



WP(MD)No.27165 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.27165 of 2023
and W.M.P(MD).No.23329 of 2023

K.Annakamu

.. Petitioner

v.

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

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Dindigul.

3.The Executive Officer,
Arulmigu Moonglianai Kamatchiamman Thirukovil,
Devadhanapatti, Periyakulam Taluk,
Theni.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus, forbearing the respondents from evicting the petitioner in S.F.No.1605 situated at Devadhanapatti Village, Periyakulam Taluk, Theni District, which is the subject property of civil suit



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in O.S.No.57 of 2023 on the file of the District Munsif Court, Periyakulam, based on the representation of the petitioner dated 03.11.2023.

For Petitioner : Mr.M.Raghuman Khan

For Respondents : Mr.P.Subburaj,
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of a writ of Mandamus to forbear the respondents from evicting the petitioner in Survey No.1605 situated at Devadhanapatti Village, Periyakulam Taluk, Theni District.

2. The case of the petitioner is that the property in Survey No.1605 measuring to an extent of 0.30.0 hectares situated at Devadhanapatti Village, was originally classified as Odai poramboku. The petitioner's mother, namely, Vellaithai, has executed an unregistered gift deed in favour of the petitioner on 30.06.1997 and 31.03.2005, with regard to the subject property. The petitioner herein is residing in the subject property and planted 150 Ilavam trees. While so, the second respondent, who is the sister of the petitioner, has disturbed the peaceful possession of her. Therefore, the petitioner has filed a suit in



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O.S.No.198 of 2011 before the District Munsif Court, Periyakulam and the suit was decreed in favour of the petitioner on 26.11.2013. Thereafter, the second respondent has instigated the third respondent to take action against the petitioner and the third respondent has also attempted to disturb her peaceful possession. Hence, the petitioner has filed a suit in O.S.No.57 of 2023 seeking the relief of permanent injunction and the suit is pending. While so, the first respondent has initiated action under Section 78 of the Hindu Religious and Charitable Endowments Act and passed an order without providing an opportunity of hearing, to evict the petitioner from the subject property by tomorrow (11.11.2023) and therefore, this Writ Petition has been filed.

3. The learned Special Government Pleader appearing for the third respondent takes notice for the respondents and submits that the subject property is a Temple property and the petitioner is unauthorisedly occupying the property and as per Section 78 of the said Act, notice was issued to the petitioner. The petitioner did not appear and therefore, an *exparte* order has been passed. Now, the petitioner has filed an application to set aside the *exparte* order and the same is pending before the first respondent. The learned Special Government Pleader has also produced “A” Register and states that the property in Survey No.1605 is a Temple



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4. This Court considered the rival submissions made by both sides and perused the materials available on record.

5. It appears that the first respondent has initiated action against the petitioner under Section 78 of the said Act and conducted enquiry, wherein the petitioner has failed to appear and therefore, an *exparte* order has been passed. Now, the petitioner has filed an application to set aside the *exparte* order before the first respondent and claims that she is in possession of the subject property and has also obtained a decree before the competent civil Court. Therefore, the petitioner can work out her remedy in the application filed before the first respondent. The first respondent shall consider the case of the petitioner in the application filed by her to set aside the *exparte* order and take a decision in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order, by providing an opportunity of hearing to the petitioner. Till a decision is taken by the first respondent, the respondents shall not disturb the possession of the petitioner.



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5. Accordingly, this Writ Petition is disposed of. There shall be no order as

to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
ssb

10.11.2023

To

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B.PUGALENDHI, J.

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