



W.P.(MD)No.17905 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.17905 of 2022

and

W.M.P.(MD).No.13057 of 2022

Thillai Raja

.. Petitioner

Vs

**1.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Chennai.**

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

**3.The Executive Officer,
Pillaiyan Artha Sama Kattalai,
Papanasam,
Tirunelveli District.**

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents and their officials from initiating any action in furtherance of the second respondent proceedings in M.P.No.7 of 2009 dated 26.07.2022, during the statutory



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period for preferring revision before the first respondent u/s 21 of the Tamil Nadu Hindu religious and Charitable Endowments Act, 1959.

For Petitioner : Mr.M.S.Jeyakarthik
For Respondents : Mr.M.Lingadurai
1 and 2 Special Government Pleader
For 3rd Respondent : Mr.V.R.Shanmuganathan
Standing Counsel

ORDER

This Writ Petition has been filed to forbear the respondents and their officials from initiating any action in furtherance of the second respondent proceedings in M.P.No.7 of 2009 dated 26.07.2022, during the statutory period for preferring revision before the first respondent under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act').

2.Mr.M.Lingadurai, learned Special Government Pleader takes notice for the respondents 1 and 2 and Mr.V.R.Shanmuganathan, learned Standing Counsel takes notice for the third respondent. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.



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3.The contention of the petitioner is that the second respondent had passed an order in M.P.No.7 of 2009, dated 26.07.2022, declaring the petitioner as encroacher of the temple property and given direction to the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli, under Section 79 of the Act to take service of Police and revenue authorities and remove the petitioner from the temple property. The petitioner's father was a lease holder of the property in Survey No.909/2 situated in V.K.Puram Village, Papanasam, Tirunelveli District, from the year 1990. The petitioner's father had paid the lease rent without any default till 2009. In the year 2009, the fourth respondent asked the petitioner's father to vacate the premises. Thereafter, a proceedings has been initiated under Section 78 of the Act. In the meanwhile, on 05.03.2017, the petitioner's father passed away. Despite the same, the temple authorities proceeded further against the petitioner's father. Thereafter, the petitioner had approached this Court by way of filing a Writ Petition in W.P.(MD)No.6084 of 2022, challenging the order passed in M.P.No.7 of 2009 by the second respondent. This Court by considering the petitioner's submission has set aside the impugned order and remitted back the case to the second



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respondent to pass a fresh order by impleading the petitioner's mother and sister as respondents in M.P.No.7 of 2009. Therefore, the petitioner and his family members were impleaded as parties. Thereafter, the present impugned order came to be passed.

4.The further contention of the petitioner is that it is a remote area and in the agricultural land, a small portion of construction has been put up for the purpose of storing fertilizers, seeds and other articles. This has been wrongly construed that the petitioner put up a construction and letting out for earning. Admittedly, the petitioner is not a defaulter and he has regularly been paying lease rent without fail. From the year 2009, when the petitioner attempted to pay the lease rent, the same has been refused to receive and thereafter, declaring the petitioner as encroacher, the impugned order came to be passed on 26.07.2022 and the same was received by the petitioner on 27.07.2022. The petitioner has right to file a revision before the first respondent, within a period of three months. Even before the expiry of three months, this impugned order has been passed to evict the petitioner. The limited prayer is that till the petitioner files an appeal, the impugned order to be kept in abeyance.



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5.The learned Special Government Pleader appearing for the respondents 1 and 2 submitted that the petitioner's father was a lessee. After the demise of the petitioner's father, the petitioner is using the said land and put up a construction and he is running a lodge in the name of Thillai. He further submitted that the petitioner has put up construction in the temple property without permission. The petitioner's father is an encroacher of the temple property, since he violated the lease condition.

6.The learned standing counsel appearing for the third respondent submitted that the petitioner's father was a lessee from the year 1990. Thereafter, taking advantage of the location of the property, which is near the Papanasam falls, the petitioner had put up a construction without any prior permission and he is running a lodge. Since the petitioner's father passed away, the family members of the petitioner have been impleaded as parties in the impugned order. The petitioner being an encroacher cannot have any right to file a revision under Section 21 of the Act, for which he cannot seek any protection. In view of the same, there is no cause of action to entertain this petition. Hence, he opposed this petition.



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7. On perusal of the materials available on records and the photographs produced before this Court, it is seen that in the agricultural land, a permanent structure have been constructed and Thillai lodge is functioning and the petitioner is now declared as encroacher, who violated the lease condition. Hence, the impugned order came to be passed. In any event, the petitioner is entitled to file a revision under Section 21 of the Act to agitate the impugned order.

8. In view of the same, it would be appropriate for the temple authorities and the third respondent to give some time for the petitioner to seek his legal remedy. Hence, the petitioner is given three weeks time, within which, he has to file a revision and get appropriate orders and also inform the third respondent and the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli, about the status of the revision. In the event of no such revision is filed, no protection order obtained, the third respondent and the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli are at liberty to proceed further in accordance



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with law as per the impugned order.
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9. With the above direction, this Writ Petition is disposed of. No costs. Consequently the connected writ miscellaneous petition is also closed.

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Index: Yes/No
Internet : Yes/No
vsg

To:

1. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Chennai.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Tirunelveli District.
3. The Executive Officer,
Pillaiyan Artha Sama Kattalai,
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