



W.P.(MD) No.12555 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.12555 of 2024
and
W.M.P.(MD) No.11207 of 2024**

Kanagasabapathy

... Petitioner

/vs./

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Dindigul.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Dindigul.
- 4.The Joint Commissioner/Executive Officer,
Arulmigu Dhandayuthapani Swamy Thirukovil,
Palani,
Dindigul District.
- 5.The Revenue Divisional Officer,
Dindigul, Dindigul District.



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

7.The Inspector of Police,
Reddarchathiram Police Station,
Reddiarchathiram,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in his proceedings in Na.Ka.No. 3344/2022-1/A3 dated 05.06.2024 and quash the same as illegal and arbitrary and consequently direct the 2 to 7th respondents herein do not interfere with the petitioner's peaceful possession and enjoyment of the property in Survey No. 598/1B1 to an extent of 60 cents situated at Kothapuli Village, Dindigul West Taluk, Dindigul District.

For Petitioner : Mr.G.Gomathisankar

For R1 to R3 &
R5 to R7 : Mr.P.T.Thiraviam
Government Advocate

For R4 : Mr.R.Murali



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ORDER

The petitioner has challenged the consequential order passed by the third respondent in his proceedings dated 05.06.2024 signed on 06.06.2024 bearing Ref.Na.Ka.No.3344/2022-1/A3, seeking to implement the order passed under Section 78 of the HR & CE Act, 1959 against the petitioner on 06.07.2023.

2.The aforesaid order was placed under suspension pursuant to the order passed by this Court on 12.06.2023 in W.P.(MD) Nos.10796 and 11120 of 2023 on 12.06.2023. The Court had rescued the petitioner at that stage, as the petitioner had filed Obstruction Petition in E.A.No.185/2008 in E.P.No.35 of 2008 filed by the fourth respondent to execute the judgment and decree of the trial Court in O.S.No.96 of 1985, which was decreed on 20.06.1989.

3.It appears that the petitioner did not prosecute E.A.No.185 of 2008 in E.P.No.35 of 2008 and thus, it was dismissed for default. Meanwhile, the petitioner has filed O.S.No.434 of 2023 before the District Court (PCR), Dindigul for declaration and injunction.



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4.It is noticed that the fourth respondent temple had also initiated proceedings against the petitioner earlier in M.P.No.60 of 2022, which came to be ordered on 06.07.2023. The petitioner has not filed any revision or appeal against the aforesaid order under Section 21/81 of the HR & CE Act, 1959. Instead, the petitioner has filed O.S.No.434 of 2023.

5.The petitioner cannot work out the remedy both before the Civil Court and before the Appellate Authority, namely the Commissioner under Section 81 of the Appellate Authority or the Revisional Authority under Section 21 of the HR & CE Act, 1959. The petitioner claims to be a subsequent purchaser of the land in respect of the property, which was the subject matter of O.S.No.96 of 1985 dated 20.06.1989.

6.The case of the petitioner appears to be that since the EP proceeding earlier initiated had abated, question of temple recovering the possession under the guise of exercising power under Section 78 from the petitioner cannot be countenanced, as the petitioner is a *bona fide* purchaser.



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7. Having considered the submissions made by the learned counsel for the petitioner on merits, this Court is inclined to give temporary relief to the petitioner by suspending the order dated 06.07.2023, which is sought to be implemented by the third respondent, vide impugned communication dated 05.06.2024 signed on 06.06.2024 for a period of 30 days. Within such time, the petitioner may file a statutory appeal or revision as the case may be under Section 21/81 before the Commissioner and secure an interim relief to suspend/stay the operation of the order dated 06.07.2023 passed in M.P.No.60 of 2022 under Section 78 of the HR & CE Act, 1959. It is open for the respondents to move suitable application before the trial Court in O.S.No.434 of 2023 to reject the plaint.

8. With the above liberty and temporary relief, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No
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C.SARAVANAN, J.

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