

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.18856, 18859, 18862, 18863, 19791, 19800,
19807, 19814, 19825, 20097, 20103, 20107 & 20109 of 2020
and 131, 1319, 1321, 136, 143, 1453, 1458, 1466,
1474, 149, 243, 262 & 266 of 2021

and

WMP. Nos.1464, 1466, 1472, 1629, 1637, 1647, 1648,
1665, 190, 195, 198, 203, 330, 335 & 339 of 2021
and 23443, 23446, 23449, 23450, 24458, 24468,
24457, 24478, 24804
24475, 24481, 24491, 24801, 24805, 24808 & 24810 of 2020

1 V.POKKILAI ... PETITIONER in WP No.18856 of 2020
1 S.RATHINAMBAL ... PETITIONER in WP No.18859 of 2020
1 ANBAGAVALLI ... PETITIONER in WP No.18862 of 2020
1 S.RAMU ... PETITIONER in WP No.18863 of 2020
1 V.MYLAINATHAN
2 SIVAGAMI ... PETITIONERS in WP No.19791 of 2020
1 I. BARKAVI ... PETITIONER in WP No.19800 of 2020
1 R.KARUNAKARA PALLAVAN ... PETITIONER in WP No.19807 of 2020
1 P.ARUMUGAM
2 A.MANIGANDASAMY ... PETITIONER in WP No.19814 of 2020
1 S.SANTHOSHKUMAR ... PETITIONER in WP No.19825 of 2020
1 AMUTHA ... PETITIONER in WP No.20097 of 2020
1 MS.INDHUMATHI
2 THAVAMANI ... PETITIONERS in WP No.20103 of 2020

1 S.K.RAGUNATHAN
2 THAVAMANI ... PETITIONERS in WP No.20107 of 2020
1 E.RAMALINGAM ... PETITIONER in WP No.20109 of 2020
1 K.RATHINAMBAL ... PETITIONER in WP No.131 of 2021
1 S.MASILAMANI
2 M.NATARAJAN ... PETITIONERS in WP No.1319 of 2021
1 K.VETRIVEL ... PETITIONER in WP No.1321 of 2021
1 KANNAN ... PETITIONER in WP No.136 of 2021
1 E.MURUGANATHAM ... PETITIONER in WP No.143 of 2021
1 M.DURAI ... PETITIONER in WP No.1453 of 2021
1 MRS. E.MALINI ... PETITIONER in WP No.1458 of 2021
1 S.RAVICHANDRAN
2 S.RAMESH ... PETITIONERS in WP No.1466 of 2021
1 MRS. K.ANANTHI ... PETITIONER in WP No.1474 of 2021
1 P.ARUMUGAM ... PETITIONER in WP No.149 of 2021
1 E.NATARAJAN ... PETITIONER in WP No.243 of 2021
1 E.SELVAM ... PETITIONER in WP No.262 of 2021
1 V.SIVALINGAM PATHAR ... PETITIONER in WP No.266 of 2021

vs

1 STATE OF TAMIL NADU
REP BY ITS SECRETARY TO GOVERNMENT,
HINDU RELIGIOUS AND CHARITABLE
ENDOWMENTS DEPARTMENT,
FORT ST GEORGE,
SECRETARIAT, CHENNAI-09.

- 2 THE COMMISSIONER,
HINDUR RELIGIOUS AND CHARITABLE
ENDOWMENTS DEPARTMENT, CHENNAI.
- 3 THE JOINT COMMISSIONER,
HINDUR RELIGIOUS AND CHARITABLE ENDOWMENTS
DEPARTMENT, VILLUPURAM.
- 4 THE ASSISTANT COMMISSIONER,
HINDUR RELIGIOUS AND CHARITABLE ENDOWMENTS
DEPARTMENT, CUDDALORE.
- 5 THE EXECUTIVE OFFICER,
ARULMIGU DEVANATHA SWAMY THIRUKOIL,
THIRUVANDIPURAM,
CUDDALORE. ...RESPONDENTS IN ALL WPs

Prayer in WP Nos.18856, 18863, 19791, 20097, 20103, 19814 of 2020, 131, 1319, 1321, 136, 1453, 1458, 149,266 of 2021:

These Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to calling for the records relating to the impugned notice bearing Rc No. 3090/ 2020/ b2, 3120/2020/b2, 3095/2020/b2, 3119/2020/b2, 3113/2020/b2, 3115/2020/b2, 3088/2020/b2, 3097/2020/b2, 3099/2020/b2, 3114/2020/b2, 3092/2020/b2, 3098/2020/b2, 3093/2020/b2, 3089/2020/b2 respectively dated 25.09.2020 of the 3rd respondent Joint Commissioner, Hindu Religious and charitable Endowments Department, Villupuram and quash the same and direct the respondents not to evict the petitioner from her property ie., Plot No.8, 17, 18 and 19,20,21, 22 and 23,19, 13, 11, 24, 5, 12, 25, 26, and 27, 10, 1, 6, 14, 3 respectively Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram, Cuddalore except by due process of law through a regularly instituted suit before the competent court of law.

Prayer in WP Nos.20109 of 2020 and 243, 262 of 2021:

These Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to calling for the records relating to the impugned notice bearing Rc. No. 3096/ 2020/ b2, 3094/2020/b2, 3100/2020/b2 respectively dated 25.09.2020 of the 3rd respondent Joint Commissioner, Hindu Religious and charitable Endowments Department, Villupuram and quash the same and direct the Respondents not to evict the petitioner from the property i.e., the extent of 875 sq.ft sitated in Plot No.28,28 and 29 respectively Ganapathy Nagar, Kumarappa Naicken Pettai,

Thiruvandipuram, Cuddalore except by due process of law through a regularly instituted suit before the competent Court of law.

Prayer in WP No.136 of 2021:

These Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to Calling for the records relating to the Impugned Notice bearing Rc. No. 3092 / 2020 / B2 / dated 25.09.2020 of the 3rd Respondent Joint Commissioner, Hindu Religious and Charitable Endowments Department, Villupuram and quash the same and direct the Respondents not to evict the Petitioner from her property i.e., Plot No. 25, 26, 27 Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram, Cuddalore of the total extent of 6000 sq ft Except by due process of law through a regularly instituted suit before the competent Court of law.

Prayer in WP No.18859 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the respondents not to evict the petitioner from her properties ie Plot No.9, Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram, Cuddalore of an extent of 1142 sq.ft and ii) Plot No.10, Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram, Cuddalore of an extent of 694.5 sq. ft along with rights of common passage except by due process of law through a regularly instituted suit before the competent court of law.

