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W.P.No.9631 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9631 of 2023

and

W.M.P.No.9685 of 2023

Bangalore T.A.Vaiyapuri Chettiar
Ammani Amman Madam
Represented by its Trustee
Amsammal
W/o.Ethiraj
No.9, Ammani Amman Gopura Street,
Tiruvannamalai.

...Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowment,
Mahatma Gandhi Salai,
Nungambakkam,
Chennai- 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Arulmighu Annamalaiyar Temple,
Tiruvannamalai.
- 3.The Assistant Commissioner/Executive Officer,
Hindu Religious and Charitable Endowment,
Arulmighu Annamalaiyar Temple,
Tiruvannamalai.



W.P.No.9631 of 2023

WEB COPY

4.The Revenue Divisional Officer,
Tiruvannamalai District.

5.The Tahsildar,
Tiruvannamalai District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent vide Proceedings M.P.No.70/2021/A2 dated 15.03.2023 and quash the same and direct the respondents to surrender the land comprised in Survey No.1377, situated at No.9, Ammani Amman Gopura Street, Tiruvannamalai.

For Petitioner : Mr.Om Prakash
Senior Counsel
For Mr.G.Veerapathiran

For R1 to R3 : Mr.R.Shunmugasundaram
Advocate General
Assisted by
Mr.K.Karthikeyan
Government Advocate (HR & CE)

ORDER

The writ on hand has been instituted, questioning the validity of the eviction order passed in proceedings dated 15.03.2023 under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR & CE Act')



W.P.No.9631 of 2023

WEB COPY

2. The petitioner Trust was declared as an Encroacher and consequently, eviction proceedings were initiated under Section 78 of the HR & CE Act.

3. The petitioner states that the ancestors of the petitioner Mutt/Trust viz., Bangalore T.A.Vaiyaburi Chettiyar Ammani Amman Madam Trust namely Yasodai Ammal, Pattammal, T.M.Janakiraman and T.M.Loganathan. Some third parties trespassed into the said Trust land and the suit was instituted for declaration and recovery of possession in O.S.No.100 of 1983 on the file of the Sub Court, Tiruvannamalai, claiming that their family alone should be in Management of the Trust and the properties of the petitioner's Mutt/Trust viz., No.9, Ammani Amman Gopura Street, Tiruvannamalai. The suit was dismissed by the Sub Court on 24.11.1986. Challenging the judgment and decree, the appeal suit in A.S.No.347 of 1987 was filed before the High Court and the High Court of Madras passed an order as follows:

“11(f) In the above said paragraphs, it has already been found that there is a trust and therefore, the above averments



are untenable. The respondent and his father knew exactly who Rathinavel Chettiar was and that he is Vaiyapuri Chettiar's descendant entitle to manage the Ammani Ammal Madam. Only by Ex.A25 dated 23.09.1986 the appellants were put on notice of the intention of the respondent to claim the property for himself. The suit has been filed in 1983 and therefore, it cannot be said that the respondent had perfected his title by adverse possession.

12. For all these reasons, the Judgment of the Trial Court is set aside. A.S.No.347 of 1987 is allowed and the suit is decreed as prayed for. No costs.

13. In view of the wishes of the testator in Ex.A1 and the obvious practical difficulties faced by the appellants to manage the trust and to protect it from persons like the respondents who might grab it for personal use, a direction is given to the appellants to co-ordinate with the Executive officer of the Tiruvannamalai Devasthanam so that, the Devasthanam authorities or any other charitable trust like the charities mentioned in Ex-A1 are made trustees along with the family of the appellants”.

4. The learned Senior counsel appearing on behalf of the writ petitioner mainly contended that the observations made in the order passed



W.P.No.9631 of 2023

in the appeal suit would be sufficient to establish the right of the petitioner with reference to the subject property. The respondent / Temple authorities have not established that the Temple is the owner of the subject land. The suit instituted for declaration ended with an observation by the High Court that the Executive Officer has to assist the Management and thus, the Management vests with the petitioner and therefore, the eviction proceedings are null and void.

5. The learned Senior counsel for the petitioner further reiterated that the eviction proceedings initiated under Section 78 of the HR & CE Act are untenable, in view of the fact that the petitioner had already established its rights in respect of the subject property and therefore, the eviction proceedings initiated under Section 78 *per se* is to be declared as null and void.

6. Even in respect of the order passed under Section 145 of Cr.P.C. Proceedings dated 12.08.2011, there is an observation that the petitioner Trust is entitled for possession of the property. Therefore, the order impugned is to be set aside.



