



W.P.(MD).No.17349 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.17349 of 2023

and

W.M.P(MD).No.14541 of 2023

K.Palanichamy Nayaker

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Tiruchirappalli District.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Tiruchirappalli District.

3.The Executive Officer / Thakkar,
Arulmigu Muthallamman Ayyanar Vagaiyara Thirukovil,
Thoppanaickanpatti, Kumaravadi Village,
Manapparai Taluk,
Tiruchirappalli District.

4.The Regional Inspector,
Hindu Religious and Charitable Endowments
Department, Vaiyampatti,
Manapparai Taluk,
Tiruchirappalli District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice issued by the third respondent dated 19.05.2023 and consequential notice dated 21.06.2023 and quash the same and further directing the third respondent to fix the fair rent by considering the petitioner's representation dated 22.06.2023.

For Petitioner : Mr.Mathavaselvam

For R-1, R-2 : Mr.S.Kameswaran,
and R-4 Government Advocate.

For R-3 : Mr.G.Mathavan

ORDER

This Writ Petition is filed challenging the impugned notice dated 19.05.2023 and consequential notice dated 21.06.2023 and further directing the third respondent to fix the fair rent by considering the petitioner's representation dated 22.06.2023.

2. The petitioner is claiming that the petitioner's father and one Nallathoppa Naicker had administered the temple affairs. The said Nallathoppa Naicker filed an application under section 63(b) of HR&CE to appoint him as hereditary trustee and the same was allowed vide order dated 31.01.1975.

Aggrieved over the same, the petitioner's father preferred an appeal under



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section 69(1) of the Act, but was dismissed on delay. Hence, a suit was filed in O.S.No.115 of 1978 and the same was dismissed for default.

3. The petitioner had preferred a suit in O.S.No.408 of 1995 on the file of Sub Court Kulithalai seeking declaration of hereditary trustee. One Appanna Naicker filed another suit in O.S.No.600 of 1995 on the file of Sub Court Kulithalai seeking recovery of possession of temple properties. Through a common judgment dated 21.09.1998, the petitioner and the said Appanna Naicker were declared as joint trustees of the above temples and they are in possession and enjoyment of the respective portion of the properties, however dismissed the O.S.600 of 1996 which was filed for recovery of temple properties. Aggrieved over the same, the Appanna Naicker had preferred A.S.(MD)No.564 of 1999 and A.S.(MD)No.565 of 1999 before this Court. This Court vide Common Judgment dated 13.06.2023 allowed the First Appeal in A.S.No.564 of 1999 (filed against O.S.No.408 of 1995) and dismissed an appeal in A.S.(MD)No.565 of 1999 (filed against O.S.No.600 of 1995). While passing the said judgment, this Court directed the authorities to initiate proceedings insofar as the hereditary trustee, if the disputes still persist among various persons in respect of management of temples. Further insofar as the temple land is concerned, it is for the authorities to independently decide whether to proceed with eviction or to regularize the possession by fixing fair



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rent as per law. In fact, the appellate Court has granted relief to the petitioner, wherein, it has directed the HR & CE Department to consider the petitioner's application in accordance to law.

4. For better appreciation, the relevant portion of the order dated 13.06.2023 in A.S.(MD)Nos.564 and 565 of 1999, is extracted hereunder:

“21.As far as the hereditary trusteeship is concerned, the Deputy Commissioner or Joint Commissioner may initiate proceedings, if the dispute still persists among the various persons in respect of management of temples. Since the order passed under Ex.B1 is set aside. The above said authorities are directed to give opportunity to all the parties, who are all interested in the said issue and decide the issue afresh and pass orders afresh, in accordance with law. As far as the immovable properties i.e., temple lands which are in the possession and enjoyment of various persons, it is stated that appropriate proceedings had already been initiated under Section 78 of the Act for eviction of the said persons from the temple properties. It is for the authorities to proceed with the process of eviction of the said encroachers or to regularize their possession by fixing fair rent as per law. The same is left open to the authorities to decide the same as per law. Accordingly, all the points are answered”.

Therefore, the petitioner is claiming to consider his representation in the light of the judgment passed in the aforesaid Appeal Suit.



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5. The respondents submitted that the proceedings itself initiated based on the direction issued by the High Court in the aforementioned Appeal Suit. Therefore, the respondents would strictly adhere to the provisions of Section 78 of the HR & CE Act. The respondents also will consider the case of the petitioner as directed by the High Court. However, the petitioner submitted they used the land for cultivation of paddy. The petitioner is permitted to take the production of cultivation. However, the petitioner is restrained from further cultivation until the aforesaid proceedings under Section 78 of the Act are over. The respondents are directed to consider the petitioner's claim as directed by this Court in Appeal Suit. The petitioner is directed to participate in the enquiry proceedings as well. The enquiry proceeding shall be completed within a period of six (6) months from the date of receipt of a copy of this order.

6. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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S.SRIMATHY, J.

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