Prayer in WP No.18862 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the respondents not to evict the petitioner from her property ie Plot No.31, Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram, Cuddalore extent by due process of law through a regularly instituted suit before the competent court of law.

Prayer in WP No.19800 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the Respondents not to evict the petitioner from her property i.e., Plot No. 7, Ganapathy Nagar Kumarappa Naicken Pettai Thiruvandipuram, Cuddalore Except by due process of law through a regularly instituted suit before the competent Court of law.

Prayer in WP No.19807 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the Respondents not to evict the petitioner from his properties i.e., i) Plot No. 16 of an extent of 2000 sq.ft. and ii) Plot No. 17 of an extent of 375 sq.ft. totalling in all the extent of 2375 sq.ft. situated at Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram Cuddalore except by due process of law through a regularly instituted suit before the competent court of law.

Prayer in WP No.19825 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the respondents not to evict the petitioner from his property i.e Plot No.4, Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram, Cuddalore except by due process of law through a regularly instituted suit before the competent court of law.

Prayer in WP No.20107 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the respondents not to evict the petitioner from the property i.e., Plot No.30, Ganapathy Nagar, Kumarappa Naicken Pettai, Thiruvandipuram, Cuddalore except by due process of law through a regularly instituted suit before the competent Court of law.

Prayer in WP No.143 of 2021:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the Respondents not to evict the Petitioner from his Property i.e. extent of 875 sq.ft. situated in Plot Nos. 28 and 29 Ganapathy Nagar Kumarappa Naicken Pettai Thiruvandipuram Cuddalore except by due process of law through a regularly instituted suit before the competent Court of law.

Prayer in WP No.1466 of 2020:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to Calling for the records relating to the impugned notice bearing Rc.No.3091/2020/b2 dated 25/09/2020

of the 3rd respondent Joint commissioner Hindu Religious and Charitable Endowments Department Villupuram and quash the same and direct the respondents not to evict the petitioner from their properties i.e (a) Land of the extent of 4350 Sq.ft. together with the superstructure and Flour Mill (b) Land of the extent of 3052 sq.ft. together with superstructure and (c) Land of the extent of 12 Cents (5232 sq.ft) together with superstructure comprised in New Survey No.54/7 and old Survey No.123/B4 situated at Kumarappa Naicken Pettai Thiruvandipuram Cuddalore Except by due process of law through a regular instituted suit before the competent court of law.

Prayer in W.P.No.1474 of 2021:

The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to directing the respondents not to evict the petitioner from her property i.e. Plot No.10 Ganapathy Nagar Kumarappa Naicken Pettai Thiruvandipuram Cuddalore of an extent of 695.5 sq.ft along with rights of common passage except by due process of law through a regularly instituted suit before the competent Court of Law.

For Petitioner : Mr.K.Mahimai Raj in all WPs

For Respondents : Mr.R.Venkatesh,
Government Advocate for R1 to R4
Mr.K.Ashok Kumar for R5.

C O M M O N O R D E R

This batch of 26 writ petitions have been filed by occupants of lands in new Survey Nos.54/5 54/6 and Old Survey No.123/B3 (W.P.No.18856 of 2020), New Survey Nos.54/5, 54/6 and Old Survey No.123/B3 and New Survey Nos.54/5, 54/6 and Old Survey No.123/B3 (W.P.No.18859 of 2020), Survey Nos.54/5, 54/6 and Old Survey No.123/B3 (W.P.No.20103 of 2020), New Survey No.54/2, 54/3, 54/4 and Old Survey Nos.123/B2 and 123/B3 (W.P.No.20109 of 2020), New Survey No.54/2, 54/3, 54/4, 54/5, 54/6 and Old Survey Nos.123/B2 and 123/B3 (W.P.No.20107 of 2020), New Survey No. 54/5, 54/6 and Old Survey Nos.123/B2 (W.P.No.20097 of 2020), New Survey No. 54/3, 54/4 and Old Survey Nos.123/B2 (W.P.No.19807 of 2020), New Survey No. 54/5, 54/6 and Old Survey Nos.123/B3 (W.P.No.19800 of 2020), New Survey No.54/2, 54/3, 54/4 and Old Survey Nos.123/B2 (W.P.No.19791 of 2020), New Survey No.54/2, 54/3, 54/4 and Old Survey Nos.123/B2 (W.P.No.18863 of 2020), New Survey No.54/2, 54/3, 54/4, 54/5, 54/6 and Old Survey Nos.123/B2 (W.P.No.18862 of 2020), New Survey No. 54/5 54/6 and Old Survey No. 123/B3 (W.P.No.1321 of

2021), New Survey No.54/2, 54/3, 54/4, 54/5, 54/6 and Old Survey Nos.123/B2 and 123/B3 (W.P.No.19814 of 2020), New Survey No. 54/5, 54/6 (W.P.No.1319 of 2021), New Survey No. 54/5, 54/6 and Old Survey No.123/B2 (W.P.No.131 of 2021), New Survey No.54/2, 54/3, 54/4 and Old Survey Nos.123/B2 (W.P.No.136 of 2021), New Survey No.54/2, 54/3, 54/4 and Old Survey No.123/B2 and 123/B3 (W.P.No.143 of 2021), New Survey No. 54/5, 54/6 and Old Survey No.123/B3 (W.P.No.149 of 2021), New Survey No. 54/5, 54/6 and Old Survey Nos.123/B3 (W.P.No.1453 of 2021), New Survey No. 54/5, 54/6 and Old Survey Nos.123/B3 (W.P.No.1458 of 2021), New Survey No. 54/7 and Old Survey Nos.123/B4 (W.P.No.1466 of 2021), New Survey Nos. 54/5, 54/6 and Old Survey Nos.123/B3 comprised in part of New Survey No. 54/5, 54/6 and Old Survey Nos.123/B3 together (W.P.No.1474 of 2021), New Survey No. 54/5, 54/6 and Old Survey Nos.123/B3 (W.P.No.19825 of 2020), New Survey No.54/2, 54/3, 54/4 and Old Survey Nos.123/B2 and 123/B3 (W.P.No.243 of 2021) New Survey No.54/2, 54/3, 54/4 and Old Survey Nos.123/B2 and 123/B3 (W.P.No.262 of 2021), New Survey No. 54/5, 54/6 and Old Survey Nos.123/B3 (W.P.No.266 of 2021) (lands/lands in question).

2. The petitioners in (W.P.Nos.18856, 20103, 20109, 20097, 19791, 18863, 19814, of 2020, 131, 136, 149, 243, 1453, 1458, 1466, 262, 266, 1319 and 1321 of 2021) have received notices from the Joint Commissioner/R3 on the premise that the lands in question belong to the Arulmigu Devanatha Swamy Temple, Thiruvandipuram, Cuddalore District (Temple) and calling upon them to show cause why they should not be evicted as encroachers. The petitioners in the remaining writ petitions are not in receipt of notices but since they are in occupation of adjacent lands, have also come before this Court praying for a Writ of Mandamus directing the respondents not to evict the petitioner from their property in anticipation of receiving similar notices.