W.P.No.9631 of 2023

7. The learned Advocate General appearing on behalf of the 'State' objected by stating that the petitioner is an Encroacher. Thus, the eviction proceedings were initiated under Section 78 of the HR & CE Act. The trustee one Mr. Shanmugam has not filed the writ petition. The competent authorities initiated proceedings only against Mr. Shanmugam and his wife under Section 78 of the HR & CE Act. Pertinently, the said Mr. Shanmugam, who is the Trustee as per the Deed, handed over the subject property to his wife by way of lease and that itself is an illegality under the provisions of the HR & CE Act.

8. Admittedly, Petitioner-Trust is a Charity falling within the ambit of the HR & CE Act and thus, the authorities are competent to initiate actions under the provisions of the HR & CE Act. In the present case, the authorities competent found that the petitioner is an Encroacher and sufficient opportunities were granted to them to respond to the notices and final order has been passed, evicting the writ petitioner.

9. The learned Advocate General appearing on behalf of the 'State' brought to the notice of this Court that the Executive Officer has already



W.P.No.9631 of 2023

taken possession of the property on 15.03.2023 and the buildings, which all are in dilapidated condition, posing danger to the public in that locality and are demolished. The authorities are in the process of removing the debris and other materials in that locality. The learned Advocate General further contended that a revision is contemplated under Section 21 of the HR & CE Act and thus, the writ petition is not maintainable.

10. Considering the arguments, let us now consider Section 78 of the HR & CE Act.

11. Section 78 of the HR & CE Act deals with 'Encroachments by persons on land or buildings belonging to charitable or religious institution or endowment and the eviction of encroachers'. Sub-Section (1) to Section 78 stipulates that “*Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee **“has reason to believe”** that any person has encroached upon any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment, he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the*



W.P.No.9631 of 2023

division in which the religious institution or endowment is situated”.

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12. The language employed in Section 78 of the HR & CE Act is “reason to believe”. Therefore, an enquiry is to be conducted and an opportunity is to be provided to the persons, who all are claiming over such properties. In the present case, such an enquiry was conducted and a final order was passed in proceedings dated 15.03.2023, which is under challenge in the present writ petition. The authorities competent arrived a conclusion that the property belongs to the Temple and the petitioner is an Encroacher. The observations made in the appeal suit filed in A.S.No.347 of 1987 dated 21.08.2002 is of no avail to the petitioner, since neither the Temple authorities nor the Department of HR & CE is a party to the proceedings and more so, the relief as such sought for in the suit itself is for declaration that their family should be in management of the Schedule mentioned properties as trustees and for possession. However, there is no declaratory relief sought for regarding title, ownership of the subject property. Thus, the suit itself was instituted, seeking right over the Management and not in respect of title or ownership. Therefore, the said appeal suit and the findings therein are of no avail to the petitioners for the purpose of claiming



W.P.No.9631 of 2023

ownership or title in respect of the suit property.

WEB COPY

13. That apart, the petitioner is a Religious Charity and therefore, the case falls within the ambit of Section 78 of the HR & CE Act, more so, religious charities are attached to the Temple Administration and the Executive Officer is empowered to control the administrative affairs of all such religious charities.

14. Even in respect of the order passed by the respondents for taking possession of the subject property, they have stated that the encroached properties were in a locked condition and not in use of the Trustees. The area was not utilized for fulfilling the objects of the trust and therefore, the notice itself was issued to the addressee at Bangalore.

15. Mr.Shanmugam, who is the Trustee, is also not in use of the property and he has leased out the property to his own wife, which is in violations of the provisions of the HR & CE Act.



W.P.No.9631 of 2023

16. This Court is of the considered opinion that such disputed facts cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Therefore, the petitioner has to independently establish the ownership or title in respect of the subject property through documents and evidences before the appropriate Forum.

17. As far as the eviction proceedings are concerned, Section 78 of the HR & CE Act is unambiguous, if the authorities has 'reason to believe' that the subject property is the Temple property, they are empowered to invoke the powers.

18. In the present case, an enquiry was conducted and thereafter, an eviction order was passed. The competent authorities had already taken possession of the property on 15.03.2023 and demolished the buildings, which all are in a dilapidated condition, posing danger to the people moving nearby the temple area.



W.P.No.9631 of 2023

19. This being the factum, if the petitioner / Trust claims any right of title or ownership over the property, they are at liberty to approach the Revisional Authority under Section 21 of the HR & CE Act or the Civil Court as the case may be for establishing their rights.

20. With this liberty, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.03.2023
(¹/₂)

Index : Yes
Speaking order
Neutral Citation: Yes

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W.P.No.9631 of 2023

WEB COPY

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WEB COPY



W.P.No.9631 of 2023

S.M.SUBRAMANIAM, J.

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W.P.No.9631 of 2023
(1/2)

29.03.2023