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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.12.2025**

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THE HONOURABLE MR.JUSTICE P.B. BALAJI

W.P. No.6340 of 2024

and WMP. No.7051 of 2024

1.A.Ramakrishnan
2.A.Arjunan
3.A.Ganesan
4.A.Seethalakshmi
5.A.Amutha

Petitioners

Vs

1.The Joint Commissioner,
Hindu Religious and charitable Endowments Board,
Salem.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Salem.

3.The Executive Officer,
Arulmigu Arasadi Muniyappan Thirukkoil,
Kumarsamipatty, Salem Taluk and District.

4.A.Rani

5.The Tahsildar,
Hasthampatti,
Salem District.
(R5-Suo motu impleaded as per order
dated 10.07.2024)

..Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records from the file

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of the 1st respondent pertaining to the order passed in Pa.Ma.No.44 of 2003 dated 22.11.2023 and quash the same.

For Petitioners : Dr.C.Ravichandran

For Respondents : Mr.K.Karthikeyan
Government Advocate for R1 to R3
Mr.M.Venkateswaran,
Special Government Pleader for R5

ORDER

The Writ Petition has been filed by the petitioners to quash the order passed in Pa.Ma.No.44 of 2003 dated 22.11.2023 by the 1st respondent.

2. Heard Dr.C.Ravichandran, learned counsel for the petitioners and Mr.K.Karthikeyan, learned Government Advocate for the respondents 1 to 3 and Mr.M.Venkateswaran, learned Special Government Pleader for the 5th respondent.

3. The petitioners challenge the final order passed under Section 78 under the Hindu Religious and Charitable Endowments Act, 1959 treating the petitioners as encroachers/trespassers on the property belonging to the Temple. The learned counsel for the petitioners would invite my attention to the fact that

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the petitioners' mother had filed a suit in O.S. No.323 of 1984 on the file of the learned Sub Judge, Salem and after contest, the decree came to be passed on 15.06.1985, declaring that the plaintiff is entitled to be in possession and enjoyment of the suit property and the mother of the petitioners was successful in getting decree in her favour declaring her entitlement to be in possession and enjoyment of the suit property until such time, she is evicted by due process and law. Further the decree of permanent injunction has also been granted to restrain the Executive Officer of Arul Migu Arasadi Muniyappan Temple, from trespassing or obstructing the plaintiff's possession and enjoyment of the suit property, till she is evicted by due process of law.

4. The writ petitioners have admittedly claimed ownership and the decree passed in O.S. No.323 of 1994, has become final. In fact, subsequently, a Civil Suit was filed against the Municipal Corporation Authorities as well in O.S. No.850 of 1999 before the First Additional District Munsif Court, Salem by the said Rajammal, the mother of the revision petitioners. The said decree was challenged in A.S. No.14 of 1985 which also came to be dismissed on 24.12.1986. The said decree in the suit has become final and no Second Appeal has been preferred by Municipal Corporation.



5. It is also seen that the petitioners, claiming to be the Legal Heirs of Rajammal, have filed O.S. No.468 of 2013 on the file of the II Additional District Munsif Court, Salem. The said suit was filed against the Department as well as the Revenue Authorities viz., VAO of Komarasamipatti, Salem Taluk and District. The said suit came to be dismissed. However finding that despite the judgment and decree in favour of the petitioners in the earlier round of litigation, what was found to be in possession of the petitioners is only an extent of three cents alone and not a larger extent of 4450 sqfts and on that ground, the suit was dismissed. In fact the said dismissal of the suit is also under challenge in A.S. No.16 of 2020, pending before the Principal Sub Judge, Salem.

6. Be that as it may, on the side of the respondents, there is not a shred of evidence to establish that the property belonged to the Temple. The learned counsel for the petitioners relies on the RTI communication which has been obtained by the petitioners and the Public Information Officer has categorically stated that the subject lands are Government Sarkar Poramboke lands. Though in the earlier 'A' Register usage of the subject survey number is shown as Temple, in the latest extract of Town Survey Land Register viz., the Computerised Certificate, there is no mention of Temple and it only reflects the



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lands as Sarkar Poramboke Lands. It is the case of the petitioners that in a portion of the Government lands, the Temple is housed and the Temple does not have any iota of right and interest over the remaining lands which are admittedly, Sarkar Porambok lands. On these grounds Section 78 proceedings has been challenged.

7. The learned counsel for the petitioners also relied the decision of this Court in *S.Nalini Selvaraj and others Vs. The Joint Commissioner/Hindu Religious and Charitable Endowments, Kanchipuram and others*, reported in (2022) SCC online Mad 3145. That was a case where the lands had been declared as 'Anatheenam land' belonging to the Revenue Department and in similar circumstances, the Temple claimed a right and sought to proceed against the writ petitioners. This Court finding that the Temple was not able to establish its right over the subject lands which were admittedly, Anatheenam land, held that in the absence of the said property being owned by the Temple, proceedings under Section 78(2) of the HR & CE Act could not be initiated against the writ petitioners. In the present case as well, the respondents have not been able to demonstrate that the subject lands belonged to the Temple/third respondent.



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8. No doubt, as contended by Mr.K.Karthikeyan, learned Government Advocate, the petitioners also do not have any valid title to the lands under their occupation. However that does not clothe the Department with a right over the adjoining lands and claim that the same also belongs to the temple and initiate proceedings under the HR & CE Act, treating the writ petitioners as an encroachers/trespassers. The proceedings initiated under Section 78 of the Act, are clearly unsustainable in law in the absence of the property actually belonging to the third respondent, Temple. In fact, the very issue has already been gone into in the earliest suit between the parties in O.S. No.323 of 1984 where also the Civil Court found that no document was filed on behalf of the Temple to establish ownership and only under such circumstances, the