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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.03.2022**

CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.12886 of 2016
and
W.M.P.(MD) No.9727 of 2016

Muthu ... Petitioner

/vs./

1.The Commissioner,
Hindu Religious and Charitable Endowment
Administration Department,
Nungambakkam High Road,
Chennai 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment
Administration Department,
Trichy.

3.The Joint Commissioner,
Executive Officer,
Arulmigu Mariamman Thirukkovil,
Samayapuram,
Trichy. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in R.P.96/2016 D2, dated 17.05.2016 confirming the order of the 2nd respondent in M.P.No.39/2015, dated 30.11.2015 passed under Section 78 of the Tamilnadu H.R. and C.E. Act, quash the same.

For Petitioner : Mrs.J.Anandhavalli

For R1 & R2 : Mr.P.T.Thiraviam
Government Advocate

For R3 : Mr.K.Govindarajan

ORDER

The petitioner has filed this writ petition against the impugned order passed by the 1st respondent/the Commissioner dated

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17.05.2016 in R.P.No.96/2016 D2. The said order was passed by the 1st respondent against the order passed by the 2nd respondent/Joint Commissioner in M.P.No.39/2015 dated 30.11.2015.

2.It is the specific case of the petitioner that the petitioner as a cultivating tenant has been in possession of the property from the erstwhile owner, Vellaiyammal for more than 40 years and then unaware of the fact that the said Vellaiyammal had gifted the aforesaid land, the petitioner had also put up trees and developed the property. It is submitted that the respondents however initiated proceedings under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 *(herein after referred to as Act)*. Under these circumstances, the petitioner was compelled to file M.P.No.39 of 2015.

3.The learned counsel for the petitioner submits that there is no proof that the respondent temple has taken possession of the property from 1987. It is further submitted that in the guise of exercising right over the property, measuring an extent of 150 + 225 sq., ft., in S.No.3104/29, Theni District, the respondents were putting a compound of entire 20 cents, which was in possession of the petitioner as permissive occupant of the said owner, namely Vellaiyammal.

4.The learned counsel for the petitioner further submits that though the petitioner had the benefit of filing an alternate remedy before the Government under Section 114 of the Act, the petitioner was compelled to file this writ petition as the 1st respondent at that point of time was also the Secretary and therefore the appeal could not be filed before the Government.

5.The learned counsel for the petitioner further submits that the petitioner has also taken steps for recognizing the petitioner as a cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and the same is pending before the Tahsildar concerned. It is therefore submitted that the order passed by the 2nd respondent as affirmed by the 1st respondent, vide order dated 17.05.2016 is liable to be quashed.

6.Opposing the prayer, the learned counsel for the official respondents submits that the writ petition is without any merits. It is submitted that even at that time when the order was passed by the 2nd respondent on 30.11.2015, the petitioner had no records to substantiate that the petitioner was the cultivating tenant. It is submitted that the petitioner was squatting of the property taking advantage of the fact that the property situated in Theni District, whereas the respondent temple is situated at Ticuchirappalli.

7.It is further submitted that the action taken for evicting the petitioner under Sections 78 and 79 of the Act was lawful and therefore the order passed by the 2nd respondent as affirmed by the

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1st respondent is liable to be upheld by dismissing this writ petition.

8.I have considered the arguments advanced by the learned counsel for the petitioner, learned Government Advocate for the respondents 1 and 2 and the learned counsel for the 3rd respondent.

9.Though the petitioner has an alternate remedy to file an appeal under Section 114 of the Act, the petitioner chose to file this writ petition. According to the respondents, the officer, who passed the impugned order dated 17.05.2016 was no longer the Secretary after 30.06.2016, whereas the writ petition has been filed on 20.07.2016. Though the submission appears to be attractive, I am not inclined to dismiss this writ petition by directing the petitioner to workout the alternate remedy before the Government under Section 114 of the Act at this distinct point of time. Therefore, this writ petition is taken up for final hearing accordingly.

10.The order passed by the 2nd respondent/the Joint Commissioner, which has been confirmed by the 1st respondent, does not suffers from any material or irregularity. Review under Article 226 of the Constitution of India is limited. It is confined to the decision making process. I do not find any infirmity in the procedure adopted by the 1st respondent, while dismissing the revision application filed by the petitioner under section 21 of the Act. That apart, the facts also indicate that the extent of the land, which was gifted by the owner is 20 cents and in the middle of the 20 cents, the petitioner has put up a temporary construction by encroaching the land taking advantage of the distance between the 3rd respondent temple and the land in Theni.

11.There is no merits in this writ petition. That apart there are no records to show that the petitioner is a cultivating tenant. The photographs, which were filed by the petitioner, show that there are few random trees. There is an attempt to put some some constructions. Therefore the petitioner cannot call himself as a cultivating tenant within the meaning of provisions of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.

12.Considering the same, I am inclined to dismiss this writ petition. At the same time, considering the fact that the petitioner has been in possession of the property atleast from 1987 even as per the admission of the petitioner, the respondents are at liberty to recover any rent for ground from the petitioner for occupying the entire extent of 20 cents of the land in the past and also consider the request of the petitioner for leasing the land as a tenant, in case, the respondents decide to auction the property for renting it to prospective tenants.

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13.The writ petition is disposed of in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

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To

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Chennai 600 034.

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Hindu Religious and Charitable Endowment
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3.The Joint Commissioner,
Executive Officer,
Arulmigu Mariamman Thirukkovil,
Samayapuram,
Trichy.

+1 CC to M/s.SPL GP (SR-16070[F] dated 01/04/2022)

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-16165[F] dated 01/04/2022)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-16153[F] dated 01/04/2022)

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