



W.P.(MD) No.6503 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.KRISHNAKUMAR**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD)No.6503 of 2024

and

W.M.P.(MD)No.6083 of 2024

1.G.Raghavan
2.N.Alli Rani
3.Sidhanathan

... Petitioners

-Vs-

- 1.The Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Chennai.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-34.
- 3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.
- 4.The Executive Officer / Joint Commissioner,
A/m. Dandayuthapaniswamy Temple,
Palani, Dindigul District.
- 5.The District Collector,
Dindigul District, Dindigul.



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6. The Tahsildar,
Taluk Office, Palani,
Dindigul District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the 4th respondent in Na.Ka.No.2032/2017/C6-1,2 and 3, dated 09.03.2024 and quash the same as illegal.

For Petitioners : Mr.V.P.S.Sengottuvel,
Senior Counsel,
for M/s.S.Madhavan
For R1 to R3, : Mr.T.Amjadkhan,
R5 & R6 Government Advocate
For R4 : Mr.R.Murali, Standing Counsel

ORDER

[Order of the Court was made by *D.KRISHNAKUMAR, J.*]

The notice dated 09.03.2024 issued by the 4th respondent, directing the petitioners to close the business running in T.S.Nos.880 and 881, is under challenge in this Writ Petition.

2. According to the petitioners, they are carrying on the business in the respective shop Nos.1 to 3 in T.S.Nos.880 and 881 of Palani Village, Adiwaram, Palani and since the land belongs to the Government, they have entered into lease agreement with the Government and they are paying lease rent to the Revenue



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Department. Though the Temple does not have any right at all, as the entire properties belong to the deity of Palani, out of pious right and obligation to the deity, their grandfather took a view that their business depends on Arulmigu Dhandayuthapani Swami Thirukoil, Palani and hence, they should not deny the demand of the Temple. Therefore, they are also paying lease rent to the Temple.

3.In such circumstances, the 3rd respondent issued notice dated 19.12.2014 and initiated proceedings under Section 78 of Hindu Religious Charitable and Endowments Act, 1959 (hereinafter referred to as 'the Act') and the same was dismissed. On appeal before the 2nd respondent, the same was also dismissed and thereafter, on revision before the 1st respondent, the 1st respondent issued G.O.(Ms).No.150, Tourism Culture and Religious Endowments Department, dated 12.11.2020, remitting the matter to the 3rd respondent to resume the enquiry under Section 78 of the Act following the procedure set out in Rule No.5 of the Removal of Encroachment on Land or Building belonging to Religious Institutions Rules.

4.Further, in the said Government Order, it is mentioned that till the matter is disposed of, there shall be an order of interim stay on eviction of the review petitioner from the property in question and during this period, the



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damages for use and occupation of the property in question as fixed by the Commissioner with suitable escalation, if any, shall be collected from the review petitioner. Therefore, at present, the proceedings initiated under Section 78 of the Act is pending before the 3rd respondent. At this stage, the present impugned notice is served to the petitioners by the 3rd respondent for closure of the commercial shops in the property in question. Aggrieved by the same, the petitioners filed this Writ Petition.

5. When the matter was taken up for admission on 18.03.2024, the learned Senior Counsel appearing for the petitioners submitted that since the proceedings under Section 78 of the Act is pending before the 3rd respondent, issuance of the present notice is contrary to the law and the same is unsustainable. Therefore, he sought to set aside the impugned order.

6. In reply to the said submission, the learned Standing Counsel appearing for the 4th respondent submitted that pursuant to the directions passed by this Court in Cont.P.(MD)No.1671 of 2018 and W.P.(MD)No.2491 of 2019 on various dates ie., on 03.01.2024, 09.01.2024, 24.01.2024, 15.02.2024, 04.03.2024 and 08.03.2024, the encroachments in the Giriveethi have been removed by the authorities, namely, 4th respondent and the revenue officials. Further, there are



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some objections from the shop owners alleging that the Devasthanam is running Panchamirtham Stall in the Giriveethi and based on the objections, the Devasthanam also removed the said stall. Therefore, if any such concession is given to the petitioners, it will reopen the flood gate for running commercial business in the Giriveethi. Therefore, the Devasthanam has taken stringent action.

7.He further submitted that though the proceedings under Section 78 of the Act is pending, this order is passed only for closure of the commercial business in the Giriveethi. Further, though the petitioner earlier entered into lease agreement with the Government, now, the period is expired. Therefore, the petitioners are paying cost for damages and the occupation to the Devasthanam. In such circumstances, the said closure order has been passed in compliance of the directions of this Court. Therefore, he sought for dismissal of this Writ Petition.

8.He also relied upon the Government Order issued in G.O.(Ms)No.3324, dated 31.08.1974, wherein it is mentioned that the Devasthanam should not levy licence fee from the present shop keeper encroachers or use the land for any remunerative purposes. The similarly placed persons / shop owners have already approached the Hon'ble Supreme Court and the Hon'ble Supreme Court granted time to continue their business till 31.07.2024.



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The said fact has to be placed before the Joint Commissioner, HR & CE Department, Dindigul, at the time of passing order under Section 78 of the HR&CE Act.

9.Today, when the matter is taken up for hearing, the learned Senior Counsel for the petitioners filed an undertaking affidavit given by the petitioners. The relevant portion of the same reads as under:-

“4.I further submit that based on the observation made before the Hon'ble Court on 18.03.2024 I am filing this undertaking affidavit. I hereby undertake to close our commercial activity by 31.07.2024 in T.S.No.880 and 881 Palani Village at the foot hills of Palani in Shop No.1,2 & 3. I further undertake that I will run my business until 31.07.2024 without disturbing the Giriveedhi.”

10. Considering the facts and circumstances of the case and considering the undertaking affidavit filed by the petitioners, even though the petitioners stated that they will close the business on 31.07.2024, we are inclined to grant time to the petitioners till 30.06.2024 to close the business in the property in question and thereafter, hand over the same to the Devasthanam, failing which, the authorities concerned shall take action for closure of the business in the property in question without any further notice.



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11.Further, it is submitted by the learned Government Advocate for the respondents 1 to 3, 5 and 6 that the proceedings under Section 78 of the Act would be concluded and necessary orders would be passed by the 3rd respondent on or before 30.04.2024 subject to the co-operation of the petitioners for the enquiry, for which, the learned Senior Counsel appearing for the petitioners assured that the petitioners will co-operate for the enquiry before the 3rd respondent. Till such time, the petitioners are directed to pay damages for use and occupation in respect of their shops to the Devasthanam and the Joint Commissioner, HR&CE, Dindigul has to take note of decision of the Hon'ble Supreme Court and accordingly proceed under Section 78 of the HR&CE Act.

12.With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [R.V., J.]
19.03.2024
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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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