



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 26.04.2021**

**CORAM :**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

WEB COPY

**W.P. (MD) .No.8486 of 2021**

**and**

**W.M.P. (MD) .No.6386 of 2021**

R.M.Balasubramanian

... Petitioner

Vs.

1. The Joint Commissioner,  
Hindu Religious and Charitable  
Endowment Department,  
No.40, Muthusamy Nagar, Tiruppathur Road,  
Sivagangai, Sivagangai District.

2. The Executive Officer,  
Hindu Religious and Charitable  
Endowment Department,  
Arulmighu Silambani,  
Chithambara Vinayagar Thirukovil,  
Devakottai Town, Sivagangai District.

... Respondents

**Prayer:** This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order issued by the first respondent in I.A.No.1 of 2021 in M.P.No.17 of 2019, dated 04.02.2021 and the same was issued to the petitioner on 25.03.2021 and to quash the same and consequently direct the second respondent herein to open the residential property of an extent of 213.24 square meter situated at Door No.34, Lakshmipuram West, Devakottai Town, Sivagangai District, enabling the petitioner to enjoy the residential portion of the property.

|                |                            |
|----------------|----------------------------|
| For Petitioner | : Mr.A.Saravanan           |
| For R-1        | : Mr.K.P.Narayana Kumar    |
|                | Special Government Pleader |
| For R-2        | : Mr.Lakshmi Shankar       |

**ORDER**

The subject matter of challenge in the present Writ Petition is the interim order passed by the first respondent in I.A.No.1 of 2021 in M.P.No.17 of 2019, dated 04.02.2021.

**2.** Heard Mr.A.Saravanan, learned counsel appearing on behalf of the petitioner, Mr.K.P.Narayana Kumar, learned Special



Government Pleader appearing on behalf of the first respondent and Mr.Lakshmi Shankar learned counsel appearing on behalf of the second respondent.

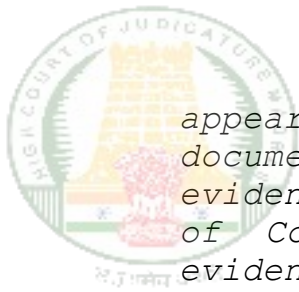
3. The second respondent has initiated proceedings against the petitioner under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (Hereinafter referred to as "The Act") on the ground that the petitioner is an encroacher upon the Temple property. Pending this petition, an Interlocutory Application was filed by the second respondent before the first respondent restraining the petitioner from proceeding further with his business. The said Interlocutory Application was allowed by the first respondent by order dated 04.02.2021. Aggrieved by the same, the present Writ Petition has been filed before this Court.

4. The second respondent had filed an Interlocutory Application before the first respondent to restrain the petitioner from utilising the property on the ground that the petitioner is using the property for serving non vegetarian food within the precincts of the Temple which goes against the agamas and adversely impacts the purity of the Temple. Therefore, according to the second respondent, the petitioner was virtually interfering with the sanctity of the Temple premises. The first respondent, on considering the facts and circumstances, exercised his discretion and passed the interim order restraining the petitioner from utilising the property for the above said purpose.

5. One of the main contention that was raised by the learned counsel appearing for the petitioner is that the first respondent did not have the power or jurisdiction to pass the interim order and Section 78 of the Act does not vest with any such power on the first respondent. In the considered view of this Court, the first respondent has been vested with the jurisdiction to remove the encroachment after conducting the enquiry under Section 78 of the Act. While exercising such a power, the first respondent is also vested with other attendant powers including the power to pass interim orders.

6. Section 78(4) of the H.R & C.E. Act (the Act) requires the Joint Commissioner to conduct an inquiry before passing orders for removal of encroachments. The manner of holding an enquiry under this provision has been elaborately set out in the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules (the Encroachment Rules). Rule 5 reads as follows:-

*"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 the 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."

7. In exercise of power under Section 116(iii) the Government has framed the Holding of Inquiries Rules, 1961. Rule 5 of the Encroachment Rules specifically make the provisions of these rules applicable to an enquiry under Section 78(4) of the Act. Rule 20 of the 1961 Rules reads as follows:

"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 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."

