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W.P(MD) .No.17273 of 2014 and M.P(MD) .No.2 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P(MD) .No.17273 of 2014

and

M.P(MD) .No.2 of 2014

1. M.Ashok Kumar
2. A.Rahuman Beevi
3. Hairunnissa Beevi
4. P.Periayya
5. S.Pugalenth
6. Varatharajan
- 7.T.Rajendran
8. Baragath Beevi
9. Abdul Kareem
10. Noorjagan
11. Kathija Beevi
12. Mariadoss
13. Asma Beevi

... Petitioners

-Vs.-

1. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Thanjavur, Thanjavur District.
2. The Executive Officer,
Arulmigu Kailasanathar Temple,
Vazhuthur, Papanasam Taluk,
Thanjavur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in Se.Mu.Na.Ka.No.6815/2010/E2 dated 16.10.2013 and quash the same.

For Petitioners : Mr.R.Giridharan

For Respondents : Mr.M.Lingadurai,
Government Advocate for R1
For R2 - No Appearance.

O R D E R

Mr.R.Giridharan, learned counsel for the thirteen writ petitioners and Mr.M.Lingadurai, learned Government Advocate (civil side) on behalf of both the respondents are before this Court.



2. The captioned main writ petition was heard out.

3. Captioned main writ petition pertains to removal of encroachment proceedings under 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereafter 'TNHR&CE Act' for the sake of convenience and clarity].

4. An 'order dated 16.10.2013 bearing reference Se.Mu.Na.Ka.No.6815/2010/E2' made by the first respondent [hereinafter 'impugned order' for the sake of convenience and clarity] has been assailed in the captioned main writ petition.

5. In the impugned order, the thirteen writ petitioners are respondents. To be noted, there are fourteen respondents in all in the impugned order. It may not be necessary to dilate much qua all these factual aspects as the captioned writ petition pertains to challenge to the impugned order.

6. As already alluded to supra, the impugned order has been made *inter alia* under Section 78, more particularly, under Sections 78(4) and 79(1) of TNHR&CE Act.

7. The subject matter of the impugned order is 'land admeasuring one acre or thereabouts comprised in Survey No.431/1 in Vazhuthur Village, Papanasam Taluk, Thanjavur District' (hereafter 'said land' for the sake of convenience and clarity). The proceedings under Section 78 of TNHR&CE Act culminating in the aforementioned impugned order pertain to said land and the proceedings were initiated on the basis that said land belongs to 'Arulmigu Kailasanathar Swamy Temple situate in Vazhuthur Village, Papanasam Taluk, Thanjavur District' (hereafter 'said Temple' for the sake of convenience and clarity).

8. Notices were issued to the thirteen writ petitioners. They participated in the proceedings before the first respondent and the same culminated in the impugned order wherein the writ petitioners were held to be encroachers qua said land, their removal under Section 78(4) was ordered and further directions were issued under Section 79(1) of TNHR&CE Act.

9. Adverting to the impugned order, learned counsel for writ petitioners submits that it is a title dispute. Learned counsel submitted that the said Temple which is a religious institution within the meaning of TNHR&CE Act has no title to said property but the first respondent in proceedings under Section 78 has virtually decided the title as if it is a title suit. Learned counsel drew the attention of this Court to paragraph 10 of the impugned order which reads as follows:

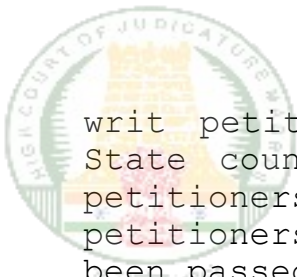


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10) தலைவர் உதவி ஆணையரால் தாக்கல் செய்யப்பட்ட அறிக்கை எதிர் மனுதாரர்கள் தரக்கல் செய்யப்பட்ட எதிருணர்வு மனுதாரர் தரப்பில் செயல் அலுவலரால் தாக்கல் செய்யப்பட்ட பதிவு. இரு தரப்பிலும் தாக்கல் செய்த ஆவணங்கள் ஆகியவை சரியான முறையில் பரிசீலிக்கப்பட்டு மனுதாரர் தரப்பில் புல எண் 431/1 -ல் உள்ள வழக்கின் சொத்திற்கு திருக்கோயில் வெளியிட்ட பெறப்பட்டதற்கு 27.12.1995 த் தேதிய நில உரிமை பதிவேட்டின் (Patta Pass Book) ஜோக்கஸ் நகல் தாக்கல் செய்யப்பட்டுள்ளது. வழக்கின் சொத்தில், தங்களுக்குள்ள உரிமையை நிலம் நிறுத்த. 1935 ஆம் வருடத்திய "அ" பதிவேட்டின் நகல்கள் வழக்கின் சொத்தில் அதி உரிமையாளரான திரு. சீனிவாச அய்யங்கரிடமிருந்து கிராமம் பெற்றதற்கு, சர் பதிவாளர் ஆவணத்தில் பதிவாக்கப்பட்ட கிராம ஆவண நகல்கள் வீட்டு வரி இராசீதுகள் மின் கட்டண இராசீதுகளின் ஜோக்கஸ் ஆகியவை எதிர்மனுதாரர்களால் தாக்கல் செய்யப்பட்டுள்ளது. மனுதாரர் தரப்பில் செயல் அலுவலரால் தாக்கல் செய்யப்பட்ட வலுவான ஆதாரமான நில உரிமைப் பதிவேடு(Patta) மூலம் வழக்கின் சொத்து திருக்கோயிலுக்கு சொந்தமானதென நிரூபணம் ஆகிறது. ஆகவே திருக்கோயிலுக்கு சொந்தமான வழக்குரை கிராமம் புல எண் 431/1 -ல் உள்ள 0.40.5 ஏக்கர் பூங்கா நிலத்தின் 1 முதல் 14 வரையுள்ள சிழ்க்கண்ட எதிர்மனுதாரர்கள் ஆக்கிரமிப்பு செய்துள்ளார்கள் என்றும், இவர்களை எட்டப்பிரிவு 78 (1) ல் Explanation (a) -ல் படி ஆக்கிரமிப்பாளர்களென்றும், அறிவித்து உத்தரவு பிறப்பிக்கப்படுகிறது.