3. The petitioners argue in one voice that they are the absolute owners of the properties under occupation by them having purchased the same for valuable consideration from private parties under registered deeds of sale. The details of the vendors or the dates of sale deeds are not material to decide the legal issue in hand and I hence desist from mentioning the same.

4. According to the petitioners, the properties in occupation by them were part of a larger extent of land that was owned and possessed by the family of Kumarappa Sankariah Naidu. Pursuant to a partition in the year 1959, under a registered partition deed dated 23.12.1959, property in 'C' Schedule was allotted to one of the sons Bhaktavatchulu Sankariah Naidu comprising several immovable properties including lands in

question. Those lands were subsequently transferred by the said persons to Sampath and Annamalai, under a sale deed dated 06.10.1982 registered as document no.1798 of 1982 on the file of the Office of the Joint Sub-Registrar-II at Cuddalore.

5. In 1989, having held the possession of the lands till then, Sampath and Annamalai formed a layout plotting the lands including the lands in question into smaller sites titled as 'Ganapathy Nagar' and sold the plots to several persons. The subject properties have ostensibly been purchased by the petitioners before me from persons who had purchased the plots from Sampath and Annamalai. The sales to the petitioner were effected in 1988 and ever since the purchase, the petitioners claim to be in possession, enjoyment and ownership of the property, having got title to the same from their vendors. Super structures has been put up by the petitioner, electricity connection and other infrastructure and facilities have been obtained and property tax paid.

6. It was in the above circumstances that a show cause notice under Section 78 of the Act was issued, to which a response was sent by some of the petitioners stating that the proposed action was misconceived as the petitioners were not trespassers but owners who held good and proper title to the properties. No action was taken thereafter and after a period of more than a year, the impugned notices have been sent under Section 78 again, putting the petitioners to notice of alleged encroachment and asking them to show cause as to why the encroachments not be removed. The matter has been listed for personal hearing.

7. The first ground taken by the petitioners is that Section 78(1) of the Act which stipulates the procedure for notice to be issued under Section 78(2) states that that it is only where the Assistant Commissioner having jurisdiction over that particular area, either suo motu or upon a complaint made by the trustee, reports the allegation of encroachment along with all supporting materials to the Joint Commissioner, that a notice may be issued by the latter under Section 78(2). According to the petitioner, no such report has been submitted by the Assistant Commissioner and thus the assumption of jurisdiction by R4 in issuing the impugned notice is incorrect. He bases this ground on the fact that the impugned notice does not refer to any reports having been sent by the Assistant Commissioner, which according to him is a sine qua non for the invocation of power under Section 78(2).

8. The second ground canvassed is that the power granted under Section 78(2) is summary and cannot be exercised in the light of the categoric assertion of the petitioners to the

effect that they are in ownership and enjoyment of the land. In the light of the objections that the petitioners now raise and have also raised earlier in response to prior notices, a determination of title would have to be made and this is not something that can be undertaken under Section 78. Questions concerning title, possession and enjoyment of property, particularly, involving voluminous and old records and documents can only be before a Civil Court which is enabled to consider evidence both oral and documentary evidences put forth by the parties to establish their respective claims. Such a detailed exercise/process is not envisaged under Section 78 and thus the impugned notices contemplate proceedings that are most unsuited to adjudication of complicated questions involving title. In any event, the petitioners reiterate their claims over the property as well, in the light of the documentation placed before this Court.

9. Per contra, Mr. Ashok Kumar, learned counsel for the Temple would first draw attention to the fact that the lands in question constitute Inam Lands. Title Deed dated 31.08.1882 along with an extract of a survey revision and resettlement register is placed on record. By order of the Settlement Tahsildar dated 07.12.1970, an order was passed in regard to a suo motu enquiry initiated under the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, and the schedule to this order evidences the grant of patta to the subjects lands, under Section 8(2)(ii) of the aforesaid Act, to the Temple. He draws my attention to serial nos. 7, 8 and 9 of that schedule and takes me through the various changes effected over time to establish the identity of the lands mentioned therein and the lands in question. I refrain from looking into this aspect of the matter or rendering a finding in this regard, as this involves factual issues that are not appropriate for me to delve into in a writ petition.

10. In this context and at this juncture, I might refer to a decision rendered by Justice S. Nagamuthu and myself in the case of Sudha Ravi and another V. The Special Commissioner and Commissioner, Hindu Religious and Charitable Endowments Department, Chennai - 34 (W.P.No.30589 of 2013 dated 05.04.2017), wherein we had occasion to consider the challenge to orders passed by the Executive Officer of Temples including the assets of the Temple properties that the petitioner claimed were theirs, and a direction to the officials of the Registration Department to receive the documents for registration of sale or lease in respect of the aforesaid properties and also for return of the properties in some cases.

11. Section 22 A of the Registration Act, 1908 dealt with the rejection of the request to register certain documents. Many

of the properties in question comprise immovable properties that had been given to, belonged or endowed to Mutts or Temples forming part of the temple register maintained in line with Section 29 of the TN HR&CE Act. The Executive Officers of various Temples had initiated proceedings to the effect that registering authorities not register deeds of sale or other arrangements concerning properties. This affected the interests of transferors/transferees of the immovable properties who claimed that the properties were theirs and did not belong to the religious institution. Objections raised by the petitioners came to be rejected and challenged unilaterally in that batch.

12. We concluded that the petitioners had to be heard prior to any orders being passed for rejection. In the course of that order, we have also referred to various judgments of the Supreme Court in regard to the power that vests in statutory authorities vis-à-vis the powers that vest in competent Civil Courts.

13. At paragraph 18, we have referred to the submission of the petitioners in that case that after passing of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, patta had been granted to several individuals and the properties in question had changed hands several times. Thus, once Ryotwari patta has been issued, title stands established and the Registering Authority must register the document despite the same being reflected as land belonging to the Religious Institution in its statutory register.

