



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.4239 of 2022

Senthilnatha Sivachariar

.. Petitioner

Vs.

The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Commercial tax Buildings, Ground Floor,
Dr.Balasundaram Salai, Coimbatore Central,
Coimbatore - 641 018.

.. Respondent

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order made in M.P.No.10/2013/AA1 on the file of the Joint Commissioner, Hindu Religious and Charitable Endowments, Coimbatore / respondent dated 08.12.2021 and quash the same on the ground of non speaking order as per the order made in W.P.No.4839 of 2016 dated 21.08.2018 and further direct the respondent to pass speaking order in No.10/2013/AA1 after considering the written submission along with documents.

For Petitioner : Dr.A.Thiyagarajan
Senior Advocate
for Mr.D.Veerasekaran

For Respondent : Mr.S.Yashwanth
Additional Government Pleader (HR & CE)

O R D E R

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order made in M.P.No.10/2013/AA1 on the file of the respondent dated 08.12.2021, quash the same on the ground of non speaking order as per the order made in W.P.No.4839 of 2016 dated 21.08.2018 and further direct the respondent to pass speaking order in No.10/2013/AA1, after considering the written



submission along with documents.

2.By consent of both the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader (HR & CE) appearing for the respondent, this Writ Petition is taken up for final disposal at the admission stage itself.

3.According to the petitioner, on the proceedings initiated by ancestors of petitioner, Arulmigu Puttridangondeeswarar Thirukoil, Oththakalmandapam, Madhukkarai, Coimbatore District was declared as exempted temple and petitioner's ancestors are entitled to be appointed as hereditary trustees. The property in question belongs to ancestors of petitioner, who leased out the properties to various third parties by registered lease deed and after expiry of lease deed, they were in possession and enjoyment of the same. The petitioner inherited the same and he was in possession through his employees. The Executive Officer of Arulmigu Puttridangondeeswarar Thirukoil, Oththakalmandapam, Madhukkarai, Coimbatore District took a stand that property belongs to temple and employee of the petitioner, one D.Subramaniam, S/o.Dharmalingam encroached the properties. Based on the said claim and order passed on 20.05.2014, the proceedings under Section 78 of the Hindu Religious and Charitable Endowment Act, 1959 was initiated and possession was taken by the Arulmigu Puttridangondeeswarar Thirukoil, Oththakalmandapam, Madhukkarai, Coimbatore District from the said D.Subramaniam. Therefore, the petitioner filed Writ Petition before this Court in W.P.No.4839 of 2016 challenging the said order dated 20.05.2014. This Court by the order dated 21.08.2018, directed the petitioner to submit his explanation / objection along with the documents relied on by him before the respondent within a period of twelve weeks from the date of that order and on receipt of such explanation / objection, directed the respondent to pass order within six weeks thereafter. According to the petitioner, he submitted all the documents before the respondent, his Advocate made arguments in length and filed written arguments before then Joint Commissioner. While so, without considering all the documents and written arguments filed by the petitioner, the present Joint Commissioner passed cryptic order, relying on the submission of the Executive Officer that possession has been taken by removing the encroachers. According to petitioner, the respondent mistook the proceedings before him that the same is for eviction of encroachers but failed to take note of the order of this Court directing him to consider the documents of the petitioner before passing the order.

4.According to learned Senior Advocate appearing for the petitioner, the matter was argued before the then Joint Commissioner and after his transfer, the present Joint



WEB COPY

Commissioner ought to have given fresh hearing or considered the documents relied on by the petitioner and written arguments filed by him and passed order. In view of the same, prayed for setting aside the order of the respondent and allowing the Writ Petition.

5.Mr.S.Yashwanth, learned Additional Government Pleader (HR & CE) appearing for the respondent submitted that the property belongs to the temple and when the same was encroached by the third parties, the proceedings were initiated under Section 78 of the Hindu Religious and Charitable Endowment Act, 1959 and encroachments were removed. In view of the same, the impugned order of the respondents is valid and legal and prayed for dismissal of the Writ Petition.

6.Heard the learned Senior Advocate appearing for the petitioner as well as the learned Additional Government Pleader (HR & CE) appearing for the respondent and perused the entire materials on record.

7.From the above materials, it is seen that petitioner is claiming ownership of the property in question, whereas, the temple is claiming ownership for the very same property. As per the request of the temple, the proceedings were initiated under Section 78 of the Hindu Religious and Charitable Endowment Act, 1959 and alleged encroachment were removed and possession was taken by the temple. It is not in dispute that petitioner filed Writ Petition in W.P.No.4839 of 2016, challenging the order dated 20.05.2014 and this Court directed the petitioner to submit all the documents relied on by him before the respondent and directed the respondent to consider the documents filed by the petitioner and pass orders. According to learned Senior Advocate appearing for the petitioner, the petitioner has submitted all the documents, written arguments and made submissions before the respondent and the said fact is not denied by the learned Additional Government Pleader appearing for the respondent. As per the order of this Court dated 21.08.2018 made in W.P.No.4839 of 2016, the respondent has to consider the claim of the petitioner. But, the respondent has not considered the claim of the petitioner and without doing so, the respondent closed the proceedings on mis-consumption that possession has already been taken from the encroachers. In view of the same, the said erroneous order is liable to be set aside and it is hereby set aside. The respondent is directed to hear the petitioner and consider all the documents and written arguments filed by the petitioner, after giving opportunity of personal hearing to the petitioner or his Advocate and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.



8. With the above observations, the Writ Petition is allowed.
No costs.

WEB COPY

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk

To

The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Commercial tax Buildings, Ground Floor,
Dr. Balasundaram Salai, Coimbatore Central,
Coimbatore - 641 018.

+1cc to Mr. D. Veerasekaran, Advocate, S.R.No.18017
+1cc to the Government Pleader, S.R.No.18692

W.P.No.4239 of 2022

SPD(CO)
CT 29/03/2022