Learned counsel submitted that the aforementioned paragraph is the crux and gravamen of the impugned order and that by itself would demonstrate that the first respondent has virtually decided title qua said property.

10. Learned State counsel defended the impugned order by saying that the first respondent does have powers to order removal of encroachment qua temple properties under Section 78 of TNHR&CE Act and the impugned order has been made after following a quasi judicial legal drill procedure wherein adequate and ample opportunity has been given to the writ petitioners. To be noted, though not argued, this Court deems it appropriate to set out that a separate procedure has been prescribed for proceedings under Section 78 of TNHR&CE Act vide Rules i.e., subordinate legislation made in exercise of rule making power by the Government under Section 116 of TNHR&CE Act. These Rules go by the title 'the Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules'. To be noted, this set of Rules is a piece of subordinate legislation having been made by the delegatee i.e., Government under Rule making power qua TNHR&CE Act i.e., Section 116 (2) of TNHR&CE Act. It is nobody's case that there was NJP (Natural Justice Principles) violation, to put it differently there is no complaint qua adequacy of opportunity given to writ petitioners. To be noted, learned State counsel also submitted that a quasi-judicial proceedings under Section 78 has been conducted after putting the



writ petitioners on notice who responded to the notice. Learned State counsel also pointed out that the submissions of the writ petitioners have been captured, the documents produced by the writ petitioners have been examined and thereafter the impugned order has been passed.

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11. By way of reply, learned counsel for writ petitioners reiterated his submission that it is a question of title and the same cannot be decided in a cursory manner by the Joint Commissioner in summary proceedings under Section 78.

12. This Court carefully considered the rival submissions.

13. Notwithstanding very many averments in the writ petition and notwithstanding several grounds raised in the writ petition, learned counsel focused his submission on one point and that is, as alluded to supra, the first respondent cannot decide title in summary quasi judicial proceedings when the same is disputed. This was reiterated by making a buttressing argument that mere revenue records in the nature of patta, 'A' Register cannot be the basis for deciding title and coming to the conclusion that the said Temple is the owner of said land.

14. This Court finds that there is a specific procedure adumbrated in Sections 78 and 79 of TNHR&CE Act whenever a noticee under Section 78 contends that the religious institution concerned has no title to the property. This is ingrained in Sub-section (2) of Section 79 of TNHR&CE Act, which reads as follows:

"(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of section 78 from instituting a suit in a Court to establish that the religious institution or endowment has no title to the property:

Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of section 78 :

Provided further that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee, of the religious institution or endowment."

15. There is nothing to demonstrate why the writ petitioners did not take recourse to aforementioned Sub-section (2) of Section 79. If the writ petitioners had contested title of the said Temple, it was well open to the petitioners to take recourse to Sub-section (2) of Section 79. Not having done this, not having chosen to resort to the mechanism available under TNHR&CE Act which has been repeatedly held by this Court to be a self-contained code, the writ petitioners cannot now assail an order made under Section 78, more



particularly, under Section 78(4) read with 79(1) of TNHR&CE Act by way of a writ petition on the ground that the title of the said Temple is being disputed.

16. There is one other reason as to why this Court refrains itself from interfering in the matter. That reason is, the impugned order is revisable under Section 21 of TNHR&CE Act. In other words, a statutory revision is available to the writ petitioners and that is an alternative remedy. There is nothing to demonstrate that the alternative remedy is not efficacious. Certain aspects of the matter turn on facts heavily and therefore this is yet another buttressing factor which has impelled this Court to come to the conclusion that this is not a fit case for interference in Writ jurisdiction.

17. As rightly pointed out by learned State counsel, there is no complaint that the procedure adumbrated for proceedings under Section 78 have not been followed i.e., complaint in the nature of writ petitioners not being put on notice or violations of any NJP (Natural Justice Principles). To be noted, this facet of the matter has already been alluded to supra.

18. Owing to the narrative thus far coupled with the discussion and dispositive reasoning set out supra, this Court is not inclined to interfere qua the impugned order in the captioned writ petition. Sequitur is, the captioned writ petition fails. However, it is made clear that if the writ petitioners choose the Section 79(2) route, it is well open to the writ petitioners to do so subject to limitation prescribed thereunder. Any plea under section 14 of the Limitation Act will not be impeded by this order. If the writ petitioners choose to make such a plea and such legal route is taken by the writ petitioners, the observations made in this order will not come in the way. In other words, the observations made in this order will neither impede nor be an impetus qua such proceedings if the writ petitioners choose to take recourse to Section 79(2) in TNHR&CE Act legal route. To be noted TNHR&CE Act has been repeatedly held to be a self-contained code by this Court and therefore it follows that Section 79(2) mechanism is part of such a self-contained code.

19. Captioned Writ Petition is dismissed. Consequently, connected WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)



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To

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

2. The Executive Officer,
Arulmigu Kailasanathar Temple,
Vazhuthur, Papanasam Taluk,
Thanjavur District.

+1 CC to M/s.R.GIRIDHARAN, Advocate (SR-33975[F] dated 10/11/2021)

+1 CC to M/s.SPL.GP (SR-33933[F] dated 10/11/2021)

W.P(MD) .No.17273 of 2014

and

M.P(MD) .No.2 of 2014

09.11.2021

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