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W.P.(MD) Nos.12492, 24493, 24494 & 24907 of
2022, W.A.(MD) No.771 of 2015 & Cont.P.(MD)
Nos.879 & 882 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD) Nos.12492, 24493, 24494 & 24907 of 2022
and
W.M.P.(MD) Nos.18569, 18570 & 19007 of 2022
and
W.A.(MD) No.771 of 2015
and
M.P.(MD) No.2 of 2015
and
Cont.P.(MD) Nos.879 & 882 of 2023

W.P.(MD) No.12492 of 2022:

Elephant G.Rajendran

... Petitioner

-VS-

- 1.The Commissioner
HR & CE
Nungambakkam
Chennai-34
- 2.The Executive Officer
A/M.Santhanagopala Krishnaswamy Koil
C/o.A/M.Kasiviswanatha Swamy Temple
Kumbakonam



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W.P.(MD) Nos.12492, 24493, 24494 & 24907 of 2022, W.A.(MD) No.771 of 2015 & Cont.P.(MD) Nos.879 & 882 of 2023

3.The District Collector
Thanjavur District
Thanjavur

4.The Commissioner
Kumbakonam Municipality
Kumbakonam

5.The Thasildar
Revenue Department
Kumbakonam

6.The Deputy Superintendent of Police
Kumbakonam

7.M.Panneerselvam

8.M.Kannan

9.V.Senthil Kumaran

10.N.Balakrishnan

11.R.Sethuraman

12.V.Rajendran

13.A.Nagappan

14.V.Muthukumaran
[R7 to R14 are impleaded vide Court
Order dated 31.08.2023 in W.M.P.
(MD) No.19781 of 2022.]

... Respondents



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W.P.(MD) Nos.12492, 24493, 24494 & 24907 of 2022, W.A.(MD) No.771 of 2015 & Cont.P.(MD) Nos.879 & 882 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to remove all the encroachments in the T.S.No.3/2, an extent of 3 Acres 26 Cents with police protection within a time stipulated by this Court.

For Petitioner : Mr.Elephant G.Rajendran
Party-in-Person

For Respondents : Mr.P.Subbaraj
Special Government Pleader for R1
Mr.V.Chandrasekar for R2
Mr.S.P.Maharajan
Special Government Pleader for R3 & R5
Mr.M.Rajarajan for R4

COMMON ORDER

[Order of the Court was made by V.LAKSHMINARAYANAN, J.]

W.P.(MD) No.12492 of 2022 is filed for issuance of a writ of mandamus directing the respondents to remove all the encroachments in T.S.No.3/2, measuring an extent of 3 Acres 26 Cents, with police protection, within a time stipulated by this Court.



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2. W.P.(MD) No.24493 of 2022 is filed for issuance of a writ of mandamus directing the respondents 1 to 3 & 5 not to interfere with the petitioner's peaceful possession and enjoyment of the property in T.S.No.3/2, sub-division No.3/2B, measuring an extent of 1196 sq.ft., situated at Municipal 4th Ward, Pettai Salaikarai Street, Kumbakonam Town, Thanjavur District, without following due process of law and principles of natural justice.

3. W.P.(MD) No.24494 of 2022 is filed for issuance of a writ of mandamus directing the respondents 1 to 3 & 5 not to interfere with the petitioner's peaceful possession and enjoyment of the property in T.S.Nos.18 and 3/2, measuring an extent of 863 sq.ft., + 1260 sq.ft., respectively, situated at Municipal 4th Ward, Pettai Salaikarai Street, Kumbakonam Town, Thanjavur District, without following due process of law and principles of natural justice.

4. W.P.(MD) No.24907 of 2022 is filed for issuance of a writ of mandamus forbearing the respondents 1 to 8 from evicting the petitioner from his residential house in Survey No.3/2, Ward No.4, Block No.1, Kumbakonam Town, Tanjore District, without following due process of law.



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5. W.A.(MD) No.771 of 2015 is filed to set aside the order dated 28.10.2014, passed in W.P.(MD) No.17332 of 2014 filed by one Shamsath Begam, who is the petitioner in W.P.(MD) No.24494 of 2022, directing the Commissioner, Kumbakonam Municipality, to take necessary positive steps for measurement of the house and vacant site mentioned in the petitioner's representation dated 18.06.2014.

6. Cont.P.(MD) Nos.879 & 882 of 2023 are filed to punish the respondents for willful disobedience of the orders, dated 28.09.2022, passed in W.P.(MD) Nos.22782 & 22788 of 2022.

7. Since the issues involved in all these cases are interlinked, they are clubbed together, heard together and are being disposed of by this common order.

8. For the sake of convenience, the parties are referred to as per the nomenclature in W.P.(MD) No.12492 of 2022.



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9. The petitioner – G.Rajendran claims to be a lessee of the property of Arulmigu Santhanagopala Krishnaswamy Thirukovil, which is a sub temple of Arulmigu Kasiviswanatha Swamy Thirukovil. The petitioner states that he has been recorded as a cultivating tenant for the property in T.S.No.3/2, measuring an extent of 3 Acres.

