



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.15984 of 2021

and

W.M.P(MD) .Nos.12902, 12904 and 12906 of 2021

S.Dhasamirtham

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.

4.The Executive Officer,
Arulmighu Chellandiyamman Temple,
Palani Road, Dindigul West Taluk,
Dindigul District,
Sub Temple of
Arulmighu Kalagatheeswar Abiramiamman
Temple, Dindigul.

5.The District Collector,
O/o.Collectorate Campus,
Dindigul District,
Dindigul.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order made in M.P.No.111/2021, dated 27.07.2021 issued by the second respondent and quash the same.

For Petitioner : Mr.V.R.Shanmuganathan

For R1 to R3

& R-5

: Mr.P.Subbaraj,

Counsel for State.

For R4

: Mr.A.K.Baskara Pandiyan



ORDER

The petitioner assails an order dated 27.07.2021 of the second respondent herein.

2. The petitioner states that she is the owner of the land bearing T.S.No.33, situated at Ward No.10, Chellandiyamman Kovil Street, Dindigul. According to the petitioner, a notice dated 01.09.2020 was issued by the fourth respondent calling upon her to vacate T.S.No.34. In the event of default, the fourth respondent threatened to initiate proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (The Act of 1959). The petitioner states that she provided an explanation to such notice on 10.09.2020. However, without properly appreciating such reply, the matter was referred to the Assistant Commissioner of the HR & CE Department. On such basis, proceedings were initiated under Section 78 and such proceedings culminated in the impugned order dated 27.07.2021.

3. The principal contention of the petitioner is that she is the owner of the land bearing old T.S.No.33. As regards T.S.No.34, she does not have any claim in respect thereof. In spite of submitting repeatedly that the petitioner has nothing to do with TS.No.34, the petitioner states that she was wrongly held to be an encroacher as regards TS.No.34.

4. Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of respondents 1 to 3 and 5. He submits that the petitioner has an alternative remedy either by way of a revision petition or by way of a civil suit. Mr.A.K.Baskara Pandiyan, learned standing counsel, accepts notice on behalf of the fourth respondent. He submits that the petitioner has encroached on T.S.No.34, which belongs to the Temple. In this connection, he refers to the notice dated 01.09.2020 and points out that such conclusion was arrived at after the property was surveyed through the Town Surveyor. Such fact was also brought to the notice of the petitioner under the said notice dated 01.09.2020. Therefore, he submits that the conclusion that the petitioner is an encroacher cannot be faulted.

5. Upon consideration of the rival contentions, the question that arises for consideration is whether the petitioner has established at least *prima facie* that she has not encroached upon T.S.No.34. Upon perusal of the documents enclosed in support of the Writ Petition and the impugned order, it is clear that a survey has been conducted as regards T.S.No.34. The proceedings against the petitioner have been initiated on the basis of such survey. Although the petitioner contends that she is the owner and occupier of T.S.No.33, she failed to produce any documents to establish the same so as to conclude that the impugned proceedings were without jurisdiction. Given the fact that it cannot be concluded at this stage that the impugned proceedings were without jurisdiction, the



petitioner's remedy lies by way of a revision in terms of Section 21 of the Act of 1959.

6. The petitioner, however, points out that she is entitled to file such revision petition within a period of ninety (90) days. Therefore, the official respondents should not take coercive steps to dispossess the petitioner until the said 90 day period expires. The said contention cannot be disregarded. Accordingly, the official respondents are directed not to take coercive steps until the expiry of the limitation period of ninety (90) days for preferring the revision petition.

7. Subject to the above observations, W.P.(MD).No.15984 of 2021 is disposed of by leaving it open to the petitioner to institute revision proceedings in accordance with Section 21 of the Act of 1959. Consequently, W.M.P(MD).Nos.12902, 12904 and 12906 of 2021 are closed. There will be no order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg/LM

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

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Sub Temple of
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Temple, Dindigul.

+1 CC to M/s.A.K.BASKARAN PANDIYAN, Advocate (SR-28649[F] dated
09/09/2021)

+1 CC to M/s.SPL GP (SR-28664[F] dated 09/09/2021)

W.P (MD) No.15984 of 2021
08.09.2021

DJ(CO)
KB(16.09.2021) 4P 8C