



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 17.09.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

WEB COPY

W.P(MD)No.16673 of 2021

and

W.M.P(MD) .No.13541 of 2021

G.Boothalingam

... Petitioner

**Vs.**

1.The Commissioner,  
Hindu Religious and Charitable Endowments Department,  
(HR & CE),  
Chennai - 34.

2.The Joint Commissioner,  
Hindu Religious and Charitable Endowments Department,  
(HR & CE),  
Tirunelveli District.

3.The Executive Officer/Joint Commissioner,  
Represented by  
Parvathipuram Udamootu Dharmam/Tharkkar,  
Arulmigu Subramania Swamy Temple,  
Tiruchendur,  
Thoothukudi District.

4.The Assistant Commissioner,  
Hindu Religious and Charitable Endowments Department,  
(HR & CE),  
Nagarcoil,  
Kanniyakumari  
District.

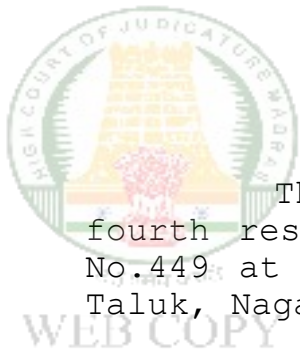
... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent to forbearing the third and fourth respondents to evict the petitioner in the house property Door No.449 situated at M.S.Road, Parvathipuram, Vadaseri Village, Agasteeswaram Taluk, Nagarcoil, Kanniyakumari District without following the due process of law on the basis of the petitioner's representation dated 29.08.2021 within the time to be stipulated by this Hon'ble Court.

For Petitioner : Mr.S.R.A.Ramachandran

For R1,R2 and R4 : Mr.P.Subbaraj,  
Counsel for State.

For R3 : Mr.M.Muthugeethayan,  
Standing Counsel.



**ORDER**

The petitioner seeks a direction to prevent the third and fourth respondents from evicting him from a property bearing Door No.449 at M.S.Road, Parvathipuram, Vadaseri Village, Agasteeswaram Taluk, Nagarcoil, Kanniyakumari District.

2. The petitioner states that he resides in the above mentioned address. According to the petitioner, the said property originally belonged to one Pavanasa Banikkar. One of his legal heirs, Boothalingam, executed a registered Will dated 07.01.1987 in favour of Ramasamy Banikkar. Thereafter, Ramasamy Banikkar and Pavanasam gave the property to the petitioner's grandmother. It is stated that the petitioner's mother inherited the said property from her mother.

3. Meanwhile, the third and fourth respondents initiated action under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (the Act of 1959) against the petitioner's mother, Janaki Ammal. In view of the failure of the petitioner's mother to attend the hearing, an order dated 30.12.2016 was passed in M.P.No.65 of 2016. Subsequently, on the basis of a power of attorney, the petitioner filed a petition to set aside the *ex parte* order. The petitioner states that such petition to set aside the *ex parte* order was allowed on condition of payment of costs. It is contended that such costs were not accepted by the Advocate concerned and that, therefore, it was subsequently remitted by money order as indicated in the communication dated 06.09.2017.

4. Upon the affixture of the *ex parte* order dated 30.12.2016 in M.P.No.65 of 2016 on 25.08.2021 at the petitioner's house, the present Writ Petition is filed.

5. Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of respondents 1, 2 and 4 and Mr.M.Muthugeethayan, learned Standing Counsel, accepts notice for the third respondent. Mr.Muthugeethayan contends that the petitioner failed to pay costs as directed by the conditional order. The communication dated 06.09.2017 itself indicates that the petitioner offered to pay the costs only on 12.08.2017 by way of a money order. In addition, he points out that no action was taken by the petitioner thereafter until the notice was affixed at his house recently on 25.08.2021. He also points out that the petitioner's remedy under the Act of 1959 is by way of a Revision Petition under Section 21 thereof.

6. The facts and documents on record indicate beyond doubt that the petitioner has approached this Court belatedly seeking discretionary relief. The Act of 1959 provides a statutory remedy to the petitioner. There are disputed questions of fact relating to the entitlement of the petitioner vis-a-vis the property in



question. Therefore, it is not appropriate to exercise discretionary jurisdiction in this matter especially in view of the existence of a statutory remedy in this regard.

7. The only impediment that the petitioner would face is the prescribed time limit of ninety (90) days from the date of communication of the relevant order as per Section 21 (7) of the Act of 1959. Such provision, however, does not specify or prescribe the consequences of not filing the revision within ninety (90) days. To put it differently, unlike certain other statutes, it does not state that such revision cannot be received if it is not filed within the said ninety (90) day period or impose a fetter with regard to the maximum time limit within which such petition may be received. In these circumstances, in exercise of extraordinary jurisdiction under Article 226, the petitioner is permitted to carry a Revision Petition within a period of fifteen (15) days from the date of receipt of a copy of this order. Section 21 also enables the petitioner concerned to seek an interim stay pending such proceedings. Accordingly, it will be open to the petitioner to seek an interim stay in such Revision Petition. During the aforesaid fifteen (15) day period, no coercive action shall be taken against the petitioner to dispossess the petitioner from the relevant property. If the petitioner files the Revision Petition within the above mentioned fifteen (15) day period, such Petition shall be received without going into the question of limitation and decided on merits.

8. With the above observations, W.P.(MD).No.16673 of 2021 is disposed of without any order as to costs. Consequently, W.M.P (MD).No.13541 of 2021 stands closed.

Sd/-

Assistant Registrar (CS-III)

// 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

1.The Commissioner,  
Hindu Religious and Charitable Endowments Department,  
(HR & CE),

<https://hcservices.hcscs.gov.in/hcscs/ites/>



2.The Joint Commissioner,  
Hindu Religious and Charitable Endowments Department,  
(HR & CE),  
Tirunelveli District.

3.The Executive Officer/Joint Commissioner,  
Represented by  
Parvathipuram Udamootu Dharmam/Tharkkar,  
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Thoothukudi District.

4.The Assistant Commissioner,  
Hindu Religious and Charitable Endowments Department,  
(HR & CE),  
Nagarcoil,  
Kanniyakumari District.

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate ( SR-29495[F] dated  
17/09/2021 )

+1 CC to M/s.SPL. GP ( SR-29579[F] dated 20/09/2021 )

**W.P (MD) No.16673 of 2021**  
**17.09.2021**

RD(24.09.2021) 4P 7C