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Writ Petition No.25503 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.25503 of 2022

and

W.M.P.No.24502 of 2022

G.Poongavanam
W/o.Late D.Ganapathy

...Petitioner

Vs

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
No.8, Atrangarai Veethi,
Puthupalayam, Cuddalore,
Cuddalore District.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
No.8, Atrangarai Veethi,
Puthupalayam, Cuddalore,
Cuddalore District.

3.The Inspector/Thakkar,
Hindu Religious and Charitable Endowments
Department,
Sivan Koil Street, Thiruvathigai,
Panruti - 607 106.

... Respondents



Writ Petition No.25503 of 2022

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records relating to the impugned notice of the first respondent bearing M.P.No.95/2022/A4 dated 14.09.2022 and all such further proceedings initiated u/s.78 of the HR & CE Act and quash the same.

For Petitioner : Mr.S.Sundaresan

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned notice issued by the first respondent in M.P.No.95/2022/A4, dated 14.09.2022 u/s.78 of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the Act'].

2. Shorn of unnecessary facts, the brief facts are stated hereunder:

2.1. The petitioner claims to be a tenant under Leelavathy Ammal and her daughter Gurulakshmi Ammal and according to the petitioner, a registered lease deed has been executed in her favour by the actual owner of the subject property and the lease period comes to an end only on



13.03.2024. According to the petitioner, the property that has been leased is situated at Old S.F.No.36/1B measuring an extent of 1.40 acres out of 3.58 acres.

2.2. The grievance of the petitioner is that the Hindu Religious and Charitable Endowments Department [hereinafter referred to as 'the Department'] without any power or jurisdiction has initiated proceedings u/s.78 of the Act treating the petitioner as an encroacher. The petitioner raised a preliminary objection with regard to the very maintainability of the proceedings since the property does not belong to the Department and the petitioner was only a lessee under a private owner. According to the petitioner, even without considering the preliminary objection raised, the first respondent proceeded further in a hasty manner and left with no other option, the petitioner has put to challenge the impugned notice issued by the first respondent.

3. The first respondent has filed a detailed counter affidavit and explained as to why the petitioner was treated as an encroacher of the property. The first respondent has also placed reliance upon the earlier order



passed by this Court in W.P.No.13287 of 2021, dated 27.09.2022 wherein the writ petition was closed and liberty was granted to the petitioner to work out his rights in the proceedings u/s.78 of the Act. Accordingly, the first respondent, in the counter affidavit, has justified the initiation of proceedings against the petitioner and sought for dismissal of the writ petition.

4. Heard Mr.S.Sundaresan, learned counsel for petitioner and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader [HR&CE] appearing for respondents.

5. Mr.S.Sundaresan, learned counsel appearing on behalf of the petitioner made elaborate submissions by relying upon various documents to substantiate the fact that the Department has absolutely no right over the property and that the proceedings itself have been initiated without any jurisdiction. Learned counsel further submitted that the first respondent is proceeding further in a hasty manner with a predetermined mind and the petitioner does not have the confidence to conduct proceedings before the first respondent.

6. *Per contra*, learned Special Government Pleader appearing on



behalf of the respondents while countering the arguments of learned counsel for petitioner attempted to establish before this Court as to how the property belongs to the 'Kattalai' and as a consequence, the right of the Department to safeguard the property by initiating proceedings u/s.78 of the Act. Learned Special Government Pleader also placed reliance upon various documents. It was also brought to the notice of this Court that independent proceedings were initiated against the so-called owners of the property under whom the petitioner is claiming to be a tenant.

7. In the considered view of this Court, the notice issued by the first respondent has been put to challenge before this Court and therefore, it is not necessary for this Court to go into the rival submissions made on the merits of the case by pointing out to various facts and documents. This Court need not take the role of the Joint Commissioner to decide upon these facts and these are facts, which must be put forth before the competent authority, who will decide upon the same while proceeding further with the hearing pursuant to the notice issued u/s.78 of the Act. On carefully going through the materials placed before this Court, it is seen that the notice issued by the first respondent, *per se* does not suffer from any illegality. The



legality of the notice cannot be tested on the basis of various facts that have been put forth before this Court and those are facts, which must be placed before the concerned authority at the time of hearing. This Court consciously does not want to list the facts that were put forth before this Court and render any finding upon the same since it will have a bearing when the issue is decided by the Joint Commissioner.

8. The only other ground that requires the consideration of this Court is the ground of malafides that has been raised by learned counsel for petitioner. It was submitted that at the time of filing of the writ petition, there was an in charge Joint Commissioner for Cuddalore and recently, a new Joint Commissioner has taken over the office. According to learned counsel for petitioner, there are some political ramifications in this case and hence, in order to render substantial justice, it was contended that the proceedings may be directed to be conducted by any other Joint Commissioner belonging to the adjacent district. Learned Special Government Pleader vehemently opposed this plea made by learned counsel for petitioner by submitting that the proceedings must be necessarily heard only by the Joint Commissioner, who has the jurisdiction and that the



proceedings cannot be transferred on the mere apprehensions that are raised by the petitioner.

9. In the considered view of this Court, some distrust has been expressed for conducting the proceedings at Cuddalore before the Joint Commissioner and the petitioner is apprehending that he will not get justice if the proceedings are conducted at Cuddalore. Taking into consideration the facts and circumstances of the case and the earlier proceedings, substantial justice can be rendered if the proceedings u/s.78 of the Act is conducted by the Joint Commissioner of another district. Ultimately, a decision must be taken by the authority before whom the parties are reposing confidence. In view of the same, this Court is inclined to direct the Joint Commissioner of Villupuram District to conduct the proceedings and complete the same within the time frame fixed by this Court.

10. In the light of the above discussion, this Court is not inclined to interfere with the impugned notice issued in M.P.No.95/2022/A4, dated 14.09.2022. It is left open to the petitioner to put forth all the claims before the concerned authority. Section 78(4) of the Act contemplates a full-fledged



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enquiry and on reading the concerned provision along with the rules, this Court has repeatedly held that the nature of proceedings is more or less a full-fledged enquiry of that of a civil Court and the proceedings are governed by the Act. The same shall be kept in mind by the concerned authority while proceeding further with the hearing. The entire files shall be transferred by the first respondent to the Joint Commissioner, Villupuram District and the said authority shall issue notice and call the parties for enquiry and a final order shall be passed on its own merits and in accordance with law within a period of twelve (12) weeks from the date of receipt of a copy of this order. At the risk of repetition, it is made clear that this Court has not expressed any opinion on merits and this order shall not have any bearing on the Joint Commissioner while hearing and passing orders in the proceedings.

This Writ Petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed. A copy of this Court shall be marked to the Joint Commissioner, Villupuram District.

06.06.2023

Index : Yes/No, Speaking order:Yes/No

Neutral citation:Yes/No

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N.ANAND VENKATESH, J



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