



WEB COPY

W.P(MD).No.22715 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.22715 of 2022

and

W.M.P(MD).Nos.16864, 16865 and 16868 of 2022

A.Kalyani

... Petitioner

Vs.

1.The Executive Officer,
Arulmigu Narumpoonaadhar Thirukovil,
Pazhavor, Radhapuram Taluk,
Thirunelveli District-627114.

2.The Thasildhar,
Radhapuram Taluk,
Thirunelveli District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the impugned notice, dated 14.09.2022 issued by the 1st Respondent and quash the same as illegal and forbearing the Respondents 1 and 2 and their men from interfering or disturbing with the peaceful possession and enjoyment of the Petitioners over the Door No.3/68A, in Grama Natham Survey Old Sy.No.1971/2 and Re.Sy.No.658/2 of Pazhavor Village, Radhapuram Taluk, Thirunelveli District by evicting or removing the Petitioner building in any manner whatsoever without due process of law.



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For Petitioner : Mr.M.Krishna Sreethar
For R1 : Dr.C.Guhaseela Rupan
For R2 : Mr.T.Amjadkhan
Government Advocate

ORDER

This writ petition has been filed challenging the impugned notice, dated 14.09.2022 issued by the 1st Respondent and forbearing the Respondents 1 and 2 and their men from interfering or disturbing with the peaceful possession and enjoyment of the Petitioners over the Door No.3/68A, in Grama Natham Survey Old Sy.No.1971/2 and Re.Sy.No.658/2 of Pazhavor Village, Radhapuram Taluk, Thirunelveli District by evicting or removing the Petitioner's building in any manner whatsoever without due process of law.

2. It is submitted by the learned counsel for the Petitioner that the above property is classified as Natham land and does not vest with the Government. The Petitioner is the owner of the said property. The Petitioner submitted that the property tax receipt and other documents are in the name of the petitioner but the impugned notice has been issued in the name of the Petitioner's husband, who does not have right, title or interest over the said property.

3. It is submitted by the learned counsel for the 1st Respondent that they have acted pursuant to the complaint made to the District Collector and the



copy of the complaint was forwarded to the 2nd Respondent. The 2nd Respondent in his communication, dated 02.08.2022 directed the 1st Respondent to issue notice and remove the encroachment. It is thus submitted that the impugned proceedings, which are pursuant to the directions of the 2nd Respondent is in accordance with law.

4. It is submitted by the learned Government Advocate for the 2nd Respondent that the property claimed by the Petitioner is not natham land and it is Arasu Poramboke land and would thus vest with the Government and therefore, anyone in possession ought to be treated as an encroacher.

5. Be that as it may, this Court is of the view that assuming the property vested with the temple as claimed by the Respondents and the Petitioner is the encroacher, there cannot be any eviction without compliance with the procedure contemplated under Sections 78 and 79 of the Hindu Religious and Charitable Endowments Act. In the present case, the impugned notice has been issued by the 1st Respondent, who may not have the jurisdiction in terms of Section 78 of the Hindu Religious and Charitable Endowments Act. Hence, the impugned order, dated 14.09.2022 is set aside. However, liberty is granted to the Respondents/appropriate authority to proceed in accordance with law,



in case, they find that that property belongs to the temple/Government and the Petitioner is an encroacher, including removal of encroachments following due process of law, and after granting opportunity to the Petitioner to putforth his claim over the property.

6. With the above direction, the writ petition stands disposed of. No cost. Consequently, connected miscellaneous petitions are closed.

28.09.2022

Index : Yes / No
Internet : Yes/ No
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To

1.The Executive Officer,
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Thirunelveli District-627114.

2.The Thasildhar,
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MOHAMMED SHAFFIQ, J.

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