



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.6084 of 2022

and

W.M.P(MD).Nos.4737 and 4738 of 2022

Thillai Raja

... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli District.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli District.

4.The Executive Officer,
Pillaiyan Arthsama Trust,
Papanasam,
Tirunelveli District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the entire records in relating to the impugned order of the second respondent made in Miscellaneous Petition No.7 of 2009, dated 21.03.2022 and to quash the same as illegal.

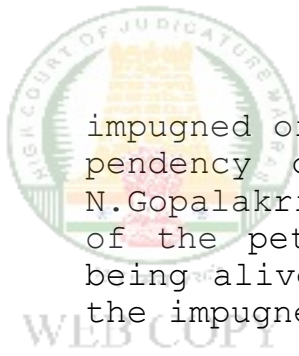
For Petitioner : Mr.M.S.Jeyakarthick

For R1 to R3 : Mr.P.T.Thiraviam
Government Advocate

For R4 : Mr.R.Velmurugan

ORDER

The petitioner has challenged the impugned order passed by the second respondent/Joint Commissioner under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, dated 21.03.2021. The



impugned order is challenged primarily on the ground that during the pendency of the aforesaid proceedings, the petitioner's father N.Gopalakrishnan passed away and that despite the other legal heirs of the petitioner's father, namely petitioner's mother and sister being alive, only the petitioner was impleaded as the respondent in the impugned order which has been passed.

2. The writ petition was opposed by the respondents 1 to 3 and the fourth respondent on the ground that the petitioner has an alternate remedy under Section 121 of the Hindu Religious and Charitable Endowments Act, 1959 and therefore, this writ petition is devoid of merits. It is further submitted that the petitioner being an elder male member, who is looking after the affairs of his late father, the notice to the petitioner was sufficient and there is no infirmity in the impugned order. It is further submitted that an extent of 1 acre of land was leased out in favour of the petitioner's father during 1990 for agricultural purpose. However, the petitioner's father had illegally put up constructions on the land to generate income and therefore, the lease was cancelled in the year 2005 and thereafter, proceedings were initiated before the first respondent in the year 2008. It is submitted that proceedings were initiated and during the interregnum, the petitioner's father R.Gopalakrishnan, who was an original tenant, died on 05.03.2017. It is submitted that there is no justification in allowing continuation of occupation of the property by the petitioner and his family members since the lease has been terminated as early as 2005.

3. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 3 and the learned counsel for the fourth respondent.

4. Technical plea raised by the petitioner deserves to be accepted as there are other legal heirs namely, the petitioner's mother and sister, who are entitled to liability have say and may be bound to discharge the liability of their late husband and father respectively.

5. Considering the fact the petitioner and his family members has been in occupation of the property right from after the cancellation of the lease and considering the fact that the impugned order has been passed without impleading the other legal heirs, I am inclined to set aside the impugned order and remit the case back to the second respondent to pass a fresh order by impleading petitioner's mother and sister as respondents to the aforesaid proceedings in Miscellaneous Petition No.7 of 2009. The entire proceedings shall be completed by the second respondent within a period of six months from the date of receipt of copy of this order. All further proceedings will be subject to orders to be passed in Miscellaneous Petition No.7 of 2009.



6. The Writ Petition stands disposed of with the above observations.No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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To

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli District.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli District.

+1 CC to M/s.R. VELMURUGAN, Advocate (SR-16521[F] dated
05/04/2022)

+1 CC to M/s.M.S. JEYAKARTHIK, Advocate (SR-16767[F] dated
06/04/2022)

+1 CC to M/s.SPL.GP (SR-16895[F] dated 06/04/2022)

W.P (MD) .No.6084 of 2022

05.04.2022

SS (CO)

KB(19.04.2022) 3P 7C