14. In this context, we have referred to the judgments of the Supreme Court in *Dokiseela Ramulu Vs. Sri Sangameswara Swamy Varu* (2017) 1 MLJ 294 (SC), wherein the Supreme Court re-affirms the law laid down by it in *State of Tamil Nadu Vs. Ramalinga Samigal Madam* ((1985) 4 SCC 10). Paragraph 12 had been referred to therein by us and may be usefully referred to now as well:

"12. Now turning to the question raised in these appeals for our determination (it is true that Section 64-C of the Act gives finality to the orders passed by the Government or other authorities in respect of the matters to be determined by them under the Act and sub-section (2) thereof provides that no such orders shall be called in question in any court of law. Even so, such a provision by itself is not, having regard to the two propositions quoted above from *Dhulabhai's* case (1968) 3 SCR 662, decisive on the point of ouster of the Civil Court's jurisdiction

and several other aspects like the scheme of the Act, adequacy and sufficiency of remedies provided by it etc., will have to be considered to ascertain the precise intendment of the Legislature. Further, having regard to the vital difference indicated above, in between the two sets of provisions dealing with grant of ryotwari pattas to landholders on the one hand and ryots on the other different considerations may arise while deciding the issue of the ouster of Civil Court's jurisdiction to adjudicate upon the true nature of character of the concerned land. Approaching the question from this angle it will be seen in the first place that Section 64-C itself in terms provides that the finality to the orders passed by the authorities in respect of the matters to be determined by them under the Act is "for the purposes of this Act" and not generally nor for any other purpose. As stated earlier the main object and purpose of the Act is to abolish all the estates of the intermediaries like Zamindars, Inamdars, Jagirdars or under-tenure holders etc. and to convert all land-holdings in such estates into ryotwari settlements which operation in revenue parlance means conversion of alienated lands into non-alienated lands, that is to say, to deprive the intermediaries of their right to collect all the revenues in respect of such lands and vesting the same back in the Government. The enactment and its several provisions are thus intended to serve the revenue purposes of the Government, by way of securing to the Government its sovereign right to collect all the revenues from all the lands and to facilitate the recovery thereof by the Government and in that process, if necessary, to deal with claims of occupants of lands, nature of the lands, etc. only incidentally in a summary manner and that too for identifying and registering persons in the revenue records from whom such recovery of revenue is to be made. The object of granting a ryotwari patta is also to enable holder thereof to cultivate the land specified therein directly under the Government on payment to it of such assessment or cess that may be lawfully imposed on the land. Section 16 is very clear

in this behalf which imposes the liability to pay such ryotwari or other assessment imposed upon the land to the Government by the patta-holder. The expression "for the purposes of this Act" has been designedly used in the section which cannot be ignored but must be given cogent meaning and on a plain reading of the section which uses such expression it is clear that any order passed by the Settlement Officer either granting or refusing to grant a ryotwari patta to a ryot under Section 11 of the Act must be regarded as having been passed to achieve the purposes of the Act, namely, revenue purposes, that is to say for fastening the liability on him to pay the assessment or other dues and to facilitate the recovery of such revenue from him by the Government; and therefore any decision impliedly rendered on the aspect of nature or character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose."

15. Taking a cue from that judgment, it was urged before us that unless a Civil Court had declined title, de hors the ryotwari patta, a document presented for registration should not be mechanically rejected simply on the basis of the objection raised by the religious institution.

16. Per contra, learned Additional Advocate General had argued that any inam granted was to be deemed as a religious endowment and title held by the religious institution in that regard was held to be at absolute. At paragraph 23, we have declined a ruling on that issue on the ground that this dispute could be resolved only by a Civil Court on examination of evidence and the Registering Authority was not competent to go into question as he does not exercise a judicial/quasi-judicial function. The temple cannot, we said, claim title merely because some lands were shown as its properties in its register. Such register was not prepared after notice was issued to interested persons, but unilaterally and we have concluded that once patta has been issued under the aforesaid three enactments, it is for the temple to establish its title before the Civil Court. This decision will also be taken note of by the authority in deciding the present matters in line with the directions in paragraphs 36-38 of this order.

17. The legal issue that arises relates to the appropriateness or otherwise of Section 78 of the HR&CE Act to engage in, and determine questions relating to title, possession, occupation or enjoyment of immovable property. In this context, the following cases have been referred to at the Bar, the first four by the petitioner and the remaining by the respondents:

(i) Govt. of Andhra Pradesh Vs. Thummala Krishna Rao and Another [AIR (1982) SCC1081];

(ii) Commissioner, HR&CE., Madras and Others Vs. P.V.Subramania Ayyar (since deceased and others) [(1992) MLJ 1]:

(iii) Sahaja Nalvazhvu Sangam Vs. The Commissioner, Hindu Religious and Charitable Endowments Department [W.A.(MD) Nos. 1273 and 1274 of 2019]:

(iv) Raju Spinning Mills Pvt. Ltd. Vs. Tahsildar, Srivilliputhur and others [(2011) 1 MLJ 659]:

(v) A.T.S.Chinnaswami Chettiar and Others Vs. Sri Kari Varadaraja Perumal Temple and Another [(1995) Supp. (3) SCC 724]:

(vi) K.V.Lakshmi Ammal Vs. The Joint Commissioner and Another [(2010) SCC Online Mad 1932]:

(vii) Palanichamy Vs. The Commissioner, Hindu Religious and Charitable Endowments [2016 SCC Online Mad. 21977]:

18. Before advertng to the decisions, two Regulations of the Tamil Nadu Hindu Religious and Charitable Endowments Department assume importance. The first is the Holding of Inquiries Rules (SRO No.A-895 of 1961) (in short 'Inquiries Rules') and the second is the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules (G.O.Ms.No.383, Revenue, dated 29.01.1962) (in short 'Removal of Encroachment Rules').

19. The latter Rules are specific to the procedure and the manner by which the proceedings for removal of encroachments should be conducted under Sections 78, 79, 80 and 81 of the Act. Regulation 5 endows the authorities with all powers as contained under the Code of Civil Procedure, 1908 (CPC) in regard to the appearance of pleaders, affidavits, production of documents, examination of witnesses, taking of oral evidence, proof by affidavits, filing of exhibits, issue of Commissions, return of

documents not admitted in evidence and other connected matters. The Regulation is extracted below:

'5. Enquiries. - The provisions of the rules issued Under section 116(2)(iii) shall apply to the conduct of enquiries under section 78(4) to 81(3) of the Act and the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) and the Civil Rules of Practice and Circular Orders shall apply, as far as practicable, to appearance of pleaders and to affidavits, production of documents, examination of witnesses, taking of oral evidence, proof by affidavits, filing of exhibits, issue of Commissions, return of documents not admitted in evidence and other connected matters.'

