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Writ Petition (MD)No.14652 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)No.14652 of 2018

and

W.M.P. (MD)No.13227 of 2018

K.Bharathirajan

.. Petitioner

Versus

1.The Commissioner,
Hindu Religious and Charitable
Endowment,
Nungambakkam,
Chennai.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment,
Nagercoil,
Office at Vadiveeswaram,
Nagercoil.

3.The Joint Commissioner/Executive Officer,
Arulmighu Subramaniasamy Temple,
Tiruchendur,
Thoothukudi District.

..

Respondents

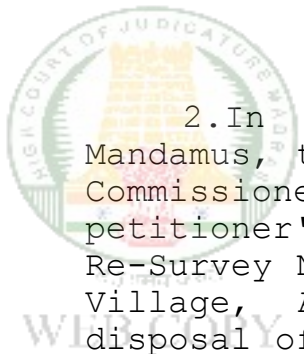
Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to restrain the respondents 2 and 3 from interfering with the petitioner's peaceful possession and enjoyment of the property in Re-Survey No.M-4/20-7, for an extent of 1.45 cents at Vadiveeswaram Village, Agatheeswaram Taluk, Kanyakumari District, till the disposal of the proceeding in M.P.No.81/2017 under Section 78 of the Hindu Religious and Charitable Endowment Act, pending before the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Tirunelveli.

For Petitioner	:	No Appearance
For R1 and R2	:	Mr.P.SUBBARAJ Special Government Pleader
For R3	:	Mr.M.MUTHUGEETHAYAN, Advocate

ORDER

The petitioner is not represented today. The petitioner appears to have revoked the Vakalath. To this effect, the learned counsel for the petitioner has filed a Memo, dated 22.02.2022.

<https://hcservices.ecourts.gov.in/hcservices/>



2.In this Writ Petition, the petitioner has prayed for a Mandamus, to restrain the respondents 2 and 3 namely, the Assistant Commissioner and the Joint Commissioner from interfering with the petitioner's peaceful possession and enjoyment of the property in Re-Survey No.M-4/20-7, for an extent of 1.45 cents at Vadiveeswaram Village, Agastheeswaram Taluk, Kanyakumari District, till the disposal of the proceeding in M.P.No.81 of 2017 under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the H.R. & C.E. Act'], pending before the Joint Commissioner, H.R. & C.E. Department, Tirunelveli.

3.The averments in the affidavit seem to indicate that the house of the petitioner was put under lock and seal without finalizing the proceedings under Section 78 of the H.R. & C.E. Act pending before the Joint Commissioner, H.R. & C.E. Department, Tirunelveli. It has been averred that the act of the respondents 2 and 3 was in violation of human rights as well as the provisions of the H.R. & C.E. Act.

4.The petitioner has further averred that though he has an alternate remedy by way of revision under Section 21 of the H.R. & C.E. Act before the first respondent, he has not opted for the same as the entire attempt of the respondents 2 and 3 was without giving due notice to the petitioner. The property was put under lock and seal from 05.07.2018.

5.The learned counsel for the third respondent submits that about 1 Acre and 75 Cents of land in Vadiveeswaram Village, Agastheeswaram Taluk, Kanyakumari District, there are large scale encroachments by several individuals and that these individuals have ended up assigning their rights by unregistered documents.

6.The learned counsel for the third respondent further submits that the petitioner has filed a copy of an unregistered document, dated 24.11.2014, to claim rights over the Temple property. It is submitted that the said document was executed on a mere Rs.20 stamp paper. It is further submitted that even if the same was registered, it would be *non est* in law, as the third respondent is the owner of the property. It is further submitted that the petitioner and his brother claim to have purchased the so called rights over the property from one Bagavathy, who herself was an encroacher and that proceedings were also initiated against her and an order came to be passed by the third respondent on 12.02.2018 under Section 78 of the H.R. & C.E. Act.

7.The learned counsel for the third respondent further submits that the possession of the property has been taken over by the third respondent and therefore, nothing survives for further adjudication in this Writ Petition inasmuch as the petitioner has not filed any revision under Section 21 of the H.R. & C.E. Act.



8.I have perused the affidavit filed in support of the Writ Petition and considered the arguments advanced by the learned Special Government Pleader for the respondents 1 and 2 and the learned counsel for the third respondent.

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9.The facts indicate that the land belong to the third respondent. It was encroached by one Bagavathy W/o.Sriraman. The said Bagavathy later assigned so called rights in the property to the petitioner's brother namely, Parthiban and the petitioner by an unregistered document, dated 24.11.2014. Such unregistered document does not confer any right either to the petitioner or petitioner's brother. The said Bagavathy and later the petitioner's brother - Parthiban and the petitioner are *prima facie* encroachers. However, it is noticed that the order dated 12.02.2018, passed by the jurisdictional Joint Commissioner of H.R. & C.E. Department, without due notice to the petitioner. The said order has been passed by the jurisdictional Joint Commissioner only against the said Bagavathy. The petitioner may have a remedy by way of a revision petition before the first respondent - Commissioner. However, the limitation under the H.R. & C.E. Act would have expired long before, as the impugned order is dated 12.02.2018.

10.Considering the fact that third respondent may have taken possession of the property as was submitted, I am inclined to dispose of this Writ Petition, by permitting the petitioner to file appropriate revision petition before the first respondent - Commissioner under Section 21 of the H.R. & C.E. Act against the impugned order, within a period of 30 days from the date of receipt of hosting a copy of this order in the High Court's Website. In case, such a revision petition is filed by the petitioner before the first respondent under Section 21 of the H.R. & C.E. Act, within such time, the first respondent shall consider the same and pass appropriate orders on merits and in accordance with law.

11.This Writ Petition stands disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Writs)

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28/02/2022
Sub Assistant Registrar(CS)



To

1.The Commissioner,
Hindu Religious and Charitable
Endowment,
Nungambakkam,
Chennai.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment,
Nagercoil,
Office at Vadiveeswaram,
Nagercoil.

3.The Joint Commissioner/Executive Officer,
Arulmighu Subramaniasamy Temple,
Tiruchendur,
Thoothukudi District.

+1 cc to Mr.M.Muthu Geethayan, Advocate, SR.No.8219

+1CC to Special Government Pleader SR.No.8355

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and
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SA (28.02.2022) 4P 6c