



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.10.2021

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.18152 of 2021

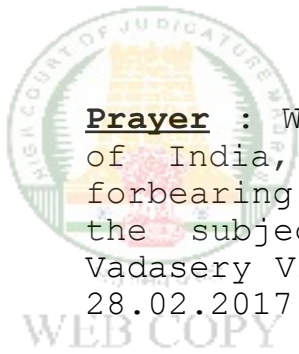
and

W.M.P(MD) .No.15006 of 2021

Vimala Iyyadurai ... Petitioner
(As Power of Attorney for her Son Ivin Prabhu)

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment,
Nagercoil.
- 4.The Fit Person,
Parvathipuram Udamoottu Dharmam
(The Joint Commissioner/Executive Officer),
Arulmighu Subramonia Temple,
Tirchendur, Thoothukudi District.
- 5.The Superintendent of Police,
Office of the Superintendent of Police,
Nagercoil, Kanyakumari District.
- 6.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Nagercoil, Kanyakumari District.
- 7.The Inspector of Police,
Nesamoni Nagar Police Station,
Nagercoil, Kanyakumari District. ... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents 1 to 4 from evicting the petitioner from the subject property in Door No.452, M.S.Road, Parvathipuram, Vadasery Village, Nagercoil in pursuance of the exparte order dated 28.02.2017 passed in M.P.No.67 of 2016 by the second respondent.

For Petitioner : Mr.G.Anto Prince
For R1 to R3, R5 to R7 : Mr.P.Subbaraj,
Counsel for State.
For R4 : Mr.M.Muthugeethayan,
Standing Counsel.

ORDER

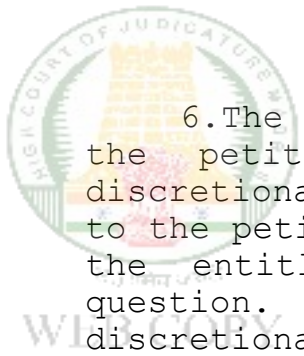
The petitioner seeks a direction to prevent respondents 1 to 4 from evicting him from the property bearing Door No.452 at M.S.Road, Parvathipuram, Vadaseri Village, Nagarcoil, pursuant to the exparte order of the second respondent dated 28.02.2017 in M.P.No.67 of 2016.

2.The petitioner states that she resides in the above mentioned address. According to the petitioner, the said property originally belonged to one Parvathipuram Udamuttu Dharmam. The petitioner's son, one Ivin Prabhu, had purchased the said property from one Chandrasekar in the year 2007 under a registered sale deed dated 05.10.2007 bearing Document No.2193 of 2007. Thereafter, the said Ivin Prabhu executed a registered power of attorney in favour of the petitioner on 29.05.2007 under Document No.565 of 2007.

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. In view of the failure of the petitioner to attend the hearing, an order dated 28.02.2017 was passed in M.P.No.67 of 2016. Subsequently, 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.

4.Upon respondents 1 to 4 taking aggressive action to evict the petitioner, the present Writ Petition is filed.

5.Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of respondents 1 to 3 and 5 to 7 and Mr.M.Muthugeethayan, learned Standing Counsel, accepts notice for the fourth respondent. Mr.Muthugeethayan contends that the petitioner failed to provide evidence that the order dated 28.02.2017 was set aside. 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.18152 of 2021 is disposed of without any order as to costs. Consequently, W.M.P(MD). No.15006 of 2021 stands closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

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

4.The Superintendent of Police,
Office of the Superintendent of Police,
Nagercoil, Kanyakumari District.

5.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Nagercoil, Kanyakumari District.

6.The Inspector of Police,
Nesamoni Nagar Police Station,
Nagercoil, Kanyakumari District.

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-31714[F] dated
08/10/2021)

+1 CC to M/s.SPL.GP (SR-31774[F] dated 08/10/2021)

**W.P (MD) No.18152 of 2021
07.10.2021**

RD(21.10.2021) 4P 9C