



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.211 of 2022
and WMP.No.243 of 2022

K.Vasudevan

...Petitioner

-Vs-

1. The Commissioner,
Hindu Religious and Charitable Endowment Board,
Uthamar Gandhi Salai (Nungambakkam High Road),
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Regional Transport Office Road,
Nehru Nagar Phase -2, Sathuvachari,
Vellore - 632 009.
3. The Assistant,
Hindu Religious and Charitable Endowment Board,
District Collectorate Campus,
Kancheepuram - 631 501.
4. The Executive Officer,
Ekambrarnathar Thirukovil Devasthanam,
Kancheepuram.

...Respondents

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorified Mandamus, calling for the records relating to the impugned notice dated nil issued by the 2nd respondent received by the petitioner dated 08.12.2021 and quash the same and consequently forbear the respondents from in any manner interfering the lawful possession of the petitioner.

For Petitioner : Mr.K.A.Mariappan

For Respondents : Mr.T.Chandrasekaran
Special Government Pleader
(HR & CE)



O R D E R

The prayer sought for herein is for a Writ of Certiorified Mandamus, calling for the records relating to the impugned notice issued by the 2nd respondent received by the petitioner dated 08.12.2021 and quash the same and consequently forbear the respondents from in any manner interfering the lawful possession of the petitioner.

2. There has been a notice issued by the second respondent under Section 78(1) of the Hindu Religious and Charitable Endowment Act, 1959 treating the petitioner as an encroacher in respect of the temple land / H.R & C.E land.

3. The said notice issued dated 08.12.2021 by the second respondent is under challenge in the present writ petition.

4. Heard Mr.K.A.Mariappan, learned counsel appearing for the petitioner, who would submit that, the petitioner has purchased the property from the erstwhile owner of the property concerned. Therefore according to the petitioner the property does not belong to the temple. In this regard, he has given a reply to the said show cause notice under Section 78(1) of the Act, vide his reply dated 11.12.2021 along with certain documents in support of his claim. Despite the said reply having been given by the petitioner dated 11.12.2021, without disposing of the Section 78(1) Proceedings, the electricity supply given to the property, where the petitioner is in occupation has been cut down at the instance of the H.R.&C.E Department. Therefore, at this juncture, he has approached this Court by filing the present writ petition challenging the proceedings under Section 78(1) of the Act.

5. Heard Mr.K.A.Mariappan, learned counsel appearing for the petitioner and Mr.T.Chandrasekaran, learned Special Government Pleader appearing for the respondents.

6. According to the learned Special Government Pleader the land in question belongs to the temple i.e., the H.R. & C.E. Department, wherein the petitioner is in encroachment or in occupation without any authority of law. Therefore, in order to evict the petitioner, the respondent has invoked Section 78(1) of the Act, that is the reason why, the notice under Section 78 (1) of the said Act has been issued, which is impugned herein. He would also submit that, since the petitioner has given a reply to the said notice dated 11.12.2021, the said reply would be considered by the respondents and accordingly on merits, Section 78(1) proceedings would be concluded and depending upon the conclusion in this regard, the petitioner can work out his remedy, he contended.



7. I have considered the rival submissions made by both sides and have perused the material placed before this Court.

8. As has been rightly pointed out by the learned Special Government Pleader that, the respondents are empowered to invoke Section 78(1) of the Act, in case, if any of the H.R & C.E Department property or temple property is occupied or encroached by any third parties, without any authority of law. Herein a case in hand, the respondents has issued notice under Section 78 (1) of the Act and the same also has been responded to by the petitioner by way of a reply dated 11.12.2021, it is open to the respondents to consider such reply and accordingly decide the same on merits and in accordance with law. However, without taking any decision, the same cannot be kept pending for a longer period and during the said period, if the amenities like Electricity is cut down, of-course on the alleged reason or at the instance of the H.R. & C.E Department that may not be justifiable.

9. Be that as it may. The learned Special Government Pleader, on instructions, would submit that, the respondents would decide the said proceedings initiated under Section 78(1) of the Act at the earliest and the issue can be given a quietus by giving a suitable direction to that effect. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

(i) That the respondents herein are directed to decide the Section 78(1) proceedings initiated through the impugned notice by taking into account the reply given by the petitioner dated 11.12.2021 along with documents, if any filed, on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. It is needless to mention that, depending upon the outcome of the decision to be taken by the respondents in Section 78(1) proceedings, the remedy, if any, with regard to the grievance of the petitioner can be invoked by the petitioner in accordance with law.

10. With this direction, this writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar



mp/kst

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Board,
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Kancheepuram - 631 501.
4. The Executive Officer,
Ekambrarnathar Thirukovil Devasthanam,
Kancheepuram.

+lcc to Mr.K.A.Mariappan, Advocate SR. No.1795

+lcc to Government Pleader SR. No.2099

W.P.No.211 of 2022 and
WMP.No.243 of 2022

MG (CO)
PR (23/02/2022)