



W.P(MD)No.10892 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.10892 of 2024

and

W.M.P(MD)Nos.9699 & 9700 of 2024

J.Gowri Shankar

... Petitioner

Vs.

1.The Hindu Religious and Charitable
Endowments Board,
Represented by its Commissioner,
No.119, Uthamar Gandhi Salai,
Chennai.

2.The Assistant Commissioner/
Executive Officer,
Arulmigu Aranganatha Swami Thirukoil,
Sri Rangam,
Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to Notice cum Order in Na.Ka.No.3397 (3)/1433/B4, dated 23.02.2024 issued by the second respondent and quash the same as illegal and pass such further or other orders as this Court.

For Petitioner : Mr.S.Vanchinathan



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For R-1 : Mr.K.S.Selvaganesan
Additional Government Pleader

For R-2 : Mr.M.Saravanan

ORDER

The present writ petition has been filed challenging the impugned notice, dated 23.02.2024, whereby, the petitioner was directed to hand over vacant possession of the property in Ward "B" Block 52 T.S.No.2386 to the extent of 0.133 hectares treating the petitioner as encroacher.

2. It is submitted by the learned Counsel for the petitioner that the impugned proceeding may not be sustainable inasmuch it is not in compliance with the procedure contemplated under Section 78 of the Hindu Religious and Charitable Endowment Act, inasmuch as no notice has been issued to the petitioner, specifying the particulars of the encroachment and calling on him to show cause before ordering the petitioner to remove the encroachment. It is submitted that issuance of the notice in terms of 78 (2) is a condition precedent. Failure to comply with the above proceeding, vitiates the proceeding.



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3. The learned Additional Government Pleader appearing for the official respondent would submit by placing reliance upon the counter in paragraph No. 7 that the impugned proceedings suffers from certain clerical / typographical errors and that they intend to initiate fresh proceedings under Section 78 of the Tamil Nadu HR and CE Act.

4. The relevant portion of the counter is extracted hereunder:

"7. I submit that the second respondent has every right to evict the encroacher occupying its properties. The impugned notice is valid and has been issued by the competent authority. We have issued the impugned notice calling for the petitioner to remove the construction put up by him on the southern side of S.No.2386/2. We have also issued similar notices to other encroachers. In our notices by oversight, we have not mentioned the sub-division number. Further, we have not yet issued notice to the petitioner for the removal of his encroachment of vacant land measuring 26 cents in S.No.2386/2. The second respondent Temple will initiate fresh proceedings against the petitioner under Section 78 of the Tamil Nadu H.R.&C.E. Act by mentioning the correct survey number and extend, which is in occupation of him in T.S.No.2386/2, Ward No.B of Vellithirumutham Village and evict him by following the due procedure under the law."



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5. Recording the same, the respondent authorities are at liberty to initiate fresh proceedings under Section 78 of the Tamil Nadu HR and CE Act in accordance with law.

6. The writ petition stands disposed of with the above direction. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

19.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Commissioner,
The Hindu Religious and Charitable
Endowments Board,
No.119, Uthamar Gandhi Salai,
Chennai.

2.The Assistant Commissioner/
Executive Officer,
Arulmigu Aranganatha Swami Thirukoil,
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MOHAMMED SHAFFIQ, J.

BTR

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