



W.P.(MD)No.22574 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	14/11/2022
Delivered on	07/12/2022

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.P.(MD)No.22574 of 2022

P.Markandan

.. Petitioner

Versus

- 1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Uthamar Gandhi Road,
Nungambakkam,
Chennai- 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
14/1, Thiruvandran Road,
Palayamkottai,
Thirunelveli - 627 002.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Alagesapuram,
Near American Hospital Roundtana,
Thoothukudi - 628 002.



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4.The Joint Commissioner-cum-Executive Officer,
Arulmigu Subramania Swamy Temple,
TB Road,
Tiruchendur,
Thoothukudi - 628 215.

5.SrilaSri 27th Guru Maha Sannithanam,
Dharmapuram Adheenam,
Dharmapuram, Mayiladuthurai - 609 311.

6.The District Collector,
National Highway 7A, PSP Nagar,
Korampallam, Thoothukudi - 628 101.

7.The Municipal Commissioner,
44, Palai Road, Tiruchendur,
Thoothukudi - 628 215.

8.The Joint Commissioner,
HR & CE Department,
Alageshapuram, Near Americal
Hospital Roundtana,
Tuticorin - 628 002.

9.The Sub Registrar,
TB Road, Thiruchendur,
Tuticorin - 628 215.

.. Respondents

(R-6 to R-9 impleaded vide order dated 11.10.2022 in
W.M.P.(MD)No.17493 of 2022 in W.P.(MD)No.22574 of 2022)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to consider the petitioner's representation dated 06.09.2022, consequently direct the respondents 1 to 4 to retrieve and handover the property belonging to the fifth respondent Dharmapuram Adheenam situated at Thiruchendur in S.Nos.222A/1, 222A/3, 222B/1, 222B/3 measuring a total extent of 3.5 acres which is presently under the encroachment of third parties as per procedure contemplated under Section 78 of the HR & CE Act



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and take other such necessary steps to secure the property belonging to the Adheenam.

For Petitioner : Mr.R.Venkatesh

For Respondents : Mr.R.Subbaraj, SGP for R1 to R3 & R8

Mr.M.Muthugeethayan
Standing Counsel for R4

Mr.M.Karthikeyan for R5

Mr.Thilak Kumar, Government Pleader for R6 & R9

Mr. N.Anandakumar for R7

ORDER

R. MAHADEVAN, J.

We have heard the learned counsel appearing for all the parties and perused the materials placed before this court.

2.The petitioner has filed this Writ Petition in the nature of Public Interest Litigation, seeking a direction to the respondent authorities to retrieve and hand over the lands in S.Nos.222A/1, 222A/3, 222B/1, 222B/3 measuring a total extent of 3.5 acres situated at Thiruchendur, belonging to the fifth respondent as per the procedure contemplated under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, (in short, "the HR&CE Act") and take further steps to secure all the properties belonging to the Adheenam, by considering his representation dated 06.09.2022.



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3. The case projected in the writ petition would run thus:

3.1. Arulmigu Subramaniya Swamy Temple, the 2nd of Arupadaiveedu of Lord Muruga, is a temple of historical importance and is located on the shores of Bay of Bengal in Tiruchendur, Thoothukudi District. There are numerous lands in and around the area belonging to the temple and mutts.

3.2. According to the petitioner, the fifth respondent / Dharmapuram Adheenam is one of the oldest Adheenam in the State of Tamil Nadu and it was founded by Guru Gnanasambandhar during the 16th century, to spread the ideology of Saiva Sidhantham. It owns the lands in S.Nos.222A/1, 222A/3, 222B/1 and 222B/3 measuring a total extent of 3.5 acres, at Tiruchendur, which have been encroached by the third parties. Though the same was brought to the notice of the authorities concerned by the fifth respondent, no steps have been taken to secure the said lands.

3.3. Therefore, the petitioner made a representation dated 06.09.2022 to the respondent authorities requesting to take action under section 78 of the HR&CE Act, retrieve the lands and hand over the same to the fifth respondent. However, the said representation has not been considered till date. Feeling aggrieved, he is before this court with the present writ petition.