8. The effect of Rule 20 to a proceeding under Section 78 (4) was considered by a Division Bench of the Madras High Court in **K.V Lakshmi Ammal v Commissioner, 2010 1 CWC 490**, wherein it was held that the procedure contemplated under Section 78 is not summary in nature. The Court observed

"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."

9. Another pointer is the fact that the expression "as far as practicable" deployed in Rule 20 would imply that the default position is that the Commissioner must follow the drill of the CPC unless it is shown that it was not practicable to do so. The aforesaid construction is fortified by the decision of the Supreme Court in **Maganlal v. Jaiswal Industries, (1989) 4 SCC 344**, wherein it was observed thus:

"28. We shall first deal with the scope and import of the expression "as far as practicable" and "in execution of a decree as if the Financial Corporation were the decree-holder" used in sub-section (8) of Section 32 of the Act. Without anything more the expression "as far as practicable" will mean that the manner provided in the Code for attachment or sale of property in execution of a decree shall be applicable in its entirety except such provision



therein which may not be practicable to be applied. It will be for the person asserting that a particular provision with regard to execution of a decree for a sale of an immovable property contained in the Code of Civil Procedure will not apply to execution of an order under Section 32 of the Act on the ground that it was not practicable to show as to how and why it was not practicable."

**10.** As the procedure under Section 78(4) of the Act, follows the same procedure as a regular suit under the Code, it would be open to the Commissioner to invoke the provisions of Section 94 of the Code, in an appropriate case, to pass an interim order. Section 94(e) which is relevant for the present discussion, reads as under:

**"Section 94 -**

*In Order to prevent the ends of justice from being, defeated the Court may, if it is so prescribed,-*

a)....

b)....

c)....

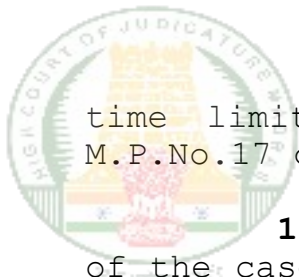
d)....

e) *make such other interlocutory Orders as may appear to the Court to be just and convenient."*

**11.** The necessary corollary of the aforesaid discussion is that the Commissioner can, in an appropriate case, exercise the powers conferred under Section 94(e) to pass interim orders in the course of an inquiry before him, if the facts and circumstances of the case so warrant. It is, however, also important to clarify that the onus would still be on the authorities to demonstrate that the facts warranted the passing of such an order. There exists a clear and unambiguous distinction between the existence of a power, and the mode and manner of its exercise.

**12.** In the present case, the first respondent was convinced that the petitioner was utilising the property in such a way that it affected the purity of the Temple premises. The petitioner even now continues to be in constructive possession of the property and he will continue to do so till final orders are passed evicting him from the premises. By virtue of the interim order, the petitioner has only been prevented from utilizing the property for serving non vegetarian food.

**13.** This Court does not find any ground to interfere with the interim order passed by the first respondent. It is stated that the pleadings are completed and the case is at the stage of examining witnesses. Therefore, it will be more appropriate, if a



time limit is fixed for the completion of the proceedings in M.P.No.17 of 2019.

**14.** Taking into consideration the facts and circumstances of the case, there shall be a direction to the first respondent to complete the proceedings in M.P.No.17 of 2019, after affording opportunity to the parties concerned, strictly in accordance with law, within a period of eight (8) weeks from the date of receipt of a copy of this order.

**15.** The Writ Petition stands dismissed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.E.)

// True Copy //

Sub Assistant Registrar(CS )

Tsg

To

The Joint Commissioner,  
Hindu Religious and Charitable  
Endowment Department,  
No.40, Muthusamy Nagar, Tiruppathur Road,  
Sivagangai, Sivagangai District.

1CC TO MR. A. SARAVANAN, ADVOCATE SR 17643  
1CC TO THE SPL GOVT PLEADER SR 17761

**NOTE:**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

GS

05/05/2021

5P/4C

Order made in  
**W.P. (MD) .No.8486 of 2021**  
Dated:26.04.2021