



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.03.2021**

CORAM

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

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W.P(MD)Nos.4213, 4214 and 4217 of 2021

and

W.M.P (MD)Nos.3385, 3387 and 3388 of 2021

P.Mariyappan ...Petitioner in W.P(MD)No.4213 of 2021
K.Nehru ...Petitioner in W.P(MD)No.4214 of 2021
P.Anthony Dias ...Petitioner in W.P(MD)No.4217 of 2021

Vs

1. The Commissioner,
Office of the Hindu Religious and
Charitable Endowments Board,
119, Uthamar Gandhi Salai,
Thousand Lights West,
Nungambakkam,
Chennai.
2. The Joint Commissioner of Police,
Office of the Hindu Religious and
Charitable Endowments Board,
Tirunelveli,
Tirunelveli District.
3. The Assistant Commissioner,
Office of the Hindu Religious and
Charitable Endowments Board,
Tirunelveli,
Tirunelveli District.
4. The Executive Officer,
Arulmigu Chokkalinga Swamy Tirukovil,
Thiruvenkadam,
Tenkasi District.

... Respondents in all
the three writ petitions

COMMON PRAYER:Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records relating to the impugned order passed by the 2nd respondent in the miscellaneous applications in 21, 20, 19 of 2019 dated 25.01.2021 respectively and quash the same as illegal.



For Petitioner

:Mr.Ajmal Khan, Senior Counsel,
for Mr.P.Subbaraj

For Respondent
Nos.1 to 3

:Mr.K.P.Narayanakumar
Special Government Pleader

For Respondent
No.4

:Mr.V.R.Shanmuganathan,
Standing Counsel

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COMMON ORDER

The case of the petitioners is that the land in Survey No.1240/2B, Tiruvenkadam Village, Thiruvenkadam Taluk, Tenkasi District was originally owned by one late Subbu Lakshmi Ammal, wife of late Venkata Krishna Iyer. The properties were transferred to various persons under various registered sale deeds and the petitioners purchased a portion of the property under registered sale deed dated 03.07.1991 and 18.02.1994 and the sale deed was registered on the file of the Sub Registrar, Kazhugu Malai.

2.After the purchase of the properties, the petitioners have been in possession and enjoyment of the same. They also obtained plan approval from the local authority and on the basis of the approval, they have also constructed dwelling houses and have been living in there along with their family members. They were eking out their livelihood out the income generated from a saw-mill located in the property and the entire family is fully depending on the income generated out of the saw-mill.

3.While so, in the year 2018, the 4th respondent Temple appears to have raised objections that the lands in question belong to the temple and the petitioners were encroachers. The 4th respondent had issued notice terming the petitioners as encroachers. An application was also filed before the 2nd respondent under Section 78 of the Hindu Religious and Charitable Endowments Act, for removal of the said encroachment.

4.Notices were also issued by the 2nd respondent and the petitioners responded to the notice impressing upon the Authority that they have been in possession and enjoyment of the land for the past 30 years and they had also come into possession of the property under a duly registered sale deed, conveying title right from the erstwhile vendor. In fact there were several other persons, who had been similarly in possession and enjoyment of the properties in various survey numbers, after they had duly purchased the same by legal means.

5.According to the petitioners, it was explained to the Officials of the HR & CE Department, of their title to the properties in question and the properties were changed hands, by



legitimate and proper means over a period of several decades. However, notwithstanding the explanation, the 2nd respondent by his proceedings dated 25.01.2021, which according to the petitioners were communicated to them only on 07.02.2021, has rejected their claim. It is stated in the impugned order that the petitioners without permission put up construction, which was illegal and unauthorised, for which, they are also liable to pay compensation as well. By the said proceedings the petitioners were directed to handover the possession of the properties by vacating the premises, failing which, they would be forcibly evicted with the assistance of the authorities concerned.

6.Challenging the proceedings dated 25.01.2021, the petitioners are before this Court.

7.Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners painstakingly submitted that the order, which was in fact communicated to the petitioners on 07.02.2021, hardly has given sufficient time to challenge the order before any legal forum. According to the learned Senior Counsel, the properties have been used as dwelling houses and the petitioners were fending for their family members out of the meagre income generated from and out of the saw-mill located in the said premises. If the petitioners and their family members are to be deprived of their place of residence, their very livelihood would be snatched away and they would be reduced to penury and destitution.

