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W.P.Nos.22538, 22544, 22625 and 22627 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P.Nos.22538, 22544, 22625 and 22627 of 2023

and

**W.M.P.Nos.21978, 21979, 21981, 21983, 21984, 21985,
22066, 22067, 22068, 22071, 22072 and 22074 of 2023**

A.Elumalai	... Petitioner in W.P.No.22538/2023
G.Manivannan	... Petitioner in W.P.No.22544/2023
K.Divya	... Petitioner in W.P.No.22625/2023
M.Saravanan	... Petitioner in W.P.No.22627/2023

Vs.

1.The State of Tamil Nadu
Rep. by Secretary to Government
Department of Hindu Religious and
Charitable Endowment
Fort St. George, Chennai 600 009.

2.The Commissioner
Hindu Religious and Charitable
Endowment Board
Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.



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3.The Chairman

Tamil Nadu Housing Board
Nandanam, Chennai 600 035.

4.The Joint Commissioner

Hindu Religious and Charitable
Endowment Board
Zone No.II – Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.

5.The Asst. Commissioner

Hindu Religious and Charitable
Endowment Board
Chennai 600 050.

6.The Executive Officer

Arulmighu Maruntheeswarar Thirukoil
Thiruvanmiyur, Chennai 600 041.

... Respondents in all WPs

PRAYER in W.P.No.22538 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorafified Mandamus, calling for the records comprising the proceedings of the 5th Respondent dated 24.07.2023 pursuant to the Order passed by the 4th Respondent in M.P.No.34 of 2015-A3 dated 19.11.2022 and consequently, forbear the Respondents 4 to 6 herein not to in any manner claim, right, title, interest or in any manner encumber the property bearing Shop No.19, measuring about 296 Sq.ft. Survey No.106/3 Arulmighu Maruntheeswarar Thirukoil Vaniga Valaagam situate at East Coast Road, Thiruvanmiyur, Chennai 600 041.

PRAYER in W.P.No.22544 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorafified Mandamus,



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calling for the records comprising the proceedings of the 5th Respondent dated 24.07.2023 pursuant to the Order passed by the 4th Respondent in M.P.No.24 / 2015-A3 dated 09.11.2022 and consequently, forbear the Respondents 4 to 6 herein not to in any manner claim, right, title, interest or in any manner encumber the property bearing Shop No.10, measuring about 260 Sq.ft. Survey No.106/3 and 6, Old Door No.76, New No.10, Arulmighu Maruntheeswarar Thirukoil Vaniga Valaagam situate at East Coast Road, Thiruvanmiyur, Chennai 600 041.

PRAYER in W.P.No.22625 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorafified Mandamus, calling for the records comprising the proceedings of the 5th Respondent dated 24.07.2023 pursuant to the Order passed by the 4th Respondent in M.P.No.29 / 2015-A3 dated 09.11.2022 and consequently, forbear the Respondents 4 to 6 herein not to in any manner claim, right, title, interest or in any manner encumber the property bearing Shop No.21, measuring about 260 Sq.ft. Survey No.106/3 and 6, Old Door No.76, New No.16, Arulmighu Maruntheeswarar Thirukoil Vaniga Valaagam situate at East Coast Road, Thiruvanmiyur, Chennai 600 041.

PRAYER in W.P.No.22627 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorafified Mandamus, calling for the records comprising the proceedings of the 5th Respondent dated 24.07.2023 pursuant to the Order passed by the 4th Respondent in M.P.No.36 / 2015-A3 dated 09.11.2022 and consequently, forbear the Respondents 4 to 6 herein not to in any manner claim, right, title, interest or in any manner



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encumber the property bearing Shop No.18, measuring about 260 Sq.ft. Survey No.106/3 and 6, Old Door No.76, New No.16, Arulmighu Maruntheeswarar Thirukoil Vaniga Valaagam situate at East Coast Road, Thiruvanmiyur, Chennai 600 041.

For Petitioners : Mr.T.T.Ravichandran
(in all WPs)

For R1, R2 and
R4 to R6 : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR & CE)
(in all WPs)

COMMON ORDER

These writ petitions are filed by the petitioners challenging the order passed by the 5th respondent herein enforcing the order of eviction passed against the petitioners under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter after referred to as 'HR and CE Act' for brevity).

