



W.P.(MD) Nos.10796 and 11120 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) Nos.10796 and 11120 of 2023

and

W.M.P(MD)No.9488 of 2023

and

W.M.P(MD)Nos.9701, 9702 & 9704 of 2023

Kanagasabapathy

.. Petitioner in both W.Ps

Vs.

1.The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowment Department,
Dindigul.

2.The District Revenue Officer and
Additional Executive Magistrate,
Dindigul.

3.The Executive Officer,
Arulmigu Dhandayuthapanisamy Temple
Palani,
Dindigul District.

.. Respondents in both W.Ps

Prayer in W.P.(MD).No.10796 of 2023 :- Petition filed under Article 226
of the Constitution of India, praying for issuance of Writ of Certiorari,



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calling for the records of the 2nd respondent dated 23.06.2022 in proceedings Na.Ka.No.32905/2015/D6, quash the same.

Prayer in W.P(MD)No.11120 of 2023 :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the 1st respondent dated 06.09.2022 in proceedings M.P.No.60/2022/AA3, quash the same.

For Petitioner in both

W.Ps : Mr.R.G.Shankar Ganesh

For R1 & R2 in both

W.Ps : Mr.P.Subbaraj,
Special Government Pleader

For R3 in both W.Ps : Mr.R.Murale

COMMON ORDER

These writ petitions are filed for issuance of a Writ of Certiorari, calling for the records of the first and second respondents, dated 06.09.2022 and 23.06.2022 in proceedings M.P.No.60/2022/AA3 and Na.Ka.No.32905/2015/D6 respectively and quash the same.



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2.Heard Mr.R.G.Shankar Ganesh, learned counsel appearing for the petitioner, Mr.P.Subbaraj, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.R.Murale, learned counsel appearing for the third respondent.

3.It is the case of the petitioner that the property in S.No.598/1 to an extent of 5 acres 86 cents in Kothapulli Village, Dindigul Taluk, was purchased by one Perumal Naicker and his brother Gurusamy Naicker, by a registered sale deed, dated 01.03.1960. After purchasing, the said property was divided between themselves by oral partition and as per partition, eastern side of the property was allotted to the said Perumal Naicker and the western side of the property was allotted to one Gurusamy Naicker and they are the absolute owners of the said properties.

4.While so, during the life time of the said Gurusamy Naicker, in a sound disposing state of mind, he had bequeathed his share in favour of his brother Perumalsamy Naicker by a registered Will dated 16.06.1990.



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Thereafter, the said Gurusamy Naicker, died on 08.03.1993 and the Will dated 16.06.1990 came into force. Therefore, the said Perumalsamy Naicker was enjoying the property and was paying kist to the said property. Thereafter, the Perumalsamy Naicker, died on 17.11.2003.

5.During the life time of the said Perumalsamy Naicker, the petitioner purchased 60 cents of land on the northern side of the property comprised in S.No.598/1B by a registered sale deed dated 24.01.1999. After purchasing the said property, the petitioner is the absolute owner of the property and he is in possession and enjoyment of the same and also he constructed a building.

6.All of a sudden, the Court Amin along with surveyor visited the petitioner's property and measured the same. At that point of time, he came to know that the third respondent Temple has filed a suit in O.S.No. 96 of 1985 against Gurusamy Naicker and others, for the relief of recovery of possession. The said suit was decreed and execution petition was filed in E.P.No.135 of 2004. In the meanwhile, the second



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respondent has issued the proceedings dated 23.06.2022 in Na.Ka.No. 32905/2015/D6 for cancellation of patta standing in the name of the petitioner. Hence, the present writ petition is filed.

7.The learned counsel appearing for the petitioner submitted that the second respondent, while passing the impugned order, failed to take note that the trial Court has dismissed the claim of Gurusamy Naicker for recovery of possession, on the basis of the endorsement made by him and also the fact that the petitioner is claiming title over the property in S.No. 598/1. The petitioner has also moved an obstruction petition and the same is pending. Further, the suit in O.S.No.96 of 1985 is filed only for recovery of possession and not for declaration. Hence, the order impugned is not sustainable in the eye of law and the same has to be set aside.

8.In view of the submission made by the learned counsel for the petitioner, this Court is of the view that the petitioner has already moved an obstruction petition in E.P.No.35 of 2008. It is made clear that the



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respondents shall not disturb the possession of the petitioner till the disposal of the obstruction petition.

9. With the above direction, these Writ Petitions are disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

12.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1. The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowment Department,
Dindigul.

2. The District Revenue Officer and
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