4. It is the submission of the learned counsel for the petitioner that the lands belonging to the Adheenam have been encroached, not only for residential



purposes, but also for commercial establishments, hotels, lodges, etc. The learned counsel further submitted that the respondent authorities have ample power under Section 78 of the HR&CE Act to remove the encroachment and retrieve the lands belonging to the fifth respondent, but no action has been taken by them so far.

5. On the other hand, the learned standing counsel appearing for the fourth respondent submitted that upon receipt of the petitioner's representation dated 06.09.2022, the fourth respondent duly sent a communication bearing Na.Ka.No. 5212/2022-2/E2 dated 24.09.2022, thereby instructing the fifth respondent to approach the eighth respondent, who is the competent authority to take action under section 78 of the HR&CE Act, for retrieval of the subject lands.

6. The learned Special Government Pleader appearing for the HR&CE Department further submitted that upon receipt of the representation of the fifth respondent dated 01.07.2022 through the Commissioner, HR&CE Department, Chennai, the third respondent has taken steps to inspect the lands encroached by the encroachers and collect the details with regard to the nature, extent and survey number of encroached lands, and thereafter, filed a report dated 06.10.2022 to the Joint Commissioner, HR&CE Department, Thoothukudi / eighth respondent, who is the appropriate authority to initiate further course of action under section 78 of the HR&CE Act.



7. In the meanwhile, on 29.09.2022, when the writ petition was taken up for consideration, this court directed the third respondent as well as the fifth respondent to file their reports on or before 11.10.2022, indicating the details of properties of Dharmapuram Adheenam encroached and sold out subsequently.

8. As directed by this court, the learned counsel for the fifth respondent filed a status report stating that the lands belonging to the fifth respondent have been encroached by the third parties by constructing houses, lodges, commercial establishments, marriage halls, besides occupying as vacant lands. It is further submitted that the fifth respondent has submitted complaint / report to the third respondent to take action against all the encroachers, as per section 78 of the HR&CE Act; and the initiation of the said proceedings is under progress. It is also submitted that till the action is taken by the third respondent, the fifth respondent sought an interim direction to the encroachers to deposit the arrears of rent and damages for use and occupation of the lands belonging to the Adheenam. The learned counsel has also filed a typed set of papers enclosing the communications exchanged among the respondents, to substantiate that the subject lands belonging to the fifth respondent have been encroached by the third parties. Therefore, the learned counsel prayed for appropriate direction to the eighth respondent who is the competent authority to pass orders to evict the encroachers and retrieve the properties of the fifth respondent.



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9. Pursuant to the order of this court dated 29.09.2022, the learned Special Government Pleader appearing for the HR&CE department filed a report on 11.10.2022, wherein, it is stated that the Tahsildar (temple lands), Thoothukudi, after field inspection, found that as per the revenue records, in patta no.1169, the subject lands measuring an extent of 3.53 acres stands in the name of Dharmapura Adheena Madam and the fifth respondent Adheenam is regularly paying taxes for the same and hence, steps may be taken to remove the encroachment in respect of the said lands. Based on the said report, the third respondent conducted field inspection on 01.09.2022 and 14.09.2022, during which, it was revealed that the subject lands have been encroached by illegally constructing commercial establishments, shops, lodges, hotels, residential houses, etc. Thereafter, further inspection was made on 30.09.2022 and 01.10.2022 and details of encroachments were collected by the third respondent, as per which, out of 3.53 acres belonging to the fifth respondent, there are 12 lodges to the extent of 1 acre and 13.62 cents, 58 residential houses to the extent of 1 acre and 56.3 cents, 14 shops to the extent of 26.54 cents and vacant lands to the extent of 25.29 cents. Thus, the lands measuring an extent of 3 acres and 21.75 cents belonging to the fifth respondent Adheenam, have been encroached by the third parties. Stating so, the third respondent made a recommendation to take action under section 78(1) of the HR&CE Act for removal of encroachments.