20. The Enquiries Rules is a general set of rules in regard to the enquiry to be conducted under all provisions of the Act and Regulation 20 is substantially in line with Regulation 5 of the Removal of Encroachment Rules stating specifically in Regulation 20 that the enquiry shall be made 'as far as practicable', in the manner laid down in the CPC for the trial of suits. Regulation 20 reads as follows:

20. The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) and the Civil Rules of Practice and Circular Orders shall apply, as far as practicable, to appearance of pleader and to affidavits, production of documents, examination of witnesses, taking of oral evidence, proof by affidavits, filling of exhibits, issue of commissions, return of documents not admitted in evidence, and other connected matters, and the inquiry shall be made, as far as practicable, in the manner laid down in the said Code for the trial of suits.

21. Thus, provision is available even within the framework of the TNHR&CE Act for the holding of enquiry akin to a civil court.

22. In ThummalaKrishna Rao (supra), the Supreme Court considered proceedings for eviction that had been initiated as against Nawab Habibuddin in terms of Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 stating that that enactment did not provide for the kind of in depth exercise required to determine title to properties but only contemplated a summary procedure. If there were a bona fide and genuine dispute relating to title to any property, the proper remedy would be to file a suit. The relevant portion is extracted below:

It seems to us clear from these provisions that the summary remedy for eviction which is provided for by section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to property properly described in sub-sections (1) and (2) of section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously which can only be done by resorting to the summary remedy provided by the Act. But section 6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under section 3". Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government" If there is a bond dispute regarding the title of the Government to any property the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between The State Government and the respondents as to whether The three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by section 6 is not the kind of legal process which is

suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

The view of the Division Bench that the summary remedy provided for by section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin", cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Meherunnissa Begum v. State of A.P.* which was affirmed by a Division Bench. (2) It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts " which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the Ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law.

23. The above case does not advance the plea of the petitioner as the enactment considered and interpreted therein, the Andhra Pradesh Land Encroachment Act, 1905, does not seem to have machinery required to conduct proceedings akin to a civil court, as does the TNHR&CE Act. Moreover, the object, intent and provisions of the Andhra Pradesh Land Encroachment Act are not analogous to the provisions of the HR&CE Act and no material has been produced by the petitioners to show that the impact of the two enactments is one and the same.

24. The Bench states that the procedure contemplated under the AP Land Encroachment Act was summary, whereas, the provisions of the TNHR&CE Act and the concerned Regulations, such as the Inquiries Rules and the Removal of Encroachment Rules, contemplate a far more in-depth and detailed examination of the question of title, as would a civil court, and as far as practicable. It has not been established, either by a reading of that judgment or by any material produced before me, that the enabling Regulations available under the HR&CE Act are available to assist the officials of that Department as well, in some form.

25. In the case of A.T.S.Chinnaswami Chettiar (supra), the Supreme Court considered a dispute in regard to title where issues of Ryotwari Patta and Inam lands were involved. The Court states at para 16 that the Inam was granted for the benefit of the religious institutions and the statutory presumption provided under Section 44 would come into full play. In such case all the occupants of that property were able to get over such statutory presumption. According to the respondents in this case, their title to the property as Inam land was cast iron and the registered sale deed that had been produced by the petitioners would not disturb their title.

16. The High Court has rightly distinguished the case on which reliance was placed by the appellants, namely 1949 (21) MLJ 602 (supra) by pointing out that that was a case which did not deal with a statute like the present Act and High Court was called upon in the present case to consider the grant of Ryotwari patta under the provisions of the Act and not outside the Act. As pointed out earlier, before us two more decisions were cited and we find in both the cases the admitted fact was that the alienation was by the inamdar temple itself. That makes all the difference. Therefore, those decisions will not help the appellants. At the risk of repetition we may point out that it is an admitted fact that the appellants have failed to establish that there was any alienation by the inamdar to enable the appellants to claim Ryotwari patta under Section 8(2). The inam in question, as found earlier, was an inam granted for the benefit of a religious institution and so the statutory presumption provided under Section 44 will come into full play in the absence of the appellants proving anything contrary to get over the said statutory presumption.

.....

26. The above is an appeal challenging the order of the Special Tribunal and Settlement Tahsildar and does not touch upon the provisions of the TNHR&CE Act or the procedure contemplated thereunder to decide disputes involving the question of title. It may however, have a bearing on the decision qua the title to the properties in question, in the final view that I have taken in this matter.

27. In the case of K.V.Lakshmi (supra), after setting out facts in question in para 6, at para 7 the Court noted that the title of the land in question had been concluded by the Privy Council to vest in the Temple and thus, the petitioner could not

claim any such right for the property. In such circumstances, there was no impediment or prohibition in taking action for removal of the encroachments in line with Section 78. The respondent would rely on this decision stating that the character of the land being inam land, the impugned proceedings under Section 78 were valid and should be permitted to run their course.

28. Moreover, the very question that has arisen in this matter, as to the interplay between the enquiry to be contemplated under Section 78 and the enquiry to be contemplated in a civil suit have also been adverted to in this decision, in paragraph 12 onwards. After extracting Regulation 20 of the Inquiries Rules, the Court records at para 13 that the enquiry to be conducted under Section 78 (4) is substantially a full-fledged enquiry, like that of a Civil Court. Thus and in summation, the Court states at para 16 that the specific procedure contemplated does not indicate that proceedings under Section 78 are only summary but detailed and thorough. The relevant paragraphs are extracted below:

6. The second respondent has filed a detailed counter stating that the notice issued on 19.01.2009, is only a show cause notice calling upon the petitioner to say why the encroachment made by her in the property in question belonging to the second respondent temple should not be removed and the fact that the petitioner had submitted to the jurisdiction of the first respondent by filing her objection on 24.08.2009. Hence, the Writ Petition is not maintainable. According to temple authorities, the land in question and other lands comprised in Survey No.196/14 and subdivided as Survey Nos.196/14A and 196/14B and the present Survey T.S.No.945/6 were all the subject matter of the claim by the temple in regard to the Hillock, Saravana Poikai, Vannankulam, Pancha Pandavar Kugai and Umari Andavar Koil, upto Giri Veedhi as demarcated in the plan filed in O.S.No.4 of 1920 on the file of the Additional Sub Judge, Madurai which was filed by the temple authorities against the Secretary of State for India in Council through the Collector, Madurai and 12 others which ultimately culminated in the proceedings before the Privy Council in Appeal No.5 of 1930, dated 12.05.1931 which was reported in 1931 Privy Council 212 wherein, the property described upto Giri Veedhi measuring an extent of 5,72,544 square foot on all the sides as per the Decree plan have been declared as property of the second respondent temple. Furthermore, as per the Village "A" Register that the

land comprised in S.No.196/14 has been subdivided as 196/14A and 196/14B which have been registered in the name of the temple. Before invoking Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, the respondent has duly passed a resolution of the Trust Board even as early as on 14.02.2007 and the petitioner has only challenged the validity of the notice in O.S.No.135 of 2007 and no suit is maintainable as against the notice issued by the temple. But, anyway it is pending as on date.

