



W.P(MD)No.6597 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.6597 of 2024 and
WMP(MD) No.6154 of 2024

O.Alagar

... Petitioner

Vs

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

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

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents from evicting the petitioner in S.No.1606/2 situated at Arulmigu Moongilanai Kamatchiamman Thirukovil, Devathanapatti Village, Periyakulam Taluk, Theni District, which is



W.P(MD)No.6597 of 2024

the subject matter in I.A.No. of 2024 against M.P.No.41 of 2023 on the file of the Joint Commissioner of Hindu Religious and Charitable Endowment Court, Dindigul.

For Petitioner : Mr.M.Raghuman Khan
For Respondents : Mr.P.Subba Raj
Special Government Pleader

ORDER

The petitioner claims that he was having a juice shop and a hotel in S.No.1606/2, Devathanapatti Village, Periyakulam Taluk, Theni District and from the income derived from the above small hotel, he is leading his life. This land according to the petitioner is a "Natham Land" and he was in occupation of the land for several years and running a small hotel therein. While so, the respondents by claiming that this property is the temple land and treating this petitioner as an encroacher have initiated proceedings as against the petitioner, under Section 78 of the HR & CE Act,1959 and passed an exparte order on 20.10.2023. Subsequently, this petitioner was evicted from the land in S.No.1606/2 of Devanampatti. Therefore, the petitioner is before this Court.



W.P(MD)No.6597 of 2024

2.The learned counsel appearing for the petitioner submits that the petitioner has failed to appear for the enquiry conducted under Section 78 of the HR & CE Act, 1959 and therefore an exparte order was passed on 20.10.2023. Thereafter, the petitioner has filed an application in to set aside the exparte order. However, the same was returned by the respondents. Therefore, the learned counsel prays this Court that a suitable direction may be issued to the respondents to permit the petitioner to run the hotel in the above property.

3.Mr.P.Subba Raj, learned Special Government Pleader who takes notice for the respondents submits that the petitioner has encroached the temple land, which belongs to Arulmigu Moongilanai Kamatchiamman Thirukovil, Devadhanapatti and was running a small hotel for several years and also causing nuisance to the temple. Therefore, action was initiated under Section 78 of the HR & CE Act,1959 in the year 2023 and an order was passed by the Joint Commissioner in MP 41 of 2023. The petitioner, though received a notice in that application remained exparte. Therefore, as



W.P(MD)No.6597 of 2024

per the order in MP 41 of 2023, dated 20.10.2023, the petitioner was evicted from the place on 28.12.2023. According to the learned Special Government Pleader, the shop was already removed from the land in S.No.1606/2 of Devathanampatti.

4.In reply, the learned counsel for the petitioner submits that this order passed in MP 41 of 2023 is an exparte order and he has filed an application to set aside the same. However, it was returned that the petitioner was already evicted.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.Though the petitioner claims that the subject property is the Natham land, he has not produced any document to substantiate his claim. On the other hand, the respondents by claiming that the subject land belongs to Arulmigu Moongilanai Kamatchiamman Thirukovil, Devadhanapatti have initiated proceedings under Section 78 of the HR & CE Act, 1959 and evicted



W.P(MD)No.6597 of 2024

the petitioner from that place, treating him as an encroacher. The petitioner was provided an opportunity in the proceedings initiated by the respondent under Section 78 of the HR & CE Act,1959. However, the petitioner has not availed the opportunity.

7.Since the petitioner claims that this juice shop and the hotel is the only livelihood and the Department has permitted the petitioner for doing his business in the subject land for several years, this writ petition is disposed of with a direction to the respondents to consider the case of the petitioner sympathetically and allot any other place in the temple land by fixing a fair rent for the same. No costs. Consequently, connected Miscellaneous Petition is closed.

19.03.2024

NCC: Yes/No
Index:Yes
Internet:Yes
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W.P(MD)No.6597 of 2024

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W.P(MD)No.6597 of 2024

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