



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.10781 of 2016

and

W.M.P. (MD) Nos.8369 and 8370 of 2016

WEB COPY

J.Jacob

... Petitioner

/vs./

1.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Madurai-1.

2.The Tahsildar,
Peraiyur, Madurai District.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Madurai -1.

4.S.N.K.Nagayasamy Kamaya Naicker ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order issued by the 1st respondent bearing Na.Ka.No.4910/2004-4(1)A1 dated 06.06.02016 under Section 79 of the Tamil Nadu Religious and Charitable

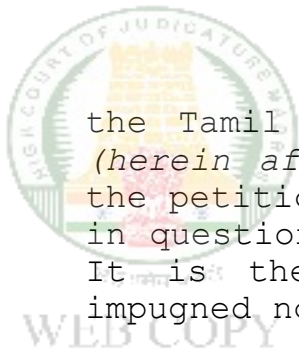
Endowments Act, 1959, for demolishing and dispossessing the petitioner from Good Samaritan Church situate in an extent of 7.50 cents of land comprised in present S.No.270/2 of Saptur Village, Peraiyur Taluk, Madurai District and quash the same.

For Petitioner	: Mr.K.Samidurai
For R1 to R3	: Mr.P.T.Thiraviam
	Government Advocate
For R4	: Mr.P.T.S.Narendravasan

ORDER

The petitioner has challenged the impugned communication dated 06.06.2016.

2.It is the specific case of the petitioner that the petitioner has filed O.S.No.57 of 2006 before the District Munsif Court, Tirumangalam, which was later transferred to the District Munsif cum Judicial Magistrate Court, Peraiyur and renumbered as O.S.No.74 of 2013. It is submitted that the impugned notice has been issued without serving a copy of the order passed under Section 78 (4) of



the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 (*herein after referred to as 'Act'*). It is further submitted that the petitioner had built a Church way back in 1990 and that the land in question was not a temple land and belongs to the 4th respondent. It is therefore submitted that the proceedings initiated vide impugned notice dated 06.06.2016 is liable to be quashed.

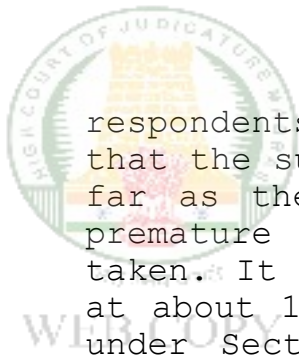
3.Opposing the prayer, the learned Government Advocate for the official respondents submits that the suit filed by the petitioner in O.S.No.74 of 2013 (formerly O.S.No.57 of 2006), which was pending before the District Munsif cum Judicial Magistrate Court, Peraiyur, was dismissed on 14.09.2015 and thereafter, an application in I.A.No.389 of 2016 was filed for restoration of the suit, which was also dismissed on 13.06.2016. That apart, it is submitted that the suit has been only filed for bare injunction and not for a declaration.

4.It is further submitted that in terms of Section 109 of the Act, the such suit is also barred under law and therefore, the trial Court ought not to have numbered the suit. In any event, the respondents are also entitled to file an appropriate application under Order VII Rule 11 of the Code of Civil Procedure as the suit is barred under law.

5.The learned Government Advocate for the official respondents also submits that without challenging the order passed under Section 78(4) of the Act, copy of which has been enclosed in the typed set of papers, the challenge to the impugned notice dated 06.06.2016 is without any merits. It is submitted that unless the order passed under Section 78 (4) of the Act is set aside in the manner known to law, the petitioner cannot seek an interference either at the stage of the notice or at the stage of recovery of possession. That apart, it is submitted that the petitioner has taken a chance to workout the remedy though wrongly before the civil Court, the petitioner cannot therefore file a writ petition merely because the proceedings have been initiated.

6.I have considered the arguments advanced by the learned counsel for the petitioner, learned Government Advocate for the official respondents and the learned counsel for the 4th respondent.

7.The factum of pendency of a civil suit at the behest of the petitioner in O.S.No.74 of 2013 before the District Munsif cum Judicial Magistrate Court, Peraiyur, (formerly in O.S.No.57 of 2006) is not relevant as the petitioner appears to have merely filed a suit for bare injunction without filing a suit for a declaration. If the petitioner wants to establish the ownership over the land, on which the Church has been put up, which is the subject matter of the present writ petition, it was open for the petitioner to file a combined suit for a declaration and for an injunction. It is for the



respondents to oppose the same in the aforesaid proceedings stating that the suit is misconceived in terms of Section 109 of the Act. As far as the challenge to the impugned notice is concerned, it is premature inasmuch as it is only a notice and no action has been taken. It merely calls upon the petitioner to appear on 22.06.2016 at about 11.00 am., That apart, the argument that the order passed under Section 78(4) of the Act was not served on the petitioner appears to be self contradictory inasmuch as a copy of the same has been enclosed in the typed set of papers. In any event, appropriate remedy has been prescribed under the provisions of the Act to challenge the same. Only if no appellate remedy is prescribed against the order passed under Section 78 (4) of the said Act, it was open for the petitioner to file a writ petition challenging the aforesaid order. Since the petitioner has neither challenged the aforesaid order in time either before the appellate forum or before this Court, I do not find any merits in this writ petitions, challenging the impugned notice of the 1st respondent dated 06.06.2016 calling upon the petitioner for personal hearing on 22.06.2016.

8.The writ petition stands dismissed, accordingly. The official respondents are at liberty to issue a fresh notice to the petitioner to appear for personal hearing as a continuation of the hearing fixed by the impugned notice dated 06.06.2016 within a period of 30 days from the date of receipt of a copy of this order. If such notice is issued, the petitioner shall appear before the 1st respondent and explain his case. The 1st respondent shall thereafter pass appropriate orders and take appropriate action against the petitioner, if the petitioner has indeed encroached the property. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Cs-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Madurai-1.

2.The Tahsildar,
Peraiyur, Madurai District.



3.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Madurai -1.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-10110[F] dated 04/03/2022)

+1 CC to M/s.SPL GP (SR-10191[F] dated 04/03/2022)

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-9900[F] dated
03/03/2022)

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