



WA No.1014 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WA No.1014 of 2023
and CMP No.10179 of 2023

Bangalore T.A.Vaiyapuri Chettiar
Ammani Amman Madam, Rep. by its
Trustee, Amsammal, NO.9, Ammani
Amman Gopura Street, Tiruvannamalai.

.. Appellant

-vs-

1. The Commissioner,
Hindu Religious and Charitable Endowment,
Mahatma Gandhi Salai, Nungambakkam,
Chennai 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Arulmighu Annamalaiyar Temple,
Tiruvannamalai.
3. The Assistant Commissioner/Executive
Officer, Hindu Religious and Charitable
Endowment, Arulmighu Annamalaiyar
Temple, Tiruvannamalai.
4. The Revenue Divisional Officer,
Tiruvannamalai District.



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5. The Tahsildar,
Tiruvannamalai District.

.. Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 29.03.2023 passed in W.P.No.9631 of 2023.

For the Appellant : Mr.Om Prakash
Senior Counsel
for Mr.G.Veerapathiran

For the Respondents : Mr.P.S.Raman
Advocate General
Assisted by Mr.NRR.Arun Natarajan,
Spl. Govt. Pleader, for RR 1 and 2
: Mr.P.Shunmugasundaram
Senior Counsel
for M/s.Shakeena for R-3
: Mr.Mr.A.Edwin Prabakar
State Government Pleader
Assisted by Mr.T.K.Saravanan,
Government Advocate, for RR 4 and 5

* * * * *

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.Om Prakash, learned counsel for the appellant, Mr.P.S.Raman, learned Advocate General assisted by Mr.NRR.Arun Natarajan, learned Special Government Pleader for respondent Nos.1 and 2, Mr.P.Shunmugasundaram, learned senior



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counsel for respondent No.3 and Mr.A.Edwin Prabakar, learned State Government Pleader, assisted by Mr.T.K.Saravanan, learned Government Advocate for respondent Nos.4 and 5.

2. The present appellant had challenged the order passed under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959. The said order was passed against the encroachers. The said order was challenged by the present appellant basically on the premise that if the encroachers failed to vacate and hand over the property to the administration of the temple, then the Assistant Commissioner, Tiruvannamalai, Hindu Religious and Charitable Endowments (HR & CE) Department is to be directed to remove the encroachment.

3. The learned Single Judge dismissed the writ petition by observing that if the petitioner/appellant is aggrieved with regard to the right of title or ownership over the property, they have to approach the Revisional Authority under Section 21 of the HR & CE Act.

4. Mr.Om Prakash, learned senior advocate for the appellant submits that the property is required to be handed over to the Trust ad



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not to the Temple. It is for that purpose the appellant had filed the writ petition.

5. The learned Advocate General appearing for respondent Nos.1 and 2 and the learned senior advocate appearing for respondent No.3 submit that there is no dispute that upon removal of the encroachment, the property should go back to the Trust. According to them, the appellant is representing the Trust registered in the year 2011 whereas there is one old trust of the year 1784. It is further submitted by them that the total area of the Mutt in question is 25247 sq.ft. and the order under Section 78 is passed against the persons who are in unauthorised occupation of a portion of the said property.

6. There cannot be any dispute with the proposition that under Section 78 of the HR & CE Act, the order of eviction can be passed against an encroacher or a person in unauthorised occupation. Since it is a religious institution, the order has been passed. It appears that error has cropped in while passing the order under Section 78 that the same is to be handed over to the Temple. In fact, the same is required to be handed over to the Trust. The order under Section 78



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to the effect that it is to be handed over to the Temple requires to be modified to the extent that it is to be handed over to the Trust and the conclusion that the said property belongs to the Temple cannot be sustained. It would belong to the Trust. If the balance land is in possession of a third party encroacher, action can be taken under Section 78 against him also.

7. It is submitted by the learned senior advocate for respondent No.3 that the structure that was demolished while demolishing the encroachment area of the Mutt would be re-constructed.

With the aforesaid observation and modification, the writ appeal stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.V.G., CJ.)

(D.B.C., J.)

05.03.2024

Index : Yes/No

Neutral Citation : Yes/No

sra



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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sra)

To

1. The Commissioner,
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