



W.P.(MD).No.26552 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.26552 of 2024

and

W.M.P.(MD)Nos.22508 and 22509 of 2024

Karpagam

...Petitioner

Vs

1.The Commissioner,
H.R and C.E Department,
119, Uthamar Gandhi Road,
Nungambakkam, Chennai - 34.

2.The Joint Commissioner
H.R and C.E Department,
Mayiladuthurai.

3.The Assistant Commissioner
H.R and C.E Department,
Kumbakonam.

4.The Executive Officer
Arulmighu Vishwanatha Swamy Temple,
Kamatchipuram,
Thiruvidaimaruthur Taluk,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first



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respondent in R.P.Nos.162/2024 D2, Dated 17.10.2024 and consequential impugned order passed by the third respondent in Na Ka.No.3395/2022-1/A7 dated 28.10.2024 quash the same as illegal and consequently direct the fifth respondent to dispose the application filed by the petitioner dated 04.11.2024 along with interim application within the time stipulated by this Court.

For Petitioner : Mr.R.Maheswaran

For R-1 to R-3 : Mr.P.Subbaraj
Special Government Pleader

For R-4 : Mr.V.Chandrasekar

ORDER

Heard Mr.R.Maheswaran, learned counsel for the petitioner, Mr.P.Subbaraj, learned Special Government Pleader, for the respondents 1 to 3 and Mr.V.Chandrasekar, learned counsel for the 5th respondent.

2. The Writ Petition had been filed challenging the order passed by the first respondent dated 17.10.2024 and consequential impugned order passed by the third respondent 28.10.2024, calling upon the petitioner to vacate the premises in lieu of the order passed by the Joint Commissioner under Section 78 of the HR and CE Act.

3. It is the case of the petitioner that as against the order passed by the Joint Commissioner, the petitioner preferred revision before the



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Commissioner under Section 21 of the Act and the Commissioner has rejected the revision petition vide order dated 17.10.2024. He would further submit as against the said order, the petitioner has got further remedy of filing revision before the Government under Section 114 of the HR and CE Act.

4. Admittedly, it is the case where the temple claims title over the property. An order had been passed under Section 78 of the Act by the Joint Commissioner holding that the petitioner is an encroacher and directed him to vacate the property. The petitioner had also filed a revision which had also been dismissed. He has a right of further revision before the Government under Section 114 of the Act. It is the case of the petitioner that he would have to avail remedy by filing revision with the Government under Section 114 of the Act, but the Assistant Commissioner has served a notice enclosing the order under Section 21 of the Act calling upon the petitioner to evict without giving any time to the petitioner to prefer further revision with the Government.

5. It is true that the petitioner has availability of further statutory revision with the Government. The Act itself provides that pending



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proceedings, the encroacher can be directed to make payment for his use and occupation of the property in question. Since the petitioner has already suffered proceedings under Section 78 and 21 of the Act, I am inclined to protect the possession of the petitioner subject to the following conditions:

a) the petitioner shall file a revision petition before the Government under Section 114 of the Act within a period of four weeks from today.

b) The petitioner is directed to deposit 50% of the arrear amount before the respondents.

c) the petitioner shall continue to pay monthly rent of Rs.1882/- to the respondent concerned.

6. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

29.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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Note: Issue Order Copy on 02.12.2024.

WEB COPY **To:**

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K.KUMARESH BABU, J.

Nsr

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