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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.21762 & 21763 of 2018

and

W.M.P.Nos.25531 to 25533 of 2018

1.K.Panneerselvam

2.K.Sampath

3.K.Kesavan

4.K.Madhavan

5.K.Baskar

6.K.Mohan

..Petitioners

(in W.P.No.21762 of 2018)

Sri Ramulu

..Petitioner

(in W.P.No.21763 of 2018)

Vs.

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.

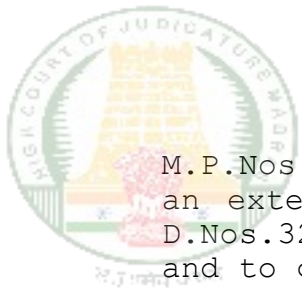
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.

3. The Executive Officer,
Arulmighu Prasanna Venkatesa Perumal Temple,
Kottur,
Chennai - 600 085.

..Respondents

(in both the cases)

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the 1st Respondent dated 13.07.2018 in



M.P.Nos.94 & 106 of 2016 respectively in respect of the land to an extent of 2400 Sq.ft & 944 Sq.ft respectively in S.No.42/2 D.Nos.32/83 & 18/83 Perumal Koil Lane, Kottur, Chennai - 600 085 and to quash the same.

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(In both the cases):

For Petitioners: Mrs.AL.Ganthimathi

For RR 1 & 2 : Mr.S.Yashwanth
Additional Government Pleader

For R3 : Mr.Willson Topaz
for M/s.A.S.Kailasam Associates

C O M M O N O R D E R

These Writ Petitions are filed challenging the orders of the 1st respondent dated 13.07.2018.

2.According to petitioners in both the Writ Petitions, the land in question in W.P.No.21762 of 2018 was leased out to petitioners' father late M.Krishnan and the land in question in W.P.No.21763 of 2018 was leased out to the petitioner in W.P.No.21763 of 2018. Both the father of the petitioners in W.P.No.21762 of 2018 as well as the petitioner in W.P.No.21763 of 2018 have put up small residential building and were residing there. The petitioners' father in W.P.No.21762 of 2018 and the petitioner in W.P.No.21763 of 2018 were paying rent from time to time without any default up to the year 2014. The 2nd respondent without taking into consideration the amount paid by the petitioners' father in W.P.No.21762 of 2018 and the petitioner in W.P.No.21763 of 2018 as rent, sent report to the 1st respondent, treating the father of the petitioners in W.P.No.21762 of 2018 and the petitioner in W.P.No.21763 of 2018 as encroachers and initiated proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959. The petitioners in both the Writ Petitions appeared before the 1st respondent and submitted that there are no arrears of rent and produced rent receipts. The 1st respondent without conducting any enquiry as per Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, passed the impugned orders. Hence, the petitioners have come out with the present Writ Petitions.

3.The learned counsel appearing for the petitioners submitted that the 1st respondent failed to consider that the father of the petitioners in W.P.No.21762 of 2018 and the petitioner in W.P.No.21763 of 2018 are in possession and enjoyment of the land for more than 80 years and rent has been



fixed by the 1st respondent from time to time. The petitioners were never treated as encroachers. During pendency of proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, the petitioners paid rent and receipts were also filed as Exhibits before the 1st respondent. The 1st respondent failed to consider the same. The land in question occupied by the petitioners and others were classified as grama natham and petitioners' father in W.P.No.21762 of 2018 and the petitioner in W.P.No.21763 of 2018 have put up super structure. Fixing of rent for land and building is arbitrary and illegal and the 1st respondent has passed the impugned orders without conducting any enquiry and prayed for setting aside the impugned demand notices of the 1st respondent.

4.The 3rd respondent filed counter affidavit and denied all the allegations made by the petitioners.

5.Mr.S.Yashwanth, learned Special Government Pleader appearing for the respondents 1 & 2 submitted that the Writ Petitions are not maintainable as the petitioners have statutory right of revision under Section 21 before the Commissioner and further revision under Section 14 before the Secretary to the Government. The petitioners have raised the disputed facts which cannot be decided in the Writ Petition. The allegation that petitioners have paid rent up to the year 2014 is not correct. They defaulted in payment of rent. The 3rd respondent informed the 2nd respondent about the arrears, who in turn sent a report to the 1st respondent. The 1st respondent has initiated the proceedings by issuing show cause notice dated 13.01.2017 and conducted enquiry from 16.06.2017 to 06.07.2018. The petitioners did not participate in the enquiry. Hence, the 1st respondent has passed the impugned orders, which are valid and legal. He further submitted that this Court on 24.08.2018, while granting interim stay, directed the petitioners to deposit 50% of the amount claimed and the said order is not fully complied with. Further, when the Writ Petitions were taken up for hearing on 22.12.2021, the learned counsel appearing for the petitioners submitted that the petitioners are willing to pay the amount due and this Court granted three weeks time to pay the amounts as claimed by the respondents after deducting the amounts paid, if any. The petitioners have not paid any amount as submitted by the learned counsel appearing for the petitioners and huge amounts are due as arrears of rent. Hence, the petitioners are encroachers as per the provisions of the Act and petitioners are not entitled for the relief sought for in the Writ Petitions and prayed for dismissal of the Writ Petitions.

6.Heard the learned counsel appearing for the petitioners, learned Additional Government Pleader appearing for the respondents 1 & 2 as well as the learned counsel appearing for



the 3rd respondent and perused the entire materials on record.