2. According to the writ petitioners, they are in possession of Shop Nos.10, 18, 19 and 21 situated at Survey No.106/3, Arulmighu Maruntheeswarar Thirukoil Vaniga Valaagam, East Coast Road, Thiruvanmiyur, Chennai 600 041. The 5th respondent initiated proceedings for eviction of the petitioners under Section 78 of the HR and CE Act before the



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4th respondent. The 4th respondent by order dated 19.11.2022 passed an order of eviction against the petitioners treating them as encroachers of the temple property. Aggrieved by the same, the petitioners said to have been filed a civil suit challenging the title of the temple and the same is pending on the file of the City Civil Court, Chennai.

3. When the suit is pending, the impugned order for enforcement of eviction order passed by the 5th respondent has been passed and the possession of the shops occupied by the petitioners has been taken and the premises were sealed.

4. The learned counsel appearing for the petitioners vehemently contended that the land in which the shopping complex stands does not belong to the 6th respondent/Temple and patta for the same stands in the name of Tamil Nadu Housing Board. It is the case of the petitioners that the 6th respondent is a trespasser of the property and fraudulently constructed a Shopping Complex in the year 1993 after collecting huge sums from various donors.



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5. The learned counsel for the petitioners submitted that when civil suit is pending before the Competent Forum where the title of the temple is questioned by the petitioners, it is improper on the part of the 6th respondent/temple to enforce the order of eviction passed against the petitioners under Section 78 of HR and CE Act.

6. Under Section 79(2) of HR and CE Act, notwithstanding the order of eviction passed against any encroachers, they are entitled to challenge the title of the temple before the Civil Court. However, as per Section 79(3) of the said Act, the Civil Court cannot grant any injunction in respect of any proceeding taken or about to be taken by the Joint Commissioner under Section 78.

7. Admittedly, in the case on hand, the proceedings initiated by the Joint Commissioner has culminated by enforcement of eviction order passed against the petitioners. Therefore, the 78 proceedings is already terminated by its enforcement.

8. The petitioner already moved the Civil Court disputing the title of the temple and the said Civil Suit is pending. The learned counsel for the



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petitioner expressed apprehension that the temple may take certain irreversable actions which may be detrimental to the right of the petitioners, if ultimately the suit is ended in their favour.

9. When Civil Suit is pending before the Competent Court, it is for the petitioners to move the application before the Civil Court for appropriate interim relief.

10. As far as proceedings initiated under Section 78 of HR and CE Act is concerned, no Civil Court can entertain the prayer against such proceedings. However, in the case on hand, already the eviction order is enforced against the petitioners and the premises have been sealed by the 5th respondent. Therefore, the proceedings initiated under Section 78 of HR and CE Act, is already terminated. In such circumstances, it is for the petitioners to move appropriate application before the Civil court for appropriate interim relief for preservation of nature and character property of property.

11. In view of the fact that eviction order is already enforced and possession has taken by the 5th respondent, the order impugned in these writ



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petitions cannot be interfered with.

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12. Accordingly, the writ petitions are dismissed. However, the petitioner is granted liberty to move the Civil Court for appropriate interim relief. If any interim application is filed by the petitioner, the same shall be disposed of by the Civil Court as expeditiously as possible preferably within a period of eight weeks from the date of numbering of the application. Such application filed by petitioners shall be considered on its own merits based on the triple test of *prima facie* case, balance of convenience and irreparable loss. No costs. Consequently, the connected miscellaneous petitions are closed.

07.08.2023

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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Note: Issue order copy on 08.08.2023.



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To

- 1.The Secretary to Government
State of Tamil Nadu
Department of Hindu Religious and
Charitable Endowment
Fort St. George, Chennai 600 009.
- 2.The Commissioner
Hindu Religious and Charitable
Endowment Board
Uthamar Gandhi Salai
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- 3.The Chairman
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- 6.The Executive Officer
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S.SOUNTHAR, J.

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