



Writ Petition No.7517 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 06.06.2023

ORDER PRONOUNCED ON : 09.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Writ Petition No.7517 of 2023

and

W.M.P.Nos.7619, 7620 & 12394 of 2023

1.S.Selvi

W/o.M.Subramani

represented by her Power of Attorney Agent

Mr.P.Mageswaran

2.P.Jayapal

.. Petitioners

Vs.

1.The Joint Commissioner,

Hindu Religious & Charitable Endowments

Department,

No.119, Uthamar Gandhi Salai,

Nungambakkam, Chennai - 600 034.

2.The Assistant Commissioner,

Hindu Religious & Charitable Endowments

Department,

No.119, Uthamar Gandhi Salai,

Nungambakkam, Chennai - 600 034.



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3.The Executive Officer,
Arulmigu Kuzhaliyamman Swamy Alayam,
Manapakkam, Chennai - 600 125.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order dated 20.02.2023 passed by the first respondent in proceeding bearing M.P.No.160/2022/A3 issued by the first respondent and quash the same as illegal and direct the respondents not to disposes the petitioners from the property comprised in Survey Nos.17/1 and 17/2 admeasuring an extent of 0.43 cents situated at Kolapakkam Village, Kundrathur Taluk, Kancheepuram District.

For Petitioners : Mr.N.L.Rajah, Senior Counsel
for Rohini Ravi Kumar

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader [HR & CE]

ORDER

The petitioners have assailed the order dated 20.02.2023 passed by the first respondent u/s.78 of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the Act'] holding that the petitioners are encroachers and they have been directed to vacate and handover possession of the property within 15 days failing which a direction has been given to the authorities to take possession of the subject property with the assistance of police.



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2. The petitioners claim to be in possession and occupation of an extent of 21050 sq.ft. in Survey Nos.17/1 and 17/2 at Kolapakkam Village, Kundrathur Taluk, Kanchipuram District. The petitioners claim to be the sole and absolute owner of the subject property by virtue of settlement deeds dated 03.10.2013 and based on the same, patta was also issued in the name of the petitioners. For the purpose of managing the property, the petitioners have appointed a Power Agent through registered Power of Attorney documents and the agent representing the first petitioner has filed this writ petition.

3. The grievance of the petitioners is that all of a sudden, the officials belonging to the Hindu Religious and Charitable Endowments Department [hereinafter referred to as 'the Department'] barged into the property and attempted to interfere with the possession and enjoyment of the property. Hence, the petitioners filed W.P.No.32387 of 2022 and this writ petition was disposed of by an order dated 01.12.2022 and the relevant portion in the order is extracted hereunder:

"6. It is accepted by Learned Counsel for the Petitioner that out of 37,135 sq.ft. of land, only an extent of 12,515 sq.ft. of land is



said to be in occupation of the Petitioner. Further, it is represented that electricity connection to the property has been disconnected and Learned Counsel for the Petitioner submits that the same may be restored to the extent of land presently in occupation of the Petitioner for which he has given an undertaking stating as follows:-

- "a) I will not create any third party interests;
- b) I will not alter the nature of usage of the property from its current usage as a cow-shed;
- c) I will not alter physical features of the property."

Though obvious, it is made clear that such restoration of electricity connection shall be subject to the ultimate outcome of the eviction proceedings under Section 78 of the Act."

Pursuant to this order, proceedings were conducted by the Joint Commissioner and the impugned order dated 20.02.2023 came to be passed by the first respondent.

4. The petitioners filed a civil suit in O.S.No.55 of 2023, which is pending before the District Judge at Kanchipuram and in the said suit, the petitioners have sought for the relief of declaration of title and for consequential permanent injunction. This suit has been purportedly filed u/s.79(2) of the Act.

5. The third respondent has filed a counter affidavit. The third



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respondent has taken a stand that the entire set of documents that were relied upon by the petitioners are forged and fabricated documents and the petitioners do not have any right or title over the property and that the first respondent had rightly come to the conclusion that the petitioners are encroachers of the subject property and hence, sought for dismissal of the writ petition. A further stand has been taken to the effect that a suit has already been filed by petitioners and in view of the same, the petitioners cannot maintain a writ petition parallelly questioning the order passed by the first respondent.

6. Heard Mr.N.L.Rajah, learned Senior Counsel appearing for petitioners and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader [HR & CE] appearing for respondents.

7. The petitioners are tracing their right by placing reliance upon the 'A' register extract of the year 1911, the death certificate of the original owner Murugesu Mudaliar, the legal heirship certificate of the said Murugesu Mudaliar, the death certificate of one M.Kuzhaliammal, the legal



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heirship certificate of the said M.Kuzhaliammal, the patta that was granted in favour of M.Kuzhaliammal, the registered release deed dated 21.06.2013 and the settlement deeds dated 03.10.2013 executed in favour of the petitioners. The petitioners also placed reliance upon the patta that was issued in their name.

