taluk, Vellore District,
Tamil Nadu-632 515.

...Petitioner

Vs.

- 1.The Principal Secretary/Commissioner,
H.R.&.C.E. Administration Department,
Chennai - 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Vellore.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Vellore.
- 4.The Executive Officer-cum-Fit Person,
Arulmighu Vilvanatheeswarar Thirukoil,
Thiruvalam, Katpadi Taluk,
Vellore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records of the 1st respondent made in R.P.No.141 of 2019 dated 01.07.2020 whereby confirmed the order of the 2nd respondent made in proceedings PROC.RC.No.10367/2013 C.1 on 21.01.2019 and quash the same.

For Petitioner : No Appearance

For Respondent : Mr.R.Venkatesh (for R1 to R3)
Government Advocate
Mr.A.K.Sriram (for R4)
for M/s.A.S.Kailasam Associates

O R D E R

Petitioner is called absent even today. His absence on 23.03.2021 has been recorded in the docket sheet.

2. Heard Mr.R.Venkatesh, learned Government Advocate for the official respondents and Mr.A.K.Sriram, learned counsel for the Executive Officer-cum-Fit Person of Arulmigu Vilvanatheeswarar Thirukoil, Katpadi Taluk, Vellore District.

3. The challenge by the petitioner is to an order passed by the Commissioner, HR&CE Department in a revision petition filed by the petitioner under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act'). Proceedings for eviction under Section 78 of the Act had been initiated and an order came to be passed by the Joint Commissioner on 21.01.2019 holding the petitioner to be an encroacher. The aforesaid order was the subject matter of challenge by the petitioner in W.P.No.3604 of 2019 and a learned Single Judge of this Court, while order dated 06.02.2019, relegated the petitioner to statutory revisional remedy, pursuant to which a revision was filed culminating in the order impugned in this writ petition.

4. A perusal of the order of the original authority under Section 78(4) dated 21.01.2019 as well as the impugned order dated 01.07.2020 reveals that the issue involved terms on the question of title to the temple property, of an extent of 14,300 sq. ft. in S.No.248/10, Sannathi Street. This property also houses a Thirumana Mandapam run under the name and style of Sri La Sri Sivanandha Mouna Swamigal Thirumana Mandapam. After a detailed look into the facts, both the original as well as revisional authority have come to categorical findings that the title to the property stands only in the name of the temple. At paragraph-11, the Commissioner states that the petitioner has been squatting upon the property without any legal right whatsoever. The order of the Joint Commissioner declaring the petitioner to be an encroacher was thus confirmed and pursuant thereto, the temple has taken possession of the property.

5. The question of title to a property is one of fact and consideration of evidence which exercise cannot be embarked upon in a writ petition under Article 226 of the Constitution of India. That apart, the statutory scheme as seen from a combined reading of Section 78(4) and Section 79(2) is that where the question of title to a property is raised by a noticee under Section 78(2), it is for the departmental authorities to look into evidence in this regard and arrive at finding as to the appropriate party in whom the title vests.

6. The Holding of Inquiries Rules (SRO No.A-895 of 1961) and the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules (G.O.Ms.No.383, Revenue, dated 29.01.1962) provide for such enquiry to be carried out designating the authority to be a Civil Court for the purpose of Section 78(4). This is what has been done in this case and a finding recorded under Section 78(4), to the effect that the title to the property vests in the temple. The provisions of Section 79(2) then provide for a civil suit to be filed by the party aggrieved by the decision under Section 78(4), such suit to be filed before the appropriate Civil Court within a period of six (6) months from date of receipt of the order under Section 78(4), by the aggrieved party.

7.The Commissioner also states in the course of the impugned order that compensation and damages as well as arrears of rent are still to be collected from the petitioner. Learned counsel for the temple is unable to confirm whether action for the collection of the arrears has been initiated. I would think, seeing as the impugned order dated July 2020, that such action ought to have been initiated and must be on-going now, and if it has not, let the same be initiated and taken forward forthwith.

8.Thus, in light of both aspects as noticed above, the question being one of fact as well as the position that an appropriate statutory remedy has been provided, I see no cause whatsoever to entertain this writ petition and proceed to dismiss the same. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Principal Secretary/Commissioner,
H.R.&C.E. Administration Department,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Vellore.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Vellore.

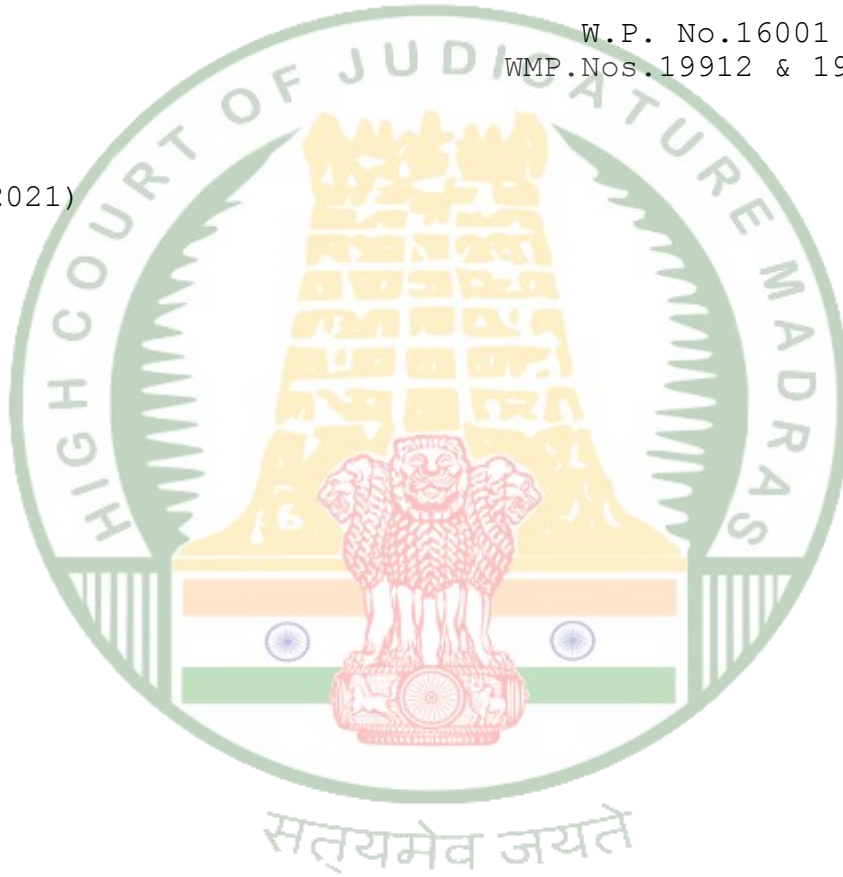
4.The Executive Officer-cum-Fit Person,
Arulmighu Vilvanatheeswarar Thirukoil,
Thiruvalam, Katpadi Taluk,
Vellore District.

+lcc to Mr.A.S.Kailasam & Associates, Advocate, S.R.No.26997

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VBM(CO)

GN(06/07/2021)



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