



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2021

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD)No.17641 of 2021

and

WMP (MD) .Nos.14530,14531 and 14532 of 2021

WEB COPY

B.Balamaheswaran

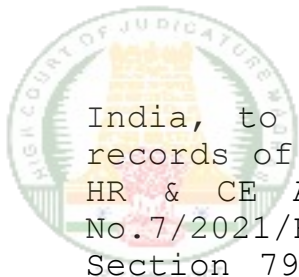
Petitioner

Vs.

1. The Collector,
Thanjavur District,
Thanjavur - 613 010.
2. The commissioner,
Hindu Religious & Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
3. The Joint commissioner,
Hindu Religious & Charitable
Endowments Department,
Samabndar Sannathi Street,
Mayiladuthurai - 609 003.
4. The Assistant Commissioner,
Hindu Religious & Charitable
Endowments Department,
Kumbakonam - 612 001.
5. The Executive Officer,
Hindu Religious & Charitable
Endowments Department,
Arulmigu Sundareswarar Thirukoil,
Thiruloki, Thividaimaruthur Circle,
Thanjavur District - 609 804.
6. The Inspector,
Hindu Religious & Charitable
Endowments Department,
Thirupandal Circle,
Thanjavur District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of



India, to issue a Writ of Certiorarified Mandamus to call for the records of the impugned notice/proceeding under Section 78(2) of the HR & CE Act notice issued by the third respondent vide notice No.7/2021/E1 dated 21.06.2021 and the subsequent proceedings vide Section 79 of the HR & CE Act vide No.OA No.1/2021 in MP.No.7 of 2021 dated 18.06.2021 of the third respondent and quash the same as illegal and directing the third respondent Joint Commissioner, HR & CE Department herein not to evict this writ petitioner and consequently, thereby regularize this writ petitioner's lawful holding of lands within a time frame that may be stipulated by this Court of which the revenue records now are in this writ petitioner's favour as a cultivating tenant of the Temple namely Arulmigu Sundareswarar Thirukoil, Thirulogi.

For Petitioner : Mr.R.Prakash
For Respondents : Mr.K.S.Selva Ganesan,
Counsel for the State for R1 to R4, R6
Mr.M.Karthikeyan for R5

O R D E R

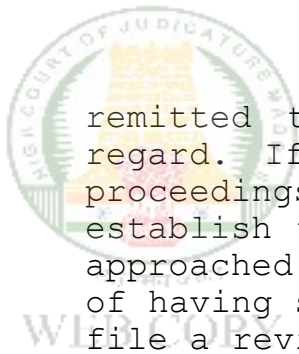
The petitioner challenges a notice issued under Section 78(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (the Act of 1959) and consequential interlocutory proceedings.

2. The petitioner states that he is a tenant of the Mutt and that he has been remitting the requisite rents promptly. Therefore, he alleges that the institution of proceedings under Sections 78 and 79 of the Act of 1959 constitutes an abuse of process. He also refers to O.S.No.8 of 2002, which was filed by his father before the District Munsif Court, Valangaiman and to the order of injunction obtained in the said suit. The present writ petition is filed in the said facts and circumstances.

3. Mr.K.S.Selva Ganesan, learned counsel for the State, accepts notice on behalf of respondents 1 to 4 and 6 and Mr.M.Karthikeyan, learned Standing Counsel, accepts notice on behalf of the fifth respondent.

4. Mr.Karthikeyan points out that the petitioner has impugned proceedings under Section 78 of the Act of 1959, whereas he is entitled to participate in such proceedings and raise all objections with regard to the endeavour to evict him from the relevant property. He also points out that the petitioner is not entitled to occupy the relevant property.

5. The Act of 1959 enables the institution of proceedings against encroachers, as defined therein. In the case at hand, the petitioner asserts that he is a lawful tenant and that he has



remitted the rent promptly without leaving any arrears in such regard. If so, the petitioner should participate in the pending proceedings and produce relevant documents and evidence so as to establish that he is not an encroacher. Instead, the petitioner has approached this Court under Article 226 of the Constitution in spite of having statutory remedies. In fact, the petitioner is entitled to file a revision petition under Section 21 of the Act of 1959 against orders passed in proceedings under Section 78.

6. For reasons set out above, the petitioner has failed to make out a case to interfere with the impugned proceedings. W.P(MD). No.17641 of 2021 is dismissed without any order as to costs by leaving it open to the petitioner to contest the pending proceedings in accordance with law. Consequently, connected WMP(MD). Nos.14530,14531 and 14532 of 2021 are closed.

Sd/-

Assistant Registrar (W)

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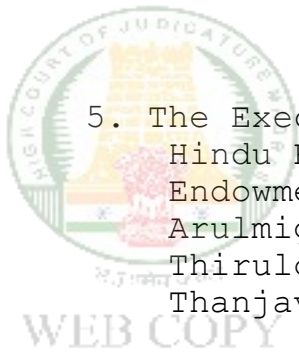
/ /2021

Sub Assistant Registrar(CS)

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To

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Hindu Religious & Charitable
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5. The Executive Officer,
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6. The Inspector,
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+1 CC to M/s.SPL.GP (SR-30992[F] dated 04/10/2021)

W.P. (MD) No.17641 of 2021
30.09.2021

RD(11.10.2021) 4P 8C