



W.P.(MD)No.26632 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.26632 of 2022

and

W.M.P.(MD)Nos.20830 of 2022

Mani @ Karuppaiah

... Petitioner

Vs.

1. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.

2. The Managing Trustee,
Arulmighu Jayamkonda Chozheeswarar Temple,
Soundaranayaki Amman Temple,
Nemam Village,
Thirupathur Taluk,
Sivagangai District.

3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.

... Respondents

(R3 impleaded vide Court order dated 25.11.2022
in W.P.(MD)No.26632 of 2022 by MSQJ)



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned order of the 1st Respondent in M.P.No.31/2022/E1 dated 06.10.2022 and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the summons issued by the Joint Commissioner, dated 06.10.2022. However, he has not been arrayed as party in this Writ Petition, though a necessary party. Therefore, this Court, *suo motu* impleads the Joint Commissioner, to which, the learned Special Government Pleader for the Respondents have no objection.

2. It is submitted that the impugned proceedings invoking Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act') is unsustainable. It is the case of the



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Petitioner that when the very title of the property is being questioned, the burden is on the Temple to let in evidence to demonstrate that the title vests with the Temple. It is only thereafter that the question of encroachment and the authority of the Temple to proceed under Sections 78 and 79 of the Act, would arise.

3. As a matter of fact, it is submitted by the learned counsel for the Petitioner that the document would show that the title in respect of subject property does not belong to the Temple rather it is treated as 'Natham Poramboke' and the revenue records and other statutory records would also indicate the same. It is further submitted by the learned counsel for the Petitioner that he has been residing there for decades and property tax receipts are in the name of the Petitioner though patta is not in the Petitioner's name.

4. To the contrary, it is submitted by the learned counsel for the respondents that the writ petition against the summon is pre-mature and not maintainable and thus ought not to be entertained.



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5. Heard both sides and perused the materials placed before this Court.

6. This Court is of the view that it may not be appropriate to interfere at this stage under Article 226 of the Constitution of India. However, the 3rd Respondent, namely, Joint Commissioner shall put the Petitioner on notice of the material in his possession on the basis / strength of which, he claims title to invoke Section 78 of the Act, it is open to the Petitioner to place all materials on record including documents relating to title in response thereto.

7. The above observations are made without prejudice to any of the rights that may be available to the Petitioner under any other law to redress his grievance.



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8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

vji

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MOHAMMED SHAFFIQ, J.

vji

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