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10. This court has considered the evil of encroachments in temple lands on multiple occasions. Illustratively, we may refer to a few cases. In ***V.Thiagaragan (Died) v. State of Tamil Nadu [2015 (1) CWC 189]***, this court emphasized that the State, which is entrusted with the administration of temples, must not only stay vigilant, but also act with responsibility to remove encroachments. In ***V. Muthusamy v. The Joint Commissioner of HR&CE Department, Chennai, [2018-1-Writ.LR.530]***, this court directed the State to secure the lands belonging to the temples, by constituting a committee to identify the same and evict third parties in illegal possession. In ***P. Lakshamanan and Ors. v. the Superintendent of Police, Sivagangai [(2018) 3 MLJ 202]***, this court highlighted the peril of encroachment on temple lands, which essentially deprives the temples of their revenue and directed the Commissioner, HR and CE department to enquire, take action under section 78 of the HR and CE Act, and recover the encroached properties.

11. Recently, in a comprehensive decision in a ***suo moto WP.No.574 of 2015 and WP(MD)No.24178 of 2018 dated 07.06.2021 [(2021) 5 MLJ 413]***, covering wide ranging issues related to preservation, protection and safeguarding the temples and its properties, a Division Bench of this court, in which, one of us (RMDJ) was a part, considered the above-mentioned judgments and reiterated the



State's duty to remove illegal encroachments and ultimately, directed the authorities to identify the extent of temple lands and remove the encroachments.

Reference may be had to the following paragraph for better appreciation of State's responsibility:

“30. At this juncture, it is needless to state that the properties of the temples/religious institutions belonging to them have to be maintained properly in order to derive more income so as to spend it for the betterment of the temples. The custodians of the temple properties are the trustees, HR&CE department and mutts, who must keep in mind the object and the reason behind such donations made to the temples. The endowments are created and the lands are donated in love, in faith and in satisfaction towards the one's contribution to the religion they profess, for the temples to be selfsufficient to perform all every day rituals, to ensure that people who profess and practice the same ideology and belief, are uplifted economically and spiritually and for the subsistence of their religion. A duty is cast on the Commissioner under Section 23, to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist and therefore, whenever any order is passed, the object of the endowment is not to be forgotten. Section 29 of the Act lays down the preparation of register for all institutions by the Commissioner. That apart, the Joint Commissioners are clothed with the power to retrieve the temple lands from the encroachers by exercising the powers under Sections 78, 79 and 80. But, the officials have not properly exercised the power conferred on them and they are in dereliction of duties and responsibilities assigned to them. At least from now, the HR&CE Department should act diligently to retrieve all the properties under the encroachments.”

Thus, under section 78 of the HR&CE Act, the Assistant Commissioner is conferred with the powers to report any factum of encroachment on temple lands, either on



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complaint or *suo moto* to the Joint Commissioner. The Joint Commissioner, upon perusal of such a report, shall conduct an enquiry and order removal of encroachment, if found to be true, after hearing the parties.

12. In the light of the aforesaid legal proposition, this court is of the view that the present scenario as revealed from the reports of the third respondent as well as the fifth respondent that the subject lands belonging to the Adheenam have been encroached by the third parties, warrants the eighth respondent, who is the competent authority under the HR&CE Act, to take immediate action under section 78 of the HR&CE Act against the encroachers, remove the encroachments, retrieve the subject lands and handover the same to the fifth respondent, in accordance with law. Accordingly, this court directs the eighth respondent to take such action and complete the same, after hearing all the interested parties, within a period of twelve weeks from the date of receipt of a copy of this order.

13. With the aforesaid directions, this writ petition stands disposed of. No costs.

[R.M.D., J.] [J.S.N.P., J.]
07.12.2022

Internet : Yes.
Index : Yes / No
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and
J.SATHYA NARAYANA PRASAD, J.

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Pre Delivery Order made in
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07/12/2022