



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.05.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. (MD) No.460 of 2022

and C.M.P. (MD) No.4352 of 2022

S.Rengarajan Naidu

.. Appellant

Vs.

- 1.P.Muthukrishnan
 - 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai 600 034.
 - 3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur District.
 - 4.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Pudukkottai District.
 - 5.The Inspector,
Hindu Religious and Charitable Endowment Department,
Kulathur,
Pudukkottai District.
- .. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 26.04.2022 made in WMP(MD) No.6187 of 2022 in W.P.(MD) No.8329 of 2022.

Prayer in WP(MD) . 8329/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorari, calling for the records relating to the impugned tender notification dated Nil issued by the 5th respondent, seeking public auction to cut and remove the Seemai Karuvella Trees in respect of S.F.No.43 and 36/1 of Pidampatti Villagem Singathakurichu vttam, Kulathur Taluk, Pudukkottai District, quash the same and illegal and pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

**Prayer in WMP(MD) . 6187/ 2022 :**

To pass an order of INTERIM STAY of all further proceedings in pursuance to the impugned tender notification dated Nil issued by the 5th respondent, seeking public auction to cut and remove the Seemai Karuvel Trees in respect of S.F.No.43 and 36/1 of Pidampatti Village, Singathakurichi Vattam, Kulathur Taluk, Pudukkottai District, pending disposal of the above writ petition and thus render justice.

For Appellant	: Mr.M.Karthikeya Venkitachalapathy
For 1 st Respondent	: Mr.M.Suresh
For Respondents 2 to 5	: Mr.N.Muthu Vijayan Special Government Pleader

JUDGMENT

[Judgment of the Court was made by **D.KRISHNAKUMAR, J.**]

Mr.M.Suresh, learned counsel takes notice for the first respondent and Mr.N.Muthu Vijayan, learned Special Government Pleader accepts notice on behalf of respondents 2 to 5. By consent of both parties, the Writ Appeal is taken up for final disposal at the admission stage itself.

2.This intra Court appeal has been filed challenging the interim order passed by the Writ Court in WMP(MD) No.6187 of 2022 in W.P.(MD) No.8329 of 2022.

3.According to the learned counsel for the appellant, the 1st respondent herein/writ petitioner has encroached the land in S.F.Nos.36/1 and 43 of Pidampatti Village, Mathur Post, Kulathur Taluk, Pudukkottai District. It is further submitted by the learned counsel for the appellant that the appellant/hereditary trustee of Arulmigu Sanjeevirayar Thirukovil, Pidampatti Village, has taken steps to approach the authority concerned under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 for evicting the writ petitioner, namely, the 1st respondent herein. In the meantime, the 1st respondent pursuant to the order passed by the Writ Court, has taken law into his own hands and cut and removed the Seemai Karuvela trees (Prosopis Juliflora) from the aforesaid land. The first respondent has not produced any documents to substantiate his case that he is a lessee of the subject property under the appellant temple and has not established any legal right to remove the trees from the subject property.



4. According to the learned counsel for the first respondent, the first respondent is a lessee under the Temple and therefore, he is having a right to cut and remove the trees from the land in Survey No.36/1 to an extent of 2.25 acres. Therefore, the Writ Court accepted the said contention of the first respondent. It is further submitted that the trees were being removed by the first respondent. According to the first respondent, all the facts are disputed facts and it can be decided before the competent forum and hence, the present appeal is unsustainable and it is liable to be dismissed.

5. The appellant has denied the contention of the first respondent that he is a lessee under the appellant temple and therefore, he is not entitled to remove the trees. All these facts are disputed facts and the appellant has to seek appropriate remedy before the competent forum for eviction of the first respondent from the subject property and for claiming damages or compensation for the illegal removal of trees from the subject property.

6. In view of the above facts and circumstances, we are constrained to direct the appellant to approach the competent forum under Section 78 of the HR & CE Act. Therefore, this Court directs the appellant to approach the competent forum under Section 78 of the Act within a period of two weeks from the date of receipt of a copy of this order. Considering the issue involved in the Writ Petition, if any such application is submitted under the provisions of the HR & CE Act, the fourth respondent Assistant Commissioner shall consider the same and take appropriate decision within a period of 12 weeks thereafter by providing adequate opportunity to the aggrieved parties. It is needless to state that the fourth respondent, without being influenced by any of the above observations made by this Court, shall independently deal with the matter based on the materials available on record.

7. With the above modifications, the Writ Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Vacation Officer/
Assistant Registrar(CS I)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

mm/sj



To

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur District.
- 3.The Assistant Commissioner,
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- 4.The Inspector,
Hindu Religious and Charitable Endowment Department,
Kulathur,
Pudukkottai District.

+1 CC to M/s.SPL.GP (SR-23707[F] dated 13/05/2022)

W.A. (MD) No.460 of 2022
11.05.2022

MGJ(20.05.2022) 4P 6C