



W.P(MD)No.19047 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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R.Jaishri

... Petitioner

-VS-

1. The District Collector,
Office of the District Collector,
Theni District.

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

3. The Tahsildar,
Theni Taluk Office,
Theni District.

4. The Executive Officer,
Gowrimariamman Temple,
Veerapandi, Theni Taluk,
Theni District.

5. Radhamani

6. M.Jeyanthi

7. Kamaraj

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4



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herein to remove the encroachments put up by the respondents 5 and 6 in respect of the property comprised in S.Nos.902 situated at Onjampatti Village, Theni Taluk, and District, based on the petitioner's representation dated 25.04.2022 within the time stipulated by this Court.

For Petitioners : Mr.C.Jeganathan
For R1 to R3 : Mr.M.Lingadurai
Special Government Pleader
For R4 : Mr.C.Guhaseelarupan
For R5 & R6 : Mr.V.N.Arjun
For R7 : Mr.A.Mohan

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

The prayer in the writ petition is for issuance of a Writ of Mandamus, directing the respondents 1 to 4 herein to remove the encroachments put up by the respondents 5 and 6 in respect of the property comprised in S.No.902 situated at Onjampatti Village, Theni Taluk, and District, based on the petitioner's representation dated 25.04.2022 within a time frame.

Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondent 1 to 3 and the counsels appearing for the respondents 4 to 7.



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2. The case of the petitioner is that an extent of 28 cents in new Survey No.902, Onjampatti Village, Theni Taluk, is classified as Government Poramboke Kovil and there is a Ganesa temple in the said survey number which is under the enjoyment of the 4th respondent/HR & CE Department. By way of a settlement deed executed in favour of the grandmother of the petitioner dated 23.06.1932, the property in the said survey number was transferred to the temple for conducting daily poojas in the temple and also for providing free water supply to the devotees. It is the further case of the petitioner that the respondents 5 and 6 have encroached upon the said temple property and constructed a house therein without any permission from the temple authorities. After submitting a representation to the official respondents and finding inaction on the same, the petitioner has filed the present writ petition for a Mandamus to remove the said encroachment.

3. The learned counsel appearing for the petitioner submitted that the respondents 5 and 6 filed a suit in O.S.No.2 of 2014 on the file of the District Munsif Court, Theni. Though the respondents 5 and 6 claimed title to the temple property, the said



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suit was filed only for a bare injunction. The trial Court specifically framed an issue whether the suit for a bare injunction is maintainable without the prayer for declaration of title. The trial Court having regard to the documents filed, came to a specific conclusion that the suit property is the property of the temple and that the plaintiffs who have established possession, cannot be evicted otherwise than due process of law.

4. The fact that the property in Survey No.902 is the property of the temple and it was treated so for so many years has been established by revenue records. The petitioner as a worshipper of temple is entitled to maintain the present writ petition where she has alleged encroachment by third parties in a temple property. When the encroachment is in the property of the temple, proceedings can be initiated by the Deputy Commissioner/Joint Commissioner of HR & CE Department on the representation or a reference either by the Executive Officer of the temple or by the Assistant Commissioner of HR & CE. Since the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, provides a machinery in terms of Sections 78 and 79 of the HR & CE Act, for



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removal of encroachment on the representation of the Executive Officer, it is for the Joint Commissioner to initiate action. The fact that the private respondents are in encroachment of the temple property is accepted by the Civil Court in a suit filed by the private respondents in O.S.No.2 of 2014.

5. Therefore, this Court is inclined to dispose of the writ petition with the following directions:-

(i) The 2nd respondent is directed to get a report from the Executive Officer with regard to encroachment by private respondents in the aforesaid temple property.

(ii) Since the property is held to be the property of the temple, it is open to the 2nd respondent to initiate proceedings under Section 78 of the HR & CE Act after issuing notice to the private respondents.

(iii) The 2nd respondent shall consider the objections, if any, raised by the private respondents and then pass appropriate orders after holding an enquiry.

(iv) The 2nd respondent shall take further action in accordance



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with the provisions of Sections 78 and 79 of the HR & CE Act.

(v) The entire exercise shall be commenced and completed within a period of twelve weeks from the date of receipt of a copy of this order.

No costs.

[S.S.S.R, J.] [D.B.C., J.]
25.07.2023

Index : Yes / No
Neutral Citation : Yes / No
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