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W.P. No. 32387 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 32387 of 2022
and
W.M.P. No. 31788 of 2022**

S. Selvi

...Petitioner

-VS-

1. The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
No. 119, Uthamar Gandhi Salai, Nungambakkam,
Chennai – 600 034.
2. The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
No. 119, Uthamar Gandhi Salai, Nungambakkam,
Chennai – 600 034.
3. The Executive Officer,
Arulmigu Kuzhaliamman Swamy Alayam,
Manapakkam.
4. Assistant Engineer,
TANGEDCO,
Manapakkam,
Chennai – 600 125.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus forbearing the Respondents from interfering with Petitioner's peaceful possession of the property situated at Survey No. 17 in Kolapakkam Village, Sriperumbudur Taluk, Kanchipuram District.



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For Petitioner : Mr. Srinath Sridevan
for Mr. Adithya Reddy

For Respondents : Mr. N.R.R.Arun Natarajan,
Special Government Pleader
(for R1 to R3)

Mr. Jai Venkatesh (for R4)

ORDER

Heard Mr. Srinath Sridevan, Learned Counsel for the Petitioner and Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader, who takes notice for the First to Third Respondents, and Mr. Jai Venkatesh, Learned Counsel, who takes notice for the Fourth Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that the property in S. No. 17 in Kolappakkam Village, Sriperumbudur Taluk, Kanchipuram District belonged to one Kuzhaliammal, whose name has been entered as the owner of the property in the revenue records, and on her demise on 12.05.1998, it had devolved upon her sons, viz., R.Subramani, M.Ramadoss and M.Balakrishnan, and that the said M.Ramadoss and M.Balakrishnan have released their respective shares in



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favour of the said R.Subramani, who in turn transferred the property in favour of the Petitioner, viz., S.Selvi, who is his wife, by settlement deeds dated 03.10.2013 registered as Document Nos. 6657 to 6660 of 2013 in the office of the Sub-Registrar, Pammal and necessary changes have been made in the revenue records to that effect. However, claiming that the property belongs to its Temple, the Third Respondent on 23.11.2022 proceeded to forcibly take possession of the property with police officials and in that backdrop, the Petitioner has filed this Writ Petition on 29.11.2022 to forbear the Respondents from interfering with his peaceful possession of the said property.

3. Learned Special Government Pleader appearing for the First to Third Respondents has placed materials to show that the property belongs to the Temple of the Third Respondent from the year 1911 onwards and the revenue records as on date reflects the name of the Third Respondent as the owner of the property and as there was unlawful occupation of that property, action for taking possession has been initiated for which no exception could be taken. He has further produced a letter dated 25.11.2022 from one Jayapal, who was then found to be in occupation of the property seeking three days time to vacate from that property and it is emphasized that there is no reference in the said letter that the Jayapal was acting on behalf of the Petitioner in this case. Reliance is



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placed on Section 79-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for short), to justify the procedure adopted to remove the encroachers from that property.

4. It is sought to be explained by Learned Counsel for the Petitioner that the said Jayapal was the person managing the dairy farm of the Petitioner and during the course of hearing today, an affidavit dated 01.12.2022 has been filed by him stating that he was constrained to give such letter undertaking to vacate from that property in three days because he was overawed by the presence of many government officials with police force and he did not have any choice when he was asked to give such undertaking by them. The Petitioner has also filed affidavit reiterating the same contention of the said Jayapal.

5. Having regard to the aforesaid rival contentions of the parties, it may be true that in view of the letter dated 25.11.2022 given by the said Jayapal, there may not have been any necessity for the Third Respondent then to invoke Section 78 of the Act, but it is evident from the materials placed on record that a dairy farm is functioning at the property, which is claimed to be owned by the Petitioner. In such circumstances, it is imperative that the proceedings under Section 78 of the Act would have to be undertaken to determine whether the



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Petitioner is an encroacher of the property and depending upon its outcome, take further action in accordance with law. In view of the said conclusion arrived by this Court, Learned Special Government Pleader appearing for the First to Third Respondents, on instructions, states that such proceedings would be taken and would be expeditiously completed by 28.02.2022. It is incumbent upon the Petitioner and all other parties concerned to extend their fullest co-operation and shall not unnecessarily protract the said proceedings.

6. It is accepted by Learned Counsel for the Petitioner that out of 37,135 sq. ft. of land, only an extent of 12,515 sq. ft. of land is said to be in occupation of the Petitioner. Further, it is represented that electricity connection to the property has been disconnected and Learned Counsel for the Petitioner submits that the same may be restored to the extent of land presently in occupation of the Petitioner for which he has given an undertaking stating as follows:-

" a) I will not create any third party interests;

b) I will not alter the nature of usage of the property from its current usage as a cow-shed;

c) I will not alter physical features of the property."

Though obvious, it is made clear that such restoration of electricity connection



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shall be subject to the ultimate outcome of the eviction proceedings under

Section 78 of the Act.

7. In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

01.12.2022

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Index: Yes/No

Note: Issue order copy by 04.01.2023.

To

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P.D. AUDIKESAVALU, J.

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