7. From the materials on record, it is seen that the petitioners are in possession and enjoyment of the property belonging to the temple. Even though the petitioners made a claim that land in question is classified as grama natham, they have stated that they are not disputing the title of the land. Once it is admitted by the petitioners that they are in possession of the property belonging to the temple, they are bound to pay the rent fixed by the temple from time to time. The petitioners claimed that they have paid rent up to the year 2014 and there is no arrears of rent payable to the temple. At the time of hearing on 22.12.2021, this Court recorded that the petitioners are willing to pay the amount as claimed by the respondents. Having agreed to pay the amount and taking time from this Court for payment of rent, it is not open to the petitioners to make a claim that there is no arrears of rent. As per the provisions of the Hindu Religious and Charitable Endowments Act, 1959, when a tenant fails to pay the rent and is in arrears or the term of lease is expired or not extended, he is treated as encroacher and authority has power to evict him. When the petitioners are defaulters in payment of rent, the authorities have right and power to evict the defaulters forcibly by invoking the provisions of Sections 78 & 79 of the Hindu Religious and Charitable Endowments Act, 1959. The said Sections reads as follows:

"Hindu Religious and Charitable
Endowments Act, 1959:

78. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers.—

(1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment (hereinafter referred to as "the property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.



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Explanation.—For the purpose of this section, the expression "encroacher" shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include—

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and

(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where, on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not be made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where after considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for reasons to be recorded, require the encroacher to remove the encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the



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use and occupation of the properties in question in the manner prescribed.

79. Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner.—

(1) Where within the period specified in the order under sub-section (4) of section 78, the encroacher has not removed the encroachment and has not vacated the property, the Assistant Commissioner having jurisdiction over the division may remove the encroachment and obtain possession of the property encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall render necessary help to the Assistant Commissioner.

(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.

(3) No injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Joint Commissioner under section 78.

79-A. Encroachment by group of persons on land belonging to charitable religious institutions and their eviction.—

(1) Where the Joint Commissioner knows or has reason to believe that a group or groups of persons without any entitlement and with the common object of occupying any land, which is the property belonging to a charitable or religious institution or endowment, are occupying or have occupied



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any such land and if such group or groups of persons have not vacated the land on demand by the Joint Commissioner or any officer authorized by him in this behalf, the Joint Commissioner shall, notwithstanding anything contained in this Act, order after giving due notice, the immediate eviction of the encroachers from the land and the taking of possession of the land and thereupon, it shall be lawful for any officer authorized by the Joint Commissioner in this behalf to evict the encroachers from the land by force, taking such police assistance as may be necessary and take possession of the land. Any police officer whose help is required for this purpose shall be bound to render the necessary help to the Joint Commissioner or to such officer authorized by him.

(2) Where, in any proceedings taken under this section, or in consequence of anything done under this section, a question arises as to whether any land is the property of the charitable or religious institution or endowment, such land shall be presumed to be the property of the charitable or religious institution or endowment until the contrary is proved by the encroacher.

(3) Any order of eviction passed by the Joint Commissioner under subsection (1) shall be final and shall not be questioned in any Court.

79-B. Penalty for offences in connection with encroachment.—

(1) No person, on or after the commencement of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1996 (Tamil Nadu Act 39 of 1996) shall occupy, otherwise than by lawful possession, any property belonging to a charitable or religious institution or endowment.

(2) Whoever contravenes the provisions of sub-section (1), shall, on conviction, be punished with imprisonment for a term which shall not be less than three months



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but which may extend to five years and with fine which may extend to five thousand rupees.

(3) No Court shall take cognizance of an offence punishable under subsection (2) except on the complaint in writing of the Commissioner.

(4) No offence punishable under subsection (2) shall be inquired into or tried by any Court inferior to that of a Judicial Magistrate of the First Class].

79-C. Recovery of moneys due to religious institution, as arrears of land revenue.—

Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any moneys due to a religious institution may be recovered as if it were an arrear of land revenue and for the purposes of such recovery, the Commissioner of the Hindu Religious and Charitable Endowments (Administration) Department or any officer not below the rank of Deputy Commissioner authorized by the Commissioner in this behalf, shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864)]."

8. In the present case, the petitioners are having arrears of the rent and based on the request of the 3rd respondent, the 2nd respondent sent report to the 1st respondent. The 1st respondent has issued notice under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, calling upon the petitioners to participate in the enquiry and conducted enquiry. After conclusion of the enquiry, the 1st respondent has passed the impugned orders. Further as per Section 21 of the Hindu Religious and Charitable Endowments Act, 1959, an effective alternate remedy of revision before the Commissioner is available for the petitioners. If the petitioners are aggrieved by the order passed by the Commissioner in revision, they have further remedy of revision before the Secretary to the Government. The petitioners have not availed these remedies and the petitioners also have not stated any reasons for not availing the said remedies. The 1st respondent, after considering the entire materials has passed the impugned orders. There is no error in the impugned orders passed by the 1st respondent



warranting interference by this Court.

9. For the above reasons, both the Writ Petitions are dismissed. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.
2. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.
3. The Executive Officer,
Arulmighu Prasanna Venkatesa Perumal Temple,
Kottur,
Chennai - 600 085.

+2cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.20762, 20763

+1cc to M/s.A.S.Kailasam & Associates, Advocate, S.R.No.20912

+1cc to the Government Pleader, High Court, Madras, S.R.No.21161

W.P.Nos.21762 & 21763 of 2018
and
W.M.P.Nos.25531 to 25533 of 2018

SJ(CO)
RGA(20/04/2022)