



W.P(MD)No.15018 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.08.2024

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**THE HONOURABLE MR JUSTICE MOHAMMED
SHAFFIQ**

**W.P(MD)No.15018 of 2024
and
W.M.P(MD)No.13182 of 2024**

Dr.Athimoolam

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments
Department, Government of Tamil Nadu,
Chennai.

(R1 is suo motu impleaded vide
Court order dated 08.07.2024)

2.The Executive Officer,
Arulmighu Papanasaswamy Thirukovil,
Papanasam,
Thirunelveli District.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue a Writ of Certiorari, calling for the records relating to the impugned proceedings in Na.Ka.No. 25-2/2024 dated 11.06.2024 issued by the respondents herein and quash the same.



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For Petitioner	: Mr.J.Anandkumar
For R1	: Mr.K.S.Selvaganesan Addl. Govt. Pleader
For R2	: Mr.VR.Shanmuganathan

ORDER

The present writ petition is filed challenging the notice dated 11.06.2024 issued by the Executive Officer, whereby, it was observed that the petitioner has encroached upon the Temple land and that the said lands should be vacated and handed over to the respondents, failing which, it was stated / observed that proceedings under 78 and 79A of Hindu Religious Charitable and Endowments Act, 1959(hereinafter referred to as HR&CE Act), would be initiated.

2. The limited ground of challenge is that the impugned proceedings issued by the Executive Officer, directing the petitioner to vacate and hand over possession of the property on the premise that the petitioner has encroached the temple land, is without jurisdiction. To appreciate the above issue, it may be



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relevant to take a look at Section 78 and 79 of the HR and CE Act, which reads as follows:

“78. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers.—(1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as “encroacher”) any land, building, tank, well, spring or water-course or any space wherever situated belonging to the religious institution or endowment (hereinafter referred to as “the property”), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.

Explanation.—For the purpose of this section, the expression “encroacher” shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include-

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and



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(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where, on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not be made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where after considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for reasons to be recorded, require the encroacher to remove the encroachment and deliver possession of the property



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(land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed.

79. Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner.—

(1) Where within the period specified in the order under sub-section (4) of section 78, the encroacher has not removed the encroachment and has not vacated the property, the Assistant Commissioner having jurisdiction over the division may remove the encroachment and obtain possession of the property encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall render necessary help to the Assistant Commissioner.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of section 78 from instituting a suit in a Court to establish that the religious institution or



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endowment has no title to the property: Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of section 78 :

Provided further that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee, of the religious institution or endowment.

(3) No injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Joint Commissioner under section 78.”

3. A reading of the above provision would show that the Assistant Commissioner having jurisdiction either *suo motu* or on complaint by the trustee, has reason to believe that any person has encroached upon any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment, he shall report the fact with relevant particulars to the jurisdictional Joint Commissioner. On perusal of such report, if the jurisdictional Joint Commissioner finds that



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there is a *prima facie* case of encroachment, he shall cause a notice to be served on the encroacher. The encroacher may submit his objection. If such objection is filed, the same would be considered by the jurisdictional Joint Commissioner and thereafter, he may pass orders requiring the encroacher to remove the encroachment and deliver possession of the property to the trustee. However, in the present case, it is the Executive Officer, who has passed the impugned proceedings directing the petitioner to remove the encroachment and hand over the possession of the temple lands.

4. There is merit in the submission of the learned counsel for the petitioner that the Executive Officer does not have any jurisdiction to issue the impugned proceedings, whereby, the petitioner was treated as an encroacher and was directed to remove the alleged encroachment and hand over the possession of the property.



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5. It was submitted by the learned counsel for the second respondent that they would issue fresh notice to the petitioner in compliance with the procedure contemplated under Section 78 of the HR and CE Act and thereafter, proceed in accordance with law.

6. Recording the above submission, this Writ Petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

16.08.2024

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

To
The Commissioner,
Hindu Religious and Charitable Endowments
Department, Government of Tamil Nadu,
Chennai.



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MOHAMMED SHAFFIQ, J.

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