



Writ Petition No.20793 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.20793 of 2023
and W.M.P.Nos.20172 and 20173 of 2023

R.Appasamy

...Petitioner

Vs

1. The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
Chennai – 600 034.

2.The Joint Commissioner,
HR & CE Department,
Cotton Market Complex,
Tirupur – 641 604.

3.The Managing Trustee,
Arulmigu Angalamman Temple,
Palladam Town,
Palladam - 641 664.
Tirupur District.

... Respondents



Writ Petition No.20793 of 2023

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records in M.P.No.107/2022/A3 dated 07.07.2022 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.P.V.S.Giridhar
Senior Advocate
for P.V.S.Giridhar Associates

For Respondent : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR & CE)
for R1 and R2
Mr.L.Mouli for R3

ORDER

Challenging the notice issued by the 2nd respondent initiating proceedings under Section 78 of HR & CE Act in M.P.No.107 of 2022, dated 07.07.2022, this writ petition has been filed.

2. The learned Senior Counsel appearing for the petitioner submitted that the petitioner has already filed a Civil Suit in O.S.No.96 of 2022 on the file of the Subordinate Court, Palladam for declaration of title over the property situated in S.No.334/1G and for other consequential relief. When the petitioner already filed a Civil Suit to establish his right, the 2nd respondent herein is not entitled to proceed with the summary proceedings



under Section 78 of HR & CE Act for eviction of the petitioner. In support of his contention, the learned Senior counsel relied on the judgment of this Court in *Raju Spinning Mills Private Limited, Vs. Tahsildar in W.P.No.23436 of 2002*.

3. The learned counsel also relied on the judgment of this Court in *Sahaja Nalvazhvu Sangam, Aanur Village Vs. The Commissioner, Hindu Religious and Charitable Endowments Department and others in (2019) SCC Online 35371*.

4. Elaborating his arguments, the learned Senior Counsel submitted that Section 78 of HR & CE Act contemplates only a summary procedure. Hence, the dispute with regard to title cannot be conveniently decided in the said proceedings. Especially, when the petitioner moved a Civil Suit for declaration of his title, the 2nd respondent ought to have waited for the outcome of the Civil Proceedings and ought not to have resorted to the summary procedure contemplated under Section 78 of HR & CE Act.



5. Per contra, the learned Special Government Pleader appearing for the respondents 1 and 2 submitted that against the person in unlawful possession of temple property, the temple has got two remedies under law. Either it can file a Civil Suit for ejectment or it can initiate proceedings under Section 78 of HR & CE Act. In the case on hand, the 3rd respondent temple preferred to follow the second option and the same cannot be faulted.

6. The learned counsel further submitted that the impugned order is a notice issued by the 2nd respondent for initiation of proceedings under Section 78 of HR & CE Act. The petitioner can very well appear before the 2nd respondent and establish his right over the property. The learned counsel further submitted that the impugned show cause notice was issued by the 2nd respondent is dated 07.07.2022 and the same has been challenged before this Court after a period of one year.

7. It is also submitted by the learned Special Government Pleader that in the proceedings initiated under Section 78 of HR & CE Act, after hearing of arguments, the orders were reserved and at this stage, the



petitioner is not entitled to file a writ petition challenging show cause notice.

8. The main contention made by the writ petitioner is that the proceedings under Section 78 of HR & CE Act is a summary procedure and hence the question of title cannot be conveniently gone into. It is also the case of the petitioner that he had already instituted a Civil Suit to establish his title over the property in question. In such case, the 2nd respondent ought to have waited till the outcome of the Civil Proceedings.

9. The submissions made by the learned Senior counsel for the writ petitioner is not acceptable to this Court for the simple reason, any person aggrieved by the order passed in proceedings initiated under Section 78 of HR & CE Act is entitled to file a Civil suit under Section 79(2) of the said Act to establish his right. Though the proceedings under Section 78 of HR & CE Act before the 2nd respondent is summary one, aggrieved party is given a right to move the Civil Court, challenging the order passed under Section 78 of HR & CE Act. Therefore, the contention made by the learned Senior counsel for the writ petitioner that when petitioner already instituted



a Civil Suit to establish his title over the property in dispute, the proceedings initiated under Section 78 of HR & CE Act is not maintainable cannot be accepted.

