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W.P.No.9778 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.9778 of 2023

and

W.M.P.No.9859 of 2023

Mr.K.Gajendran

...Petitioner

Vs.

1.The Commissioner,
Hindu Religious & Charitable Endowments
Department,
Mahatma Gandhi Salai, Nungambakkam,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowments
Department,
Chennai.

3.The Executive Officer,
A/M.Bhashyakara Adi Chenna Kesava Perumal Temple,
Mambalam, Chennai.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the 2nd respondent impugned order in M.P.No.61/2022/A3 dated 21.02.2023 and quash the same as illegal, arbitrary and unconstitutional.



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For Petitioner : Mr.J.Ramesh
For R1 to R3 : Mr.K.Karthikeyan
Government Advocate
(HR & CE)

ORDER

The Eviction order issued under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR & CE Act') dated 21.02.2023 is under challenge in the present writ petition.

2. The petitioner states that his brother was a tenant in the Temple property comprised in T.S.No.1/2, which belongs to A/M Bhashyakarakara Adi Chennai Kesava Perumal Temple, Mambalam, Chennai. The brother of the petitioner was paying the monthly rent of Rs.2/- for the usage of his portion of the land leased out by the temple authorities. The brother of the petitioner put up certain construction at his own costs and thereafter his demise, the petitioner is in possession of the property.

3. Admittedly, the lease was not extended by the temple authorities. The lease was terminated long back by the authorities. Thus, the petitioner



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was considered as an Encroacher under Section 78 of the HR & CE Act and accordingly, eviction proceedings were initiated and final orders have been passed under Section 78 of the HR & CE Act.

4. The order impugned under Section 78 of the HR & CE Act is appealable and a revision is available under Section 21 of the HR & CE Act.

5. The petitioner has not preferred any revision and more so, the learned Government Advocate appearing on behalf of the respondents state that the petitioner is an Encroacher and the property situate in the temple campus is required for the purpose of the Temple use. The Temple authorities have already obtained planning permission to construct concrete floors in that area for the benefit of the devotees, visiting the Temple. As of now, there is no provision for parking the vehicle and the Temple authorities have already planned to provide parking area and to construct concrete floors for the benefit of the Temple and the devotees.

6. When the Temple authorities have initiated action for the expansion of the Temple area for the benefit of the devotees, then the



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petitioner has no locus to claim that he must be allowed to continue in the premises, in which, he is an encroacher.

7. Admittedly, the petitioner is not holding any valid lease as of now. Already the brother of the petitioner enjoyed the Temple property for several years. This being the factum, the petitioner is not entitled for any relief from the hands of this Court.

8. The learned Government Advocate (HR & CE) appearing on behalf of the respondents, based on the written instructions, made a submission that the Temple is providing 'Annadhanam' to 50 persons daily. There is no place for Annadhanam and now it is being done in the open space beneath a tree. There is no place to park the vehicle. Therefore, they have already obtained building plan permission to construct an area for Anadhanam and to provide better space to the devotees, who all are visiting the Temple. This being the factum, the petitioner is liable to be evicted without any further delay in this matter.



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9. If at all the petitioner is aggrieved, he is at liberty to file a revision

petition under Section 21 of the HR & CE Act.

10. With this liberty, the writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

29.03.2023
(2/8)

Index : Yes

Speaking order

Neutral Citation: Yes

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To

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S.M.SUBRAMANIAM, J.

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