



W.P. No. 28739 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 28739 of 2023

K.Kumaravelu

... Petitioner

-VS-

1. The Commissioner,
Hindu Religious Charitable Endowments,
Nungambakkam,
Chennai.
2. The District Collector,
Office of the Collectorate,
Coimbatore.
3. The Joint Commissioner,
Hindu Religious Charitable Endowments,
Balasundaram Road,
Coimbatore.
4. The Tahsildar,
Office of the Tahsildar,
Kovai South Taluk,
Coimbatore.
5. Arulmigu Sivasubramania Swamy Bajanai Madalayam,
Rep. by its Managing Trustee,
No. 42, Uppu Thotae Gouder Road,
Idayar Street,
Coimbatore.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondent to consider the Petitioner's representation dated 09.08.2023 in the light of the order passed in W.P. No. 25797 of 2021 dated 14.06.2022 and remove the notice board put up by the Respondents in T.S. No. 213 which belongs to mutt and the same within the time to be stipulated by this Court.

For Petitioner : Mr. A.Rajakumar

For Respondents : Mr. K.Karthikeyan,
Government Advocate
(for R1, R3 & R5)

Mr. U.Baranidharan,
Additional Government Pleader
(for R2 & R4)

ORDER

Heard Mr. A.Rajakumar, Learned Counsel for the Petitioner, Mr. K. Karthikeyan, Learned Government Advocate appearing for the First, Third and Fifth Respondents and Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Second and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had earlier filed the Writ Petition in W.P. No. 25797 of



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2021 in which the following order was passed:-

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This writ petition has been filed to issue a writ of Mandamus, directing the respondents to act upon the petitioner's representation dated 17.07.2021 to remove the notice board put up by the respondents herein and permit the petitioner temple to utilize the property bearing T.S.No.213, Block No.11 Ward No.7 which is situated in Coimbatore Town for petitioner's temple development activities.

2. The dispute in the present case is whether the petitioner is the owner of the property or not. It is the specific case of the petitioner that the petitioner's property has been wrongly shown as the property belonging to the Balathandayuthapani Temple. The petitioner has sent a representation dated 17.07.2021 to the respondents to remove the notice board put up on the property. It is submitted that the petitioner is the patta holder of the property. The Encumbrance Certificate indicates that the property is in the name of the some other temple when it indeed belongs to the petitioner and that there is a mistake.



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3. *This Court is not in a position to decide the title of the property in this proceeding. In case, it is the case of the petitioner is that the property belongs to the petitioner, the petitioner has to file civil suit for declaration of his title. I am therefore not inclined to pass any favourable order. However, liberty is given to the petitioner to send appropriate representation to the temple concerned with request to remove the notice board put up by the respondents. The said petition shall be disposed by the Authority concerned strictly in accordance with law.*

4. *This writ petition is disposed with the above observation. No costs.”*

3. It is the case of the Petitioner that he had made a representation dated 09.08.2023 to the First to Fourth Respondents in terms of the said order, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.

4. Learned Special Government Pleader appearing for the First to Fourth



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respondents has filed a memo dated 05.10.2023, in which it has been explained

as to why the claim made by the Petitioner in his representation could not be

countenanced, as follows:-

“2. I humbly submit that on 05.10.2023 instructions given by the Executive Officer of Arulmigu Baladhandayuthapani Swamy Temple, Sukiravanpettai, Coimbatore stating that T.S. No. 213, Block No. 11, Ward No. 7 to an extent of 909 Sq. ft. property absolutely belongs to Arulmigu Baladhandayuthapani Swamy Temple, Sukiravanpettai, Coimbatore.

3. I humbly submit that as per the 'property Register' maintained by Arulmigu Baladhandayuthapani Swamy Temple, Sukiravanpettai, Coimbatore. The land in T.S. No. 213 with superstructure belongs to the temple and earlier one Mr. S.P.Murugesan and M.Savithri encroached the property. The temple initiated the eviction proceedings under Section 78 of HR & CE Act before the Joint Commissioner, HR & CE, Coimbatore in M.P. No. 36 of 2017. The Joint Commissioner, HR & CE, Coimbatore has passed an order on 23.03.2021, based on that the possession was taken on 06.07.2021.



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4. *I humbly submit that after taking the possession of land in T.S. No. 213 land to an extent of 909 Sq. ft. The temple authorities put a board stating that the land belongs “Arulmigu Baladhandayuthapani Swamy Temple, Sukiravanpettai, Coimbatore”. The records maintained by the temple property absolutely belongs to Arulmigu Baladhandayuthapani Swamy Temple, Sukiravanpettai, Coimbatore.”*

As the Fifth Respondent asserts title to the property claimed by the Petitioner, it would not be possible to direct the Fifth Respondent to remove the notice board put up to protect it.

5. It is settled position of law that disputed questions of fact relating to property rights, which are private in character and do not have any element of public law involved, require full fledged trial by recording of evidence of parties and cannot be decided in a summary manner in proceedings under Article 226 of the Constitution of India. As such, the Petitioner would have to agitate his rights relating to the ownership of the property only before the Civil Court and it is not possible to entertain this Writ Petition.

6. In such circumstances, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition reserving the rights of the



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Petitioner to work out his remedies before proper forum in the manner recognized by law.

In fine, the Writ Petition is dismissed as withdrawn with the aforesaid clarification. No costs.

06.11.2023

kv

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.01.2024.

To

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Hindu Religious Charitable Endowments,
Nungambakkam,
Chennai.
2. The District Collector,
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Coimbatore.
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P.D. AUDIKESAVALU, J.

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