7. Inasmuch as the right of the land in question has already been concluded by the Privy Council that the temple is the owner of the property the petitioner will have no right over the property and there is no prohibition or impediment in taking action for removal of the encroachment as contemplated under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959. Therefore, without even inviting an order under Section 78(4) of the Act, the present Writ Petition is not maintainable. It is premature and has to be dismissed in limini. In any view of the matter, the petitioner has got an effective remedy available under the statute and therefore, also the writ petition is not maintainable, nor any action could be taken without passing the final order. With the above reasonings, the learned Single Judge has passed the order stating as follows:

"20. It is not for this Court to decide the issues relating to the title of the property under dispute. Further, it is open to the petitioner to establish her title by way of civil proceedings, before the appropriate forum, in accordance with law. It is also seen that the impugned notice, dated 19.01.2009, has been issued by the first respondent, under Section 78(2) of the Hindu Religious and Charitable Endowments Act, 1959. Therefore, it would be open to the petitioner to raise all the issues before the first respondent, including the ground of lack of jurisdiction, raised by the petitioner, in the present writ petition. When it is open to the petitioner to pursue her remedy by way of a civil suit, before the civil forum, the writ petition preferred by her before this Court, under Article 226 of the Constitution of India, cannot be maintained.

12. Furthermore, a reading of Section 78 (4) would indicate that the Act gives three statutory mandate on the competent authority. They are that the authority should conduct such enquiry as may be prescribed and he should be satisfied that there was an encroachment and only by an order in which he has to record reasons, he can direct removal of such a person. Therefore, the Act contemplates the authority should conduct such an enquiry as prescribed. To analyse what has been prescribed under the Act, the relevant rule is extracted below:

"20. The provisions of the Code of Civil Procedure and the Civil Rules of Practice and Circular Orders shall apply, as far as practicable, to appearance of pleader and to affidavits, production of documents, examination of witnesses, taking of oral evidence, proof by affidavits, filing of exhibits, issue of commissions, return of documents not admitted in evidence, and other connected matters, and the inquiry shall be made, as far as practicable, in the manner laid down in the said Code for the trial of suits."

13. On a reading of the rules, it is very clear that the enquiry as contemplated under Section 78 (4) is that the authority should give the necessary opportunity to the petitioner concerned including that of cross-examination of witnesses, production of documents, summoning of witnesses and also availing of the help of lawyer. It is more or less, a full-fledged enquiry of that of a Civil Court, when the proceedings are governed by the Act. The apprehension of the petitioner at this point of time even at the show cause notice stage itself is totally unacceptable. The petitioner knowing fully well that the remedy is given under the Act itself, has unnecessarily chosen to file writ petition to drag on the proceedings.

15. The learned counsel for the appellant relied upon a decision reported in 1995 Supp. (2) Supreme Court Cases 290 (State of Rajasthan v. Padmavati Devi (Smt) (Dead) by LRs and others) for the proposition that if there is a bona fide dispute, summary procedure should not be imposed for evicting even from the public premises, eviction from the unauthorised occupation.

16. As stated supra since the Act contemplates specific procedure, whereby it is not a summary in nature it is an inquiry to be conducted "as far as practicable" like a suit, it cannot be treated as a summary procedure. In this case, even though the petitioner is not able to establish anything on the title, it is always open for the petitioner to establish the same before the concerned authority after adducing evidence which cannot be done in a Writ Court. Hence, we have no hesitation in stating that the petitioner is not entitled to file Writ petition and nothing is warranted for our interference as the order passed by the learned Single Judge is correct and proper.

29. Again, in the case of Palanichamy (supra), this court, at para 34 reiterates its conclusion in other cases to the effect that the procedures contemplated under Section 78 (4) are not summary but specific, stating as follows:

31. In this connection it is to be pointed out that disputed questions of fact should be left with the fact finding Authorities. In general, a disputed fact is not investigated in a proceeding, under Article 226 of the Constitution of India, wherein, an effective, efficacious, adequate and alternative remedy is available, Writ is not the proper forum, as opined by this Court. Moreover, Article 226 of the Constitution of India, is not intended to circumvent statutory procedures, where, statutory remedies are very much available a Petition under Article 226 of the Constitution of India should not be entertained. Also, that, in exercise of discretionary jurisdiction, the High Court should not act as, 'Court of Appeal or Revision' to correct mere errors of Law or fact. Besides that, under Article 226 of the Constitution of India, the High Court does not generally entered upon a determination of question, which demand an elaborate examination of evidence to establish the right and to enforce to which the Writ is claimed.

32. Ordinarily, the Competent Authority under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is to issue show-cause notice for removal of encroachment and thereafter, considering the objections and conducting an enquiry, after recording the reasons, has to pass an order of eviction. As a matter of fact, 'an opportunity of hearing to the

parties' is to be given and reasons must be assigned for arriving at a certain conclusion.

33. Also, it is quite evident that, as per Section 78(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, an individual, who continues to remain in the property after termination of Lease also comes under the definition of 'Encroacher' for the removal of whom, the Joint Commissioner can pass an order, under Section 78 (4) of the Act. Section 78(5) of the Act speaks of depositing the amount decided by the Joint Commissioner for use and occupation pending disposal of the proceedings for eviction. In fact, Section 78 (1) of the Act, deems a person to squat on the property after the expiry of the Lease as an encroacher. As such, treating an individual as a tenant of property holding over after the expiry of the Lease is excluded under Section 78 of the Act. To put it precisely, in this regard, the general Right under the Transfer of Property Act, 1882, is inapplicable, in the considered opinion of this Court.

34. It is to be noted that the procedures contemplated under Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, is a specific procedures and admittedly, it is not a summary in character. Therefore, an enquiry is to be conducted 'as far as practicable' like that of a Suit. In fact, Section 78(4) of the said Act, prescribes three statutory mandates on the competent authority viz., (i) An Authority should conduct an enquiry (ii) An Authority should satisfy that there is an encroachment in property and (iii) An Authority should pass an order / speaking order recording reasons for removal of encroachment. Suffice it for this Court to clearly point out that the procedures prescribed under Section 78(3) of the Act, are more or less a full pledged Enquiry, as the one prevailing in a civil Court.

35. Section 78(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, speaks of encroachers being ordered to deposit the amount determined by the Joint Commissioner, for use and occupation, pending disposal of the proceedings for eviction. As per Section 78(1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, a person, who continues to remain in the property after

termination of Lease also comes under the definition of 'Encroacher' and for the removal of the whom, the Joint Commissioner can pass an order, under Sub Section 4 of Section 78 of the Act.