8.At this, when this Court confronted the learned Senior Counsel that the proper course of remedy for the petitioner is to approach the civil Court or exhaust the appeal remedy as provided for in the HR & CE Act, the learned Senior Counsel conceded that there are factual controversies, which may not be a subject matter of adjudication before this Court. However, he would submit that the petitioners are facing imminent threat of being evicted any time, they are constrained to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

9.Mr.V.R.Shanmuganathan, learned Standing Counsel appearing for the HR and CE Department would submit that a similar writ petition has been dismissed by this Court on 25.02.2021 and further the learned Standing Counsel submitted that there is appeal remedy available under Section 21 of the HR & CE Act and the petitioners can very well avail the effective remedy under the Act against the order passed by the 2nd respondent.

10.According to the learned Counsel for the 4th respondent department, the petitioners are encroachers and therefore, under the provisions of the Act, their possession and enjoyment of the



properties, can be justified, as the properties under their occupation belong to the 4th respondent temple. The learned Counsel would further submit that in any case, the petitioners may seek interim protection before the authority concerned under Section 21 of the HR & CE Act and this Court is not the appropriate forum for the petitioners to redress their grievance by way of these writ petitions.

11.At this, the learned Senior Counsel appearing for the petitioners submitted that approaching the civil Court or approaching the 1st respondent, may take some time as these writ petitioners need to collect all materials justifying their title and possession of the properties under their occupation. In the interregnum, the petitioners cannot be deprived of their livelihood, or shelter. When a remedy is available under the HR & CE Act, the petitioners rights cannot be allowed to suffer irretrievable infringement.

12.Although this Court is inclined to accept the case of the respondents that *prima facie* that the properties belong to the 4th respondent Temple, yet when the right to livelihood is being jeopardised by the action of the 2nd respondent, this Court cannot remain a mute spectator without coming to the aid of the petitioners at this hour of their distress, at least on temporary basis so that the petitioners can work out their remedies in a manner known to law without being thrown out from their premises abruptly .

13.In fact it was brought to the notice of this Court that proceedings has been pending for quite some time from the year 2019 and the petitioners have also been aware of the action of the HR & CE Department and they cannot feign ignorance of the proceedings, as contended by them.

14.However this Court is not inclined to go into the factual controversies, but on humanitarian consideration, this Court is of the view that interim protection need to be granted to the petitioners for a short while, till they take remedial measures by approaching the appellate authority.

15.For the above said reasons,

(i) the petitioners are directed to approach the 1st respondent by invoking the relevant provisions of the Hindu Religious and Charitable Endowments Act (Section 21) against the impugned orders dated 25.01.2021 passed by the 2nd respondent and request the authority for interim protection, as not to implement the orders of the 2nd respondent till a decision is taken by him in the proceedings to be initiated by them, pursuant to the present



(ii) the petitioners, if so advised, shall approach the first respondent within a period of one week from the date of receipt of a copy of this order ad on such applications being made by the petitioners, the 1st respondent is directed to grant any interim protection of maintaining *status quo* till a decision is to be taken on the applications by the petitioners. The grant of interim protection may be considered and order to be passed in that regard within a period of four weeks from the date of receipt of such applications from the petitioners.

(iii) The petitioners are also directed to make available all the materials with their possession to appraise the authority in support of their claim to resolve the issue by the first respondent and after affording an opportunity of personal hearing and sufficient opportunity, the first respondent shall pass final orders in the matter, not later than 3 months from the date of their applications, and

(v) In the meanwhile, till a decision is taken by the 1st respondent, for granting interim protection, this Court orders *status quo* to be maintained for a period of four weeks from the date of receipt of copy of the order.

16. These writ petitions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed. However, it is made clear that this Court has not expressed any view on the merits and demerits of the claim and rival claims of the parties.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Commissioner,
Office of the Hindu Religious and
Charitable Endowments Board,
119, Uthamar Gandhi Salai,
Thousand Lights West,
Nungambakkam, Chennai.



2. The Joint Commissioner of Police,
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3. The Assistant Commissioner,
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4. The Executive Officer,
Arulmigu Chokkalinga Swamy Tirukovil,
Thiruvenkadam,
Tenkasi District.

+1 CC to M/s.SPL GP (SR-8167, 8205, 8204 [F] dated 02/03/2021)

+3 CC to M/s.P.SUBBARAJ, Advocate (SR-8385 to 8387[F] dated
03/03/2021)

**W.P (MD) Nos.4213, 4214 and
4217 of 2021**

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PM(CO)
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