



W.P.(MD)No.15728 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 29.08.2022

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THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.15728 of 2022
and
W.M.P.(MD)No.11321 of 2022

R.M.Balasubramaniam

.. Petitioner

Versus

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai District.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Paramakudi.
- 3.The Executive Officer,
Arulmigu Silambani Chidambara Vinayagar Temple,
Devakottai Town & Taluk,
Sivagangai District.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to M.P.No. 17/2019/E1, dated 21.04.2022, on the file of the first respondent and quash the same.

For Petitioner : Mr.Selva Adithya
for Mr.G.Prabhu Rajadurai

For R1 : Mr.M.Lingadurai
Special Government Pleader



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to use the property, which was allowed. Challenging the same, the petitioner preferred W.P.(MD)No.8486 of 2021. This Court, by order dated 26.04.2021, dismissed the said Writ Petition with the direction to complete the enquiry within a period of eight weeks from the date of receipt of a copy of that order. Thereafter, the first respondent passed an order on 21.04.2022, declaring the petitioner as encroacher and directed him to vacate the premises within 30 days. The said order was received by the petitioner on 20.06.2022. Challenging the same, the present Writ Petition is filed.

3.The learned counsel for the petitioner submits that the petitioner is 65 years old senior citizen, having various health ailments and if the impugned order is to be enforced, grave prejudice and irreparable loss would be caused to him. The learned counsel for the petitioner submits that the petitioner is not permitting any cooking of non-vegetarian food in the property in question. The learned counsel for the petitioner undertakes that no non-vegetarian food is allowed to be cooked in the Temple lands and further, he undertakes that no such cooking would be permitted by the petitioner, which is against the custom and practice of the Temple.

4.The learned Special Government Pleader appearing for the respondents 1 and 2 submits that the petitioner on his own admits that he is a



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sub-tenant under one Kalimuthu Kone, thereby, he is an encroacher. The petitioner, being an encroacher, tried by the proceedings in M.P.No.17 of 2019, by citing one reason or the other. The petitioner encroached the land, which is adjacent to the Temple, wherein the petitioner permitted non-vegetarian cooking and also allowing feast. Since it disturbs peace and tranquillity of the Temple, enquiry has been conducted. The petitioner's status as encroacher confirmed in the proceedings initiated and thereafter, order passed. If the petitioner is aggrieved, to file a revision before the Commissioner under Section 21 of the H.R. & C.E. Act, within a stipulated time and not to file a writ petition.

5.The third respondent filed a counter affidavit. The learned Standing Counsel for the third respondent submits that Arulmigu Silambani Chidambara Vinayagar Temple, situated at Devakottai Taluk, Sivagangai District, is a Hindu public religious institution. The vacant site to an extent of 79.50 sq.mt. comprised in Door No.34, Ward No.J6/2, Lakshimpuram West, Devakottai, was leased out to one Kalimuthu Kone and his name is recorded in the Demand-Collection-Balance Register of the Temple. The petitioner illegally encroached the above said Temple premises and further, encroached the adjacent area to an extent of 133.74 sq.mt., put up a superstructure with tin sheet, converted the residential area into commercial area and leased out the



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shed for functions, allowing the shed to be used as a place for preparing non-vegetarian food and served to persons, who attend the functions, the shed is adjacent to the Madapalli of the Temple, causing nuisance and disturbs the serene atmosphere of the Temple.

6.The learned counsel for the third respondent further submits that the petitioner, on his own, admits that he is a sub-tenant of Kalimuthu Kone. Hence, steps taken by the second respondent/Assistant Commissioner, on enquiry, found the petitioner as encroacher and sent a report to the first respondent/Joint Commissioner, who initiated proceedings under Section 78 of the H.R. & C.E. Act in M.P.No.17 of 2019. The petitioner appeared before the Enquiry Officer. In the meanwhile, he continued to cook non-vegetarian food in the premises. Hence, I.A.No.1 of 2021 came to be filed. The first respondent finding reasons, allowed the said I.A., against which, the petitioner filed W.P. (MD)No.8486 of 2021. This Court, by order dated 26.04.2021, dismissed the said Writ Petition, with a direction to the first respondent to complete the enquiry in M.P.No.17 of 2019 within a period of eight weeks. Following the directions of this Court, the first respondent passed the impugned order on 21.04.2022, declaring the petitioner as encroacher. If the petitioner is aggrieved, he ought to have filed a revision before the Commissioner under Section 21 of the H.R. & C.E. Act. To avoid payment of pre-deposit, the



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petitioner straightaway approached this Court, which cannot be encouraged.

The petitioner is still squatting on the Temple property, hence, prayed for dismissal of the Writ Petition.

7.Considering the rival submissions and on perusal of the materials, it is seen that the petitioner, on his own, admits that he is a sub-tenant under one Kalimuthu Kone. The Temple Register also records the same. If the petitioner is aggrieved by the orders of the first respondent, he could very well file a revision before the Commissioner under Section 21 of the H.R. & C.E. Act, within a period of 90 days. Instead, he filed this Writ Petition. Now, the stipulated period has elapsed. In view of the same, the delay in filing the revision alone is condoned. The petitioner is directed to file a revision before the Commissioner within a period of four weeks from the date of receipt of a copy of this order. The Commissioner to entertain the revision petition, not questioning the limitation, if it is filed within a period of four weeks from the date of receipt of a copy of this order, thereafter, to dispose of the revision in accordance with law. If the petitioner files any miscellaneous petition, the same to be considered. From today till the filing of the revision, for the period of four weeks, the respondents 2 and 3 to maintain status quo. On completion of the fourth week, if no protective order obtained by the petitioner, the authorities are at liberty to dispossess the petitioner from the encroachment



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8. With the above directions, this Writ Petition is disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

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Note:- Issue order copy on 01.09.2022.

To

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2. The Assistant Commissioner,
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M.NIRMAL KUMAR, J.

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Order made in
W.P.(MD)No.15728 of 2022

29.08.2022