36. It is to be borne in mind that a Competent Authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, cannot pass an order, according to his whims and fancies on in an ordinary or capricious manner. Before passing an order of eviction, he is to necessarily consider the objections raised by the encroachers and should conduct an enquiry after providing an opportunity of hearing to the parties and after recording the reasons for coming to such a conclusion, he has to pass a reasoned order, on merits. If a person is aggrieved against an order passed by a Competent Authority, then, he is to exhaust his remedies first under a particular statute.

30. In the case of P.V.Subramania Ayyar (supra), this court has stated that declaration of a document as void would involve approaching the Civil Court only and cannot be done by an authority functioning under an enactment, such as the HR&CE Act. Such an authority is endowed with only limited powers to decide the question of title and thus the authorities in that case were held to have acted correctly in following the decision of the trial Court on the issue of title.

2. We find that the learned single Judge has approached the problem truly and strictly in accordance with law on the subject. To declare a document void, one has to go a civil court only. The provision of the Act has given any such power to any authority of limited jurisdiction to decide a question of title. The courts abhor the idea of authorities of limited jurisdiction being vested with the power to decide the question of title. On many occasions such provisions under which power to declare title is vested in an authority of limited jurisdiction, Courts have declared the law invalid. In the instant case, the case of the plaintiffs/respondents, however, is on a better footing. The law on religious endowments in the State of Tamil Nadu has not vested any authority of limited jurisdiction to decide the question of title and declare any conveyance void. In that view of the matter, he has rightly confirmed the judgment of the trial court on this issue.

31. In the present case, there has been no decision by any court on the question of title to the property in question. Had there been such decision, it would have been incumbent upon the authorities under the Act to have followed and adopted the same. However, in the absence thereof, they are, in line with the provisions of Section 78 and 79 of the Act read with the machinery provided in the two Regulations, to take a view in that regard, themselves.

32. A learned single judge of this court in the case of Sahaja Nalvazhvu Sangam (supra) noticed that the parties in that case, were already before the Civil Court in regard to title to the properties in question there, and in such circumstances when the matter was pending resolution before the Civil Court, the HR&CE authorities ought not to have pre-empted the decision, but awaited the result of the civil proceedings. The relevant portion of the decision is extracted below:

3. These appeals are filed by the writ petitioners against the order dated 22.02.2019 in W.P.(MD)Nos.1614 and 1615 of 2019, by which, the writ petitions filed by the appellants challenging the proceedings of the first respondent dated 28.07.2018 and consequential proceedings of the third respondent dated 23.08.2018 were dismissed. The appellants before us had filed these writ petitions challenging the impugned proceedings therein on the ground that the action of the Assistant Commissioner of HR & CE Department, empowering the respondents 4 and 5 to take action for recovery of possession of the properties is without jurisdiction. Further, it was contended that the Assistant Commissioner of HR & CE Department, Karur, erred in passing the proceedings dated 23.08.2018 for recovery of the properties claimed by the appellants by relying upon the communication from the HR & CE Department and from the first respondent dated 28.07.2018 and that there is a clear misreading of the said communication as the Commissioner of HR & CE Department had only asked the Additional Commissioner of HR & CE Department, Trichy, to enquire regarding the status of the property and file a report. In other words, the contention of the appellants before the Writ Court was that the third respondent exceeded his jurisdiction, assumed jurisdiction and acted contrary to the directions of the head of the Commissioner of HR & CE Department. It appears that the writ petitions were dismissed at the admission stage. Consequently, the stand taken by the respondents were not placed in the form of any counter affidavit. In fact, some of the observations made by the learned Writ Court in

paragraph No.6 of the impugned order, in our prima facie opinion would enure in favour of the appellants. We say so, because the writ court has made an observation that the communication of the third respondent, dated 23.08.2018 (impugned in the writ petition) may not take away the appellants' right. The other observations which also may enure in favour of the appellants is that the Civil Court alone is competent to decide the question of title. Though such observations were made by the writ court, ultimately, the writ petitions have been dismissed.

7. We now move on to consider the validity of the proceedings of the third respondent/The Assistant Commissioner of HR & CE Department, Karur, dated 23.08.2018. The communication clearly shows that Assistant Commissioner of HR & CE Department has exceeded his jurisdiction, he has written certain things, which he was not authorised to do. Going by the communication of the Commissioner of HR & CE Department, dated 28.07.2018, the Assistant Commissioner of HR & CE Department has no jurisdiction to direct cancellation of patta granted in favour of the appellants. Therefore, the communication of the third respondent, dated 23.08.2018 is without jurisdiction. Added to these, respondents 3 and 4 have already approached the Civil Court by filing a suit in O.S.No.118 of 2018 for declaration, consequential injunction and recovery of possession. The suit is now pending before the Principal District Court, Karur. In our opinion, this is the correct remedy chosen by the respondents 4 and 5. In the interregnum, the HR & CE Department cannot tinker with the proceedings and a parallel line of enquiry cannot be commenced, which, we have already held to be without jurisdiction. Apart from that, we find that there are two civil suits filed by the appellants, namely, O.S.No.105 of 2018, pending on the file of the Principal District Munsif Court, Karur and O.S.No.322 of 2018, pending on the file of the Additional Sub Court, Karur. Thus, when the parties are before the civil court, the HR & CE Department should keep its hands off and await the result of the civil proceedings. As observed earlier certain observations made by the writ court enure in favour of the appellants. Having observed so, we are of the view that the writ court ought to have interfered with the impugned communications directed the parties to agitate their rights before the civil court. This is more so, because if the impugned communications are allowed to stand, it would affect the trial of the civil suit.

33. I have perused the decisions carefully. In matters where the Civil Court has declared the title to a property, such determination will hold the field and the HR&CE authorities are bound by such decision. The scheme of Section 78 and 79 of the Act lays out a two pronged approach in the matter of clearance of encroachments, that, in some instances, will include the determination of title as well. The provisions of Sections 78 and 79 are extracted below:

78. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers. - (1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situated belonging to the religious institution or endowment (hereinafter referred to as the "property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.

Explanation. - For the purpose of this section, the expression "encroacher" shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include -

- (a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence); and
- (b) any person who continues to remain in the property after the expiry of termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not be made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where, after considering the objections if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for reasons to be recorded require the encroacher to remove the encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed.]

79. Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner. -

(1) Where within the period specified in the order under sub-section (4) of section 78, the encroacher has not removed the encroachment and has not vacated the property, the Assistant Commissioner having jurisdiction over the division may remove the encroachment and obtain possession of the property encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall render necessary help to the Assistant Commissioner.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of section 78 from instituting a suit in a Court to establish that the religious institution or endowment has no title to the property:

Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of section 78:

Provided further that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee of the religious institution or endowment.

