



W.P.(MD) No.13905 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.13905 of 2023

and

W.M.P(MD) No.11737 of 2023

Sathasivam

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Gandhi Road,
Nungambakkam,
Chennai.

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

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

4.The Executive Officer,
Letchumi Narayana Perumal Temple,
Malapuram Village,
Papanasam Taluk,
Thanjavur District.

... Respondents



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Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to restore the possession of the petitioner in Survey No.18/1, Goburajapuram Firka, Malapuram Village, Pabanasam Taluk, Thanjavur District on the file of the second respondent and pay compensation to the petitioner for highhanded dispossession of the petitioner from his house without following due process of law within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Jasima Yasmin
for M/s.Ajmal Associates

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The might of the state is clearly evident in the instant case. The facts are briefly set out to morefully appreciate the reasons for the above statement. The petitioner and his forefathers have been in occupation of the land situated in Survey No.18/1 Goburajapuram Firka, Malapuram Village, Papanasam Taluk, Thanjavur District, which has been classified as 'Natham Poramboke'. The petitioner has submitted a copy of the resettlement register obtained by him under the Right to Information Act,



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where the property in Survey No.18/1 has been described as Natham.

It is his case that they are in possession of the property for more than five decades and has constructed a small house therein and cultivating the remaining vacant land.

2. The petitioner would also submit that he is assessed to property tax and electricity charges are also being collected from him. While so, he was shocked to receive the notice from the second respondent calling upon him to appear for an enquiry on 05.12.2022 and thereafter on 06.02.2023, alleging that the land in which he is in occupation, belongs to the fourth respondent temple and that the petitioner is an encroacher. The petitioner would further submit that on the given dates no enquiry was conducted and on 06.02.2023, he was informed that the matter had been adjourned and he would be kept inform about the next date of hearing. The petitioner would further submit that although he had been waiting to receive notice about the next hearing date, he had been served with the copy of an *ex parte* order passed on 22.02.2023 under Section 78(4) of the Hindu Religious and Charitable Endowments Act (herein



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after referred to as “the Act”) directing him to hand over vacant possession of the petition mentioned property to the fourth respondent. Immediately on 03.03.2023, the petitioner had filed I.A.No.1 of 2023 in M.P.No.52/2022/E3, before the second respondent for setting aside the *ex parte* order. On 24.03.2023, the second respondent has issued notice stating that the application would be heard on 10.04.2023. After adjourning the matter to 10.04.2023, the respondent has demolished the petitioner's house and thrown the petitioner out of the property based on the *ex parte* order, which is sought to be set aside in the proceedings in I.A.No.1 of 2023 in M.P.No.52/2022/E3. The petitioner has therefore rushed to this Court.

3. When the matter had come up for admission on 14.06.2023, this Court had directed the respondents 3 and 4 to appear before this Court with the files. This order was passed, since *prima facie* this Court felt that after receiving the application for setting aside the *ex parte* decree and the date was given, the respondents ought not to have proceeded to forcibly evict the petitioner. When the files were produced for the



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scrutiny of this Court, the records would reveal that notice of the original proceedings under Section 78(4) of the Act has not been sent/received by the petitioner. On the contrary, there is a single registered returned notice, which says “no such person in the address”. After this, the second respondent has not attempted to directly serve the petitioner, who is residing in the said premises. Therefore, the *ex parte* order which has been passed, is one without hearing the petitioner or affording him an opportunity. The records would further reveal that even according to the report of the fourth respondent an extent of 44 cents in Survey No.18/4/1, which is classified as Natham house-site consists an asbestos sheet hut and a vacant site. The photographs that are enclosed in the files also indicate this state and it is seen that the house has been fenced and there are coconut trees in the property.

4. As per Section 78(2) of the Act, the Joint Commissioner/second respondent shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove



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the encroachment cannot be passed. Therefore, the action of the respondents in forcibly evicting the petitioner without giving him an opportunity as contemplated under Section 78 of Act, has to necessarily be set aside.

5. In the interest of justice and equity, this order is passed. It is no doubt true that an application for setting aside the order is pending before the second respondent. However, this Court exercising its jurisdiction under Article 226 of the Constitution of India, is setting aside the *ex parte* order dated 22.02.2023 and remitting the matter back to the second respondent for fresh consideration. Before hearing afresh the Section 78 petition, the respondents 2 to 4 shall restore the property in question back to the petitioner tomorrow (i.e. 17.06.2023) at 11.00 a.m. The officials after handing over the possession of the property, shall obtain signature of the petitioner as well as his counsel. The petitioner shall be permitted to once again put up the structure, namely, asbestos sheet hut in the premises in question. The respondents shall not interfere in the possession of the petitioner till the disposal of Section 78



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application by the second respondent. The second respondent shall take up Section 78 application for hearing on 27.06.2023 at 11.00 a.m. and the petitioner shall appear before the second respondent. The second respondent after giving an opportunity to file counter and documents, shall dispose of the application filed under Section 78 of the Act within a period of three weeks thereafter.

6. This Writ petition is disposed of with the above directions.

No costs. Consequently, connected miscellaneous petition is closed.

16.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

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P.T.ASHA, J.

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