10. Apart from the right available to the petitioner to file a Civil Suit under Section 79(2) of HR & CE Act, the aggrieved party is also entitled to invoke Section 21 of the said Act and file a revision before the Commissioner of the HR & CE Act to revise the order passed by the 2nd respondent.

11. When aggrieved party is given a remedy before the regular Civil Court, it cannot be stated that merely because the petitioner instituted a Civil Suit, the 2nd respondent has to wait for the outcome of the Civil Suit. Under the scheme of HR and CE Act, if show cause notice is issued by Joint Commissioner to initiate eviction proceedings under Section 78, the concerned respondent is expected to appear before him and establish before him why he shall not be evicted. If Joint Commissioner is satisfied there is an encroachment, he shall pass a speaking order for eviction. Any person aggrieved by said order can move Civil Court under Section 79(2) of HR



and CE Act to establish his right. In the case on hand, the petitioner herein trying to pre-empt the same by filing a Civil Suit to establish his title. The same is against the scheme of the Act. The petitioner is expected to participate in the enquiry to be conducted by Joint Commissioner and if any adverse order is passed against him, he can file statutory suit as per Section 79(2) of HR and CE Act. Hence, the submission of learned Senior Counsel that merely because Civil Suit is pending, the 2nd respondent ought not to have initiated proceeding under Section 78 of the Act is against scheme of the Act and hence rejected. Further, impugned notice was issued by 2nd respondent based on petition submitted by Assistant Commissioner on 15.01.2022. The suit has been filed by petitioner subsequently on 18.03.2022. Hence, the suit filed by the petitioner is only a sequel to petition submitted by Assistant Commissioner before 2nd respondent.

12. In *Raju Spinning Mills case* cited supra, relied on by the learned Senior Counsel for the petitioner, temple filed a suit for recovery of possession and the said suit was dismissed. Aggrieved by the same, the temple filed a First Appeal and the same was also dismissed. Aggrieved by the concurrent findings, again the temple filed a Second Appeal and when



the said Second Appeal was pending, a proceeding was initiated by the Joint Commissioner in favour of the temple under Section 78(2) of HR and CE Act, treating successful defendant as an encroacher. In that context, this Court held that when temple right was already negated by the Civil Court and the matter was pending consideration in Second Appeal, the Joint Commissioner ought not to have initiated proceeding for eviction. In the present case, the temple has not filed any suit for recovery of possession before the Civil Court. Therefore, no Civil Court has negated the right of the 3rd respondent temple in the present case. In such circumstances, the said case law will not be helpful to the petitioner.

13. In another case law relied on by the learned Senior Counsel in *Sahaja Nalvazhvu Sangam, Aanur Village Vs. The Commissioner, Hindu Religious and Charitable Endowments Department and others* reported in (2019) SCC Online 35371. The proceedings initiated by the Assistant Commissioner for cancellation of patta appeared to have been challenged. The said case law is not relating to the proceedings initiated by the Joint Commissioner under Section 78 of HR and CE Act.



Therefore, the said case law is also not useful to the petitioner.

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14. The impugned order is only a show cause notice issued by the 2nd respondent to initiate proceedings under Section 78(2) of HR and CE Act. The petitioner can very well appear before the 2nd respondent to put forth his case. If he is aggrieved by the final order passed by the 2nd respondent, he can either file a revision before the Commissioner under Section 21 of HR and CE Act or file a comprehensive Civil Suit under Section 79(2) of HR and CE Act.

15. Therefore, the petitioner is having remedy before the hierarchy of the authorities including remedy before regular Civil Court against adverse order, if any, passed by 2nd respondent. Therefore, the contention made by the learned Senior counsel for the petitioner that in view of the filing of Civil Suit by the petitioner, the proceedings initiated by 2nd respondent should be stayed cannot be accepted. The impugned show cause notice issued by 2nd respondent is not inflicted with any error of jurisdiction. Hence, the petitioner is expected to appear before 2nd respondent and put forth his case.



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16. Accordingly, the writ petition is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

14.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

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S.SOUNTHAR, J.

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