



W.P.(MD) No.9509 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.9509 of 2024
and
W.M.P.(MD) No.8623 of 2024**

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 Muthalamman 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 for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 1st respondent dated 14.02.2024 in M.P.No. 196/2023 and quash the same and further directing the 1st respondent to fix the fair rent by considering petitioner's representation dated 22.06.2023.

For Petitioner : Mr.Mathavaselvam

For R1, R2 & R4 : Mr.P.Subbaraj
Special Government Pleader

For R3 : Mr.Mathavan
Standing Counsel

ORDER

Mr.P.Subbaraj, learned Special Government Pleader takes notice for the respondents 1, 2 and 4 and Mr.Madhavan, learned Standing counsel takes notice for the third respondent.

2.This is the second round of litigation before this Court. Earlier, the petitioner had filed W.P.(MD) No.17379 of 2023 and by an order dated 19.07.2023, the said writ petition was disposed of with the following directions:-



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"The respondents submitted that the proceedings themselves 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."

3.It appears that the petitioner and one Appanna Naicker claimed themselves as hereditary trustees of the temple and had filed rival suits in O.S.No. 408 and 600 of 1995 before the lower Court. Both the suits were dismissed and therefore, the issue reached this Court in A.S.(MD)Nos.564 and 565 of 1999.

4.By a judgment dated 13.06.2023, these appeals were disposed of by this Court. Paras 21 and 22 of the judgment of this Court in A.S(MD)Nos.564 and 565 of 1999 read as under:-



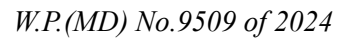
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“21.As far as the hereditary trusteeship is concerned, the Deputy Commissioner or Joint Commissioner may initiate proceedings, if the dispute still persists among the various persons in respect of management of temples. Since the order passed under 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 ie, 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.

22.In fine A. S No.564 of 1999 is allowed by setting aside the judgment and decree made in O.S.No.408 of 1995 declaring the plaintiffs and second defendant as hereditary trustee of the suit temples and A.S No. 565 of 1999 is dismissed which is filed against the judgment and decree made in O.S.No.600 of 1995 filed for recovery of possession of the temple properties. No costs.”

5.The petitioner has now been issued with the impugned notice under Section 78 of the HR & CE Act, 1959. It is the specific case of the petitioner that the first respondent has not considered the submission of the petitioner and had passed the above order under Section 78 of the HR & CE Act, 1959 and thus, the impugned order is liable to be quashed.



8. The present Writ Petition is liable to be dismissed and is accordingly dismissed with liberty to the petitioner to workout the remedy before the Commissioner by way of filing a revision under Section 21 of the HR & CE Act, 1959 in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

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C.SARAVANAN, J.

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