



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.14479 of 2014 &
MP.No.1 of 2014

The National Higher Secondary School Committee,
Registration No.24/1946,
Nagapattinam represented by
The Secretary cum Correspondent
K.S.Kumaravelu,
No.1/138, Sivasakthi Nagar,
Puthur, Nagapattinam-611 001.

...Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur.

3.A/m.Kayarohanaswamy and
Neelayatchi Amman Temple,
represented by its executive officer,
Nagapattinam.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, directing the second respondent to take the application of the petitioner filed section 63(c) of the Hindu Religious and Charitable Endowment Act, on file which was returned on 07.01.2014 made in Aa.Thi.Mu.No.16229/13 (E2) and dispose of the same in accordance with law.

For Petitioner : Mr.Ravichandran Sundaresan

For Respondents : Mr.NRR.Arun Natarajan (for R1 & R2)
Government Advocate
Mr.A.Muthukumar (for R3)



O R D E R

Heard Mr.Ravichandran Sundaresan, learned counsel for the petitioner, Mr.N.R.R.Arun Natarajan, learned Government Advocate for the official respondents/R1 & R2 and Mr.A.Muthukumar, learned counsel for the Executive Officer of the Arulmighu Kayarohanaswamy and Neelayathatchi Amman Temple, Nagapattinam/R3 (temple/temple in question)

2. The petitioner is a Committee that is stated to be running a school and prays for a mandamus directing the Joint Commissioner, HR&CE Department/R2 to take on file its application filed under Section 63(3) of the Hindu Religious and Charitable Endowments Act, 1959, (in short 'Act') which was returned on 07.01.2014, and dispose the same in accordance with law.

3. The school is being run upon property that, according to the temple, belongs to one Kulanthaivel Chettiar, comprised in T.S.Nos.74 to 77 in Ward No.III, Block No.II, Nagapattinam Town. The said Kulanthaivel Chettiar had acquired the properties on 09.05.1946 and had leased the properties to the school on 24.08.1950, as they were appropriate for use as playground. At the time of renewal, a lease was executed on 17.05.1984 for a period of three years in favour of the temple, based on the temple's assertions that the land belonged to it.

4. At paragraph 3 of the affidavit filed in support of the Writ Petition, the petitioner states 'even prior to the execution of the lease deed the school was already a lessee of the property in their own right and the execution of the lease deed in favour of the temple is only out of an honest mistake without verifying the legitimate claim of the temple'.

5. This position continued with the petitioner occupying the property in question. While this is so, fair rent was fixed by the temple at an amount of Rs.39,715/- per month by order dated 17.01.2005 at which juncture, the petitioner filed an application under Section 63(c) seeking a determination whether the property in question was a religious endowment. The application came to be returned as non-maintainable on the ground that Section 63(c) would have no application in a case of this nature.

6. The petitioner would submit that this Court, in the case of Molasiyar Nattugounder Samugham, rep. by its Dharmakarthas Kandasamy, Namakkal District V. Commissioner, Hindu Religious Charitable and Endowment, Chennai and Others, (2013 6 MLJ 381), has held that if there were any dispute as regards the title to an immovable property qua an individual and the temple, the



proper course of action for the party concerned would be to approach the appropriate authority under Section 63 of the Act and thereafter by way of appeal in terms of Section 69 of the HR&CE Act and suit as contemplated under Section 70, if aggrieved. Thus, according to the petitioner, the proper course of action would be the respondents to adjudicate upon the application filed under Section 63(c), on merits.

7. Per contra, learned counsel for the Executive Officer of the Temple would rely on a decision of this Court in the case of N.A.S.Ansari v. M.Sarangan (1996 2 LW 315). Referring to Section 116 of the Indian Evidence Act, 1972, he would argue that there was an estoppel upon the tenant/licencee in possession of the property to deny the title of the landlord to the property and thus it did not lie in the mouth of the petitioner to challenge the temples' title. He also points out that the proceedings initiated under Section 78 have been virtually brought to a standstill, since, though there is no stay granted in the present writ petition, the authorities have been reluctant to continue the proceedings on account of the pendency of the present writ petition.

8. Heard. The provisions of Section 63 and Section 78 turn in different spheres. Section 63 entitles the Joint or Deputy Commissioner to enquire into and decide upon enumerated categories of disputes including the determination of whether a specific property or money would constitute a religious endowment.

9. Section 78 on the other hand proceeds on the basis that the property in question belongs to the temple and makes a determination of whether the occupant has encroached upon that property, after hearing the person. Section 78 also contains an in-built mechanism to address disputes in regard to title that may be decided by the officer as though the proceedings were being conducted in a Civil Court.

10. Two regulations have been prescribed, 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). The provisions of Section 79(4) specifically provide for a remedy to the party aggrieved by the order under Section 78(4) by way of civil suit to establish that the religious institution or endowment has no title to the property in question.

11. The provisions of Section 63 envisage the adjudication of a dispute as to whether the property is a religious endowment. Such a dispute can only be raised by someone who claims title to a property who is being treated as a religious



endowment by the temple. This petitioner, admittedly, has no such claim to the property in question.

12. Section 63 does not envisage a dispute being raised in this regard by a third party. Thus, if at all the petitioner wishes to defend its occupation of the property on the ground that the title to the property vests in a third party and not the temple, such a defence may be made only under Section 78 and not under Section 63. The appropriate provision to be invoked in the present circumstances would be Section 78 only and not 63 and reference to Section 63(c) is misplaced.

13. In the present case a notice under Section 78 of the Act has been issued calling for the petition to show cause why it not be treated as an encroacher. The petitioner is bound to respond and it is, in the course of the reply, also has the liberty to contend that the title to the land in question/vests in some other party and not the temple.

14. In fine, I dismiss this writ petition directing the authorities to continue with the proceedings under Section 78 forthwith, hear the petitioner on Thursday, the 15th July, 2021 at 10.30 a.m. virtually if possible and pass orders within a period of four (4) weeks thereafter, in accordance with law. No notice need be issued afresh for this purpose. The objection of the petitioner raised in the application under Section 63(c) shall also be decided in the course of the Section 78 proceedings, if the petitioner pursues this point. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.



2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur.

WEB COPY

3.A/m.Kayarohanaswamy and
Neelayatchi Amman Temple,
represented by its executive officer,
Nagapattinam.

+1CC to Mr.Ravichandran Sundaresan, Advocate SR No.31814

+1CC to Mr.A.Muthukumar, Advocate SR No.31878

W.P. No.14479 of 2014 &
MP.No.1 of 2014

PCH (CO)
PR (20/07/2021)