



W.P.(MD) No.10814 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.10814 of 2023

and

W.M.P(MD) No.9493 of 2023

P.Manikandan

Vs.

... Petitioner

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.19, Uthamar Gandhi Salai,
Thousand Lights West,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Virudhunagar Division,
Virudhunagar District.

4.The Executive Officer,
A/M.Thathankulam Vinayagar Temple,
Aruppukkottai,
Virudhunagar District.

... Respondents



W.P.(MD) No.10814 of 2023

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned notice issued by the fourth respondent under Section 78(1) & 78(2) dated 17.03.2023, and to quash the same as illegal and consequently, directing the respondents not to interfere with the peaceful possession and business of the petitioner in Shop No.168, in T.S.No.271, Block 9, Ward D, old S.No.123, New S.No. 167/1149, Aruppukkottai Town, Virudhunagar District.

For Petitioner : Mr.S.Madhavan

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioner seeks the issuance of a writ of certiorarified mandamus calling for the records pertaining to the notice issued by the fourth respondent under Sections 78(1) and 78(2) HR&CE Act, dated 17.03.2023 and quash the same and consequently, direct the respondents not to interfere with the peaceful possession and the business of the



W.P.(MD) No.10814 of 2023

petitioner in Shop No.168, in T.S.No.271, Block 9, Ward D, old S.No. 123, New S.No.167/1149, Aruppukkottai Town, Virudhunagar District.

2. The petitioner had purchased the property in question from the legal heirs of Late Varadha Shanmugam Pillai. The revenue records had been mutated in his name and he has been in exclusive possession and enjoyment of the same. While so, the fourth respondent had filed a civil suit in O.S.No.123 of 1995 on the file of the Principal District Court, Srivilliputhur, for the relief of declaration and recovery of possession stating that the property is belonging to the temple. The suit was later transferred to the file of the learned Subordinate Judge, Virudhunagar and renumbered as O.S.No.72 of 1996 and once again on the formation of the Sub Court, Aruppukkottai, the suit was transferred to the learned Subordinate Judge, Aruppukkottai and renumbered as O.S.No.9 of 2001. The petitioner herein was impleaded as 36th defendant and he had contested the suit along with other defendants. The petitioner had also adduced evidence as D.W.6 and had filed Ex.B24 to Ex.B28 to prove his title to the property. After a full-fledged trial, the suit in O.S.No.9 of



W.P.(MD) No.10814 of 2023

2001 was dismissed by the learned Subordinate Judge, Arupukottai, vide his judgment and decree, dated 23.12.2009 and the relief of declaration, declaring that the fourth respondent temple has title to the property, had been denied. Thereafter, the fourth respondent temple had filed A.S.No.4 of 2015 on the file of the learned Additional District Judge, Virudhunagar, where the same now awaits pronouncement of judgment. While so, after their prayer for declaration of title had been negatived and an appeal thereunder filed and pending judgment, the fourth respondent has initiated proceedings under Sections 78 of HR&CE Act terming the petitioner as an encroacher. Therefore, left with no other alternative, the petitioner has approached this Court.

3. The conduct of the fourth respondent in issuing this proceedings is a flagrant attempt to overreach the judgment of a Civil Court. As an date, the petitioner's title to the property has been denied by the civil Court and challenge to this decree is now pending in appeal. In this background, the proceedings now initiated is illegal and has to necessarily be set aside. Accordingly, this Writ Petition is allowed and



W.P.(MD) No.10814 of 2023

the proceeding initiated under the impugned order, dated 17.03.2023, is quashed. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Thoothukudi.
- 3.The Assistant Commissioner/Executive Officer,
Arulmigu Thirukkutralanathatswamy Temple,
Courtallam,
Tenkasi District.



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W.P.(MD) No.10814 of 2023

P.T.ASHA, J.

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W.P.(MD) No.10814 of 2023

Dated: 28.04.2023