



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P (MD)No.15938 of 2021

and

W.M.P (MD)Nos.12875 & 12876 of 2021

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Shekinah Hospital,
Door No.443, KP Road,
Parvathipuram,
Nagercoil
(S.Nos. G1/95 and G1/96)
Vadasery South Village,
Rep. by Dr. S.Alfred Sathya Sekar

... Petitioner

Vs.

1.The Joint Commissioner
Hindu Religious and Charitable Endowment Department,
Tirunelveli.

2.Thakkar/Executive Officer
Arulmigu Subbramaniam Swamy Thirukovil,
Tiruchendur.

3.The Assistant Commissioner
Hindu Religious and Charitable Endowment Department,
Nagercoil - 629001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, to call for the records relating to the impugned order passed by the first respondent vide M.P.No.61/2016 dated 28.02.2017 and quash the same as illegal and consequently direct the respondents herein to give an opportunity to the petitioner to file his objections with relevant records and to dispose the proceedings.

For Petitioner : Mr.D.Saravanan
For Respondents 1 & 3 : Mr.P.Subbaraj
Counsel for State
For 2nd Respondent : Mr.M.Muthugeethayan



ORDER

The petitioner challenges an order dated 28.02.2017 of the first respondent.

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2.The petitioner states that he is running a clinic in survey Nos.G1/95 and G1/96 at Vadaseri South Village of an extent of about 3.3 cents. He states that he was previously a tenant in the said property and purchased the same in March, 2021. According to the petitioner, he was shocked to find that the second respondent had initiated proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in the year 2016. The petitioner asserts that he is not an encroacher and that, therefore, proceedings cannot be initiated against him under Section 78 of the Act of 1959. The petitioner claims that the order dated 28.02.2017 was issued without putting him on notice and without providing him with a reasonable opportunity. The said order is challenged on the above mentioned grounds.

3.Mr. P. Subbaraj, learned counsel for the State, accepts notice on behalf of respondents 1 and 3 and Mr. M.Muthugeethayan, learned standing counsel, accepts notice on behalf of the second respondent.

4.The second respondent brings to the notice of the Court that a suit was filed by the petitioner herein before the Principal District Munsif, Nagercoil. By producing a copy of the plaint and affidavit, it is submitted that the present Writ Petition is not maintainable in as much as the petitioner has already availed of remedies before a civil court.

5.The Writ Petition is filed challenging an order dated 28.02.2017. The suit is filed for a permanent injunction to restrain the defendants therein from interfering with the petitioner's possession over the suit property. The basis on which the suit is filed is clear from paragraph 10 thereof. In paragraph 10, the petitioner herein asserts that a notice was affixed in the building on 26.08.2021 as if an order had been passed by the first defendant therein on 28.02.2017. Thereafter, the petitioner herein asserts that no notice was issued to him and that no inquiry was conducted. In effect, the basis of the suit is the issuance of the order dated 28.02.2017 without providing an opportunity to the petitioner and without conducting an inquiry. The present Writ Petition is also filed on the same basis. A



public law remedy is discretionary and the party seeking such remedy should disclose all material facts while coming to Court. In the case at hand, the petitioner has clearly not done so.

6.For the reason set out above, W.P(MD) No.15938 of 2021 is dismissed without any order as to costs. However, it shall be open to the petitioner to prosecute the suit or seek an amendment thereof in accordance with law. It is made clear that the civil Court may decide the pending dispute without being influenced by any of the observations made herein. Consequently, W.M.P(MD) Nos.12875 and 12876 of 2021 are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Rm

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.

To

1.The Joint Commissioner
Hindu Religious and Charitable Endowment Department,
Tirunelveli.

2.Thakkar/Executive Officer
Arulmigu Subbramaniam Swamy Thirukovil,
Tiruchendur.

3.The Assistant Commissioner
Hindu Religious and Charitable Endowment Department,
Nagercoil - 629001.

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-28462[F] dated 07/09/2021)

+1 CC to M/s.D.SARAVANAN, Advocate (SR-28490[F] dated 08/09/2021)

+1 CC to M/s.SPL GP (SR-28509[F] dated 08/09/2021)

W.P(MD)No.15938 of 2021

07.09.2021

SB(16.09.2021) 3P 7C

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