8. *Per contra*, the Department has taken a very specific stand to the effect that all the official records are forged and fabricated and to justify the same, the report received from various authorities have been filed in the typed set of papers filed along with the counter affidavit. Hence, the Department has taken a stand that the claim made by the petitioners is vitiated by fraud and there is absolutely no scope to maintain this writ petition before this Court. The first respondent in the impugned proceedings dated 20.02.2023 has rendered a finding to the effect that the petitioners are relying upon documents which are not genuine and has treated the petitioners as encroachers and passed the impugned order.

9. Learned Senior Counsel appearing on behalf of the petitioners



submitted that none of the documents that are relied upon by the Department to allege that the documents produced by the petitioners were forged and fabricated, were furnished to the petitioners. Hence, it was contended that this Court cannot act upon the *ipse dixit* of the Department, more particularly, since the petitioners are also relying upon official documents and if at all, these official documents are fabricated, necessary action ought to have been taken by now and no such action has been taken. It was further contended that the petitioners are willing to withdraw the suit that is pending in O.S.No.55 of 2023 and learned Senior Counsel urged this Court to remand the matter back to the file of the first respondent with a direction to furnish the documents relied upon by the Department to the petitioners and to conduct the proceedings strictly in accordance with Section 78(4) of the Act r/w Removal of Encroachments of Lands or Buildings belonging to Religious Institutions Rules.

10. This Court heard the learned Senior Counsel appearing for the petitioners and the learned Special Government Pleader appearing for the Department in extenso and perused the materials available on record.

11. In the considered view of this Court, the present writ petition filed



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before this Court challenging the order passed by the first respondent is liable to be dismissed for the simple reason that the petitioners had already filed a suit in O.S.No.55 of 2023 before the District Court at Kanchipuram and in the said suit, apart from seeking for the relief of declaration of title and permanent injunction, the legality of the order passed by the first respondent has also been put to challenge. This suit was filed on 02.03.2023. On going through the plaint, it is seen that the petitioners took a conscious decision to file the suit. However, the petitioners filed the present writ petition on 07.03.2023 and parallely the order passed by the first respondent has been put to challenge in the present writ petition also. It will be too late in the day to contend that the petitioners are willing to withdraw the suit at this stage. Once the petitioners consciously filed a suit seeking for a substantive relief, the petitioners can never be allowed to maintain a parallel writ petition on the same cause of action. The proposal to withdraw the suit at the time of hearing lacks merits.

12. The rival submissions clearly demonstrate the fact that this case



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requires deeper consideration of evidence and appreciation of evidence by a competent Court. The Department is raising the ground of fraud against the petitioners and hence, it will be more appropriate for a competent Court to deal with the same and in the light of such an allegation, the matter cannot be sent back to the Joint Commissioner. This Court also holds that once the petitioners have consciously taken a decision to file a suit seeking for substantive relief, there is no scope for remanding the matter back to the file of the first respondent. The first respondent has applied his mind on the relevant records and hence, remanding the matter back to the file of the first respondent will be a wasteful exercise.

13. In the light of the above discussion, this Court holds that the petitioners cannot maintain this writ petition before this Court and the petitioners have to necessarily work out their remedy only in the pending suit. Learned Senior Counsel appearing for the petitioners submitted that in view of Section 79(3) of the Act, a civil Court cannot pass any interim order safeguarding the possession over the property and hence, the petitioners will lose possession of the property even during the pendency of the suit and the



petitioners will be put to irreparable loss and hardship. In the considered view of this Court, the power and jurisdiction of the civil Court to pass interim orders pending the suit is not taken away u/s.79(3) of the Act. The said provision has to be read along with Section 79(1) of the Act. A civil Court cannot grant an order of injunction in respect of proceedings initiated by the Assistant Commissioner pursuant to the order passed u/s.78 of the Act nor can the civil Court pass an order of injunction for proceedings, which is about to be initiated by the Joint Commissioner. The bar under Section 79(3) of the Act will not apply to the suit that is filed u/s.79(2) of the Act. During the pendency of the suit, it is always left open to the civil Court to consider the *prima facie* case, balance of convenience and irreparable loss and hardship as between the parties and pass interim orders. Hence, the apprehension raised by learned Senior Counsel appearing for petitioners is unfounded.

14. It is made clear that this Court has not rendered any findings on the merits of the case and the order passed in this writ petition will not come in the way of the civil Court to pass orders on its own merits and strictly in



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accordance with law.

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In the result, this Writ Petition stands dismissed in the above terms.

No costs. Consequently, connected miscellaneous petitions are closed.

09.06.2023

Index: Yes

Speaking Order/Non-Speaking Order

Neutral citation: Yes

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To

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N.ANAND VENKATESH, J



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Pre-delivery Order
in
Writ Petition No.7517 of 2023

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