(3) No injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Joint Commissioner under section 78.

34. Section 78 (1) requires the concerned Assistant Commissioner to have made a detailed enquiry in relation to the

property in question and once he has satisfied himself that the land in question belongs to the Temple, a report should be given to the concerned Joint Commissioner to the effect that the noticee is an encroacher. On the basis of the aforesaid report, a notice under Section 78(2) is to be issued to the noticee.

35. The enquiry contemplated under Section 78(4) cannot be said to be summary *stricto sensu* in view of the enabling regulations and rules under the Removal of Encroachments and Inquiries Rules. The aforesaid Rules deem the office of the Joint Commissioner to be a competent Court 'as far as practicable' to decide the question of title should this question be raised by the noticee. All enabling provisions of the CPC have been made applicable and thus the Joint Commissioner is certainly empowered to decide this issue except where he is of the opinion that the documentation involved too cumbersome, the witnesses to be examined too many, or the disputes arising, too complicated. The decision on this aspect is his, finally, subject to further reference to the competent Civil Court in line with the provisions of Section 79(2).

36. After a determination is made under Section 78(4), if the noticee is still of the view that the determination made by the Joint Commissioner is incorrect or erroneous or does not take into account all relevant particulars in proper perspective, he is given the liberty to challenge the determination by way of a civil suit within a period of six months from the date of receipt of the determination under Section 78(4). Thus, the provisions of Section 78 and 79 have not lost sight of the first principle that determination of title is to be made by a Civil Court. However, in the scheme of the Act, the Joint Commissioner has been vested with the trappings of a Civil Court to make such determination 'as far as it is practicable' and the noticee may approach the Civil Court at the second instance should he be unhappy with the determination made under Section 78(4). Thus the issuance of notice in this case is not sans jurisdiction. The respondent will decide the issue of competence in jurisdiction as a preliminary issue, first, and then proceed to decide the issue of encroachment, only thereafter, and if applicable.

37. These writ petitions are dismissed and the petitioners are directed to submit to the authority of the Joint Commissioner, i.e., R3 whose notices are impugned before me, in terms of Section 78 of the Act. The petitioners shall appear before the authority on Friday the 12th of March, 2021 at 10.30.a.m. without expecting any further notice in this regard and upon hearing the petitioners, orders shall be passed as above, within a period of eight (8) weeks ie., on or before

15.05.2021. Let the possession of the petitioners not be disturbed till such time orders are passed as aforesaid, or till 15.05.2021, whichever is earlier.

38. Assuming that the orders are adverse to the petitioners, the petitioners are at liberty, in terms of Section 79 (2), to institute Suits before the Civil Courts seeking to establish title to the properties in question, within a period of 6 months from date of receipt of the offending order.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Ska/sl

To

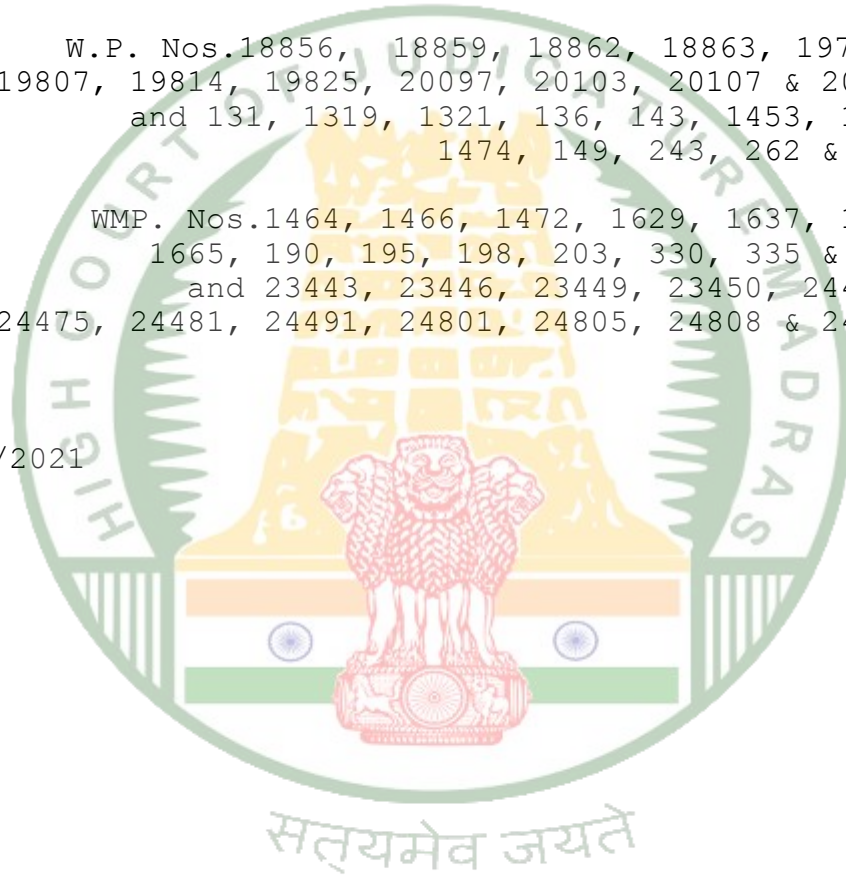
1. The Secretary to Government,
State of Tamil Nadu,
Hindu Religious and Charitable Endowments
Department, Fort St. George, Secretariat,
Chennai - 600 009.
2. The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Chennai.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department, Villupuram.
4. The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department, Cuddlore.

5. The Executive Officer,
Arulmigu Devanatha Swamy Thirukoil,
Thiruvandipuram, Cuddalore.

+25cc to Mr.K.Ashok Kumar, Advocate Sr Nos.13922 to 13928, 13932
to 13935, 13937 to 13940, 13945 to 13954
+26ccs to Mr.S.Mahimai Raj, Advocate Sr.Nos. 13637 to 13642,
13646 to 13655, 13804 to 13813

W.P. Nos.18856, 18859, 18862, 18863, 19791, 19800,
19807, 19814, 19825, 20097, 20103, 20107 & 20109 of 2020
and 131, 1319, 1321, 136, 143, 1453, 1458, 1466,
1474, 149, 243, 262 & 266 of 2021
and
WMP. Nos.1464, 1466, 1472, 1629, 1637, 1647, 1648,
1665, 190, 195, 198, 203, 330, 335 & 339 of 2021
and 23443, 23446, 23449, 23450, 24458, 24468,
24475, 24481, 24491, 24801, 24805, 24808 & 24810 of 2020

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srg 30/06/2021



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