10. Originally, the petitioner – G.Rajendran filed W.P.No.7849 of 2000 before this Court seeking a direction to the respondents therein to measure the property and fix boundary stones. By an interim order, dated 03.01.2003 in M.P.No.19352 of 2002 in W.P.No.7849 of 2000, directions were issued to the respondents 1 to 4 therein to remove the encroachments in the subject land in accordance with law and also file a detailed report before this Court. Since the said directions were not complied with, a contempt petition in Cont.P.No.409 of 2003 was filed and in the said contempt petition, on 17.06.2004, this Court has passed the following order:

“2.Alleging that the orders as aforesaid have not been complied with, the above contempt petition has been filed. The learned Government Advocate states that subsequently, the encroachment in the disputed area has been removed and the orders of this Court was carried out



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in the presence of the petitioner himself on 26.05.2004. The petitioner has also signed in the memorandum. A xerox copy of the memorandum is placed before this Court. Therefore, nothing further survives in the contempt petition.

3. However, the petitioner expresses his apprehension that the illegal encroachment will be allowed to come up again as it has been happening during the earlier occasions and the respondents may be directed to keep off the encroachers and maintain the area free of encroachment. It is made clear that the respondents shall keep the area free of encumbrance strictly and shall not permit any encroachment to come up again on the disputed area. If the respondents fail to do so, the petitioner is free to approach this Court again.”

11. At the time of argument, the petitioner – G.Rajendran, Party-in-Person, drew our attention to the proceedings, dated 26.05.2004, wherein it is stated that the encroachments had been removed in his presence. He would state that subsequently, two persons have encroached upon the property and therefore, he has come forward with W.P.(MD) No.12492 of 2022.



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12. Mr.V.Chandrasekar, learned counsel appearing for the respondent – Temple, would submit that the total extent of the land is 3 Acres and 26 Cents. Out of which, the petitioner – G.Rajendran is a tenant only in respect of 3 Acres of land. He would also submit that as per the interim order passed by this Court, the encroachments on the northern side of T.S.No.3/2 had been removed. But, due to construction of concrete structures, two persons are continued to be in occupation of the property. He would point out that as per the orders of this Court, dated 31.08.2023, the persons, who are in occupation of the property, have also filed an affidavit admitting the title to the property of the respondent – Temple. He would further add that the two occupants in the northern side of T.S.No.3/2 have obtained a T.S.L.R. Patta and had originally claimed independent title to the property. He would state that the Temple Authorities will initiate action under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959 (hereinafter, referred to as “the Act”) for removal of these encroachments

13. Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the petitioners in W.P.(MD) Nos.24493, 24494 & 24907 of 2022, would submit that the petitioners in these writ petitions have not encroached upon the land



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of the respondent – Temple. He would further point out that the petitioner in W.P.(MD) No.12492 of 2022 i.e. Mr.G.Rajendran himself is a defaulter in payment of rent, which constrained the respondent – Temple to file O.S.No. 363 of 2020, before the Principal District Munsif Court, Kumbakonam. He would state that the petitioners in W.P.(MD) Nos.24493, 24494 & 24907 of 2022 are residing in the property belongs to the respondent – Temple and therefore, he would state that these petitioners are entitled for a mandamus not to be evicted from T.S.No.3/2, without following due process of law.

14. The above narration would show that the petitioner – G.Rajendran is in occupation of 3 Acres of land as a tenant under the respondent – Temple. Insofar as the remaining 26 Cents is concerned, the Temple Authorities have removed ten encroachments, leaving aside two encroachments due to nature of construction i.e. concrete structures.

15. Learned counsel appearing for the respondent – Temple also submits that the Temple Authorities will initiate action under Section 78 of the Act and have those two encroachments also removed in accordance with law.



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16. Learned counsel appearing for the respondent – Temple would also submit that the petitioner – G.Rajendran's father Mr.Govindasamy claimed to be a cultivating tenant. But, the same will not enure in favour of the petitioner – G.Rajendran. He adds since he is not exerting his personal physical labour, the petitioner – G.Rajendran will not come within the scope of the Act. He would add that the petitioner – G.Rajendran is an Advocate practicing before the High Court and Supreme Court and therefore, by no stretch of imagination, he can be treated as a cultivating tenant within the meaning of the Tamil Nadu Cultivating Tenants Protection Act, 1955.

17. In the light of the above submissions and discussion of the facts, we note that the land in T.S.No.3/2 absolutely belongs to Arulmigu Santhanagopala Krishnaswamy Thirukovil. The petitioner – G.Rajendran is not claiming any independent right, but he is claiming a derivative right through the said Temple as a tenant. Whether he is a cultivating tenant or not is a matter to be dealt with by the Authorities constituted under the Cultivating Tenants Protection Act or in a regularly constituted proceedings. The respondent – Temple, in case is so advised, can take appropriate



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proceedings for the purpose of dealing with the 3 Acres of land, which is in possession of the petitioner – G.Rajendran.

18. Insofar as the two encroachments in the northern side of T.S.No.3/2 is concerned, we place on record the learned counsel for the respondent – Temple that the Temple Authorities will initiate appropriate proceedings under Section 78 of the Act for removal of encroachments.

19. The respondent – Temple is directed to initiate appropriate proceedings to protect its properties in accordance with the Act.

20. With the above direction, all the writ petitions, writ appeal and contempt petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[V.L.N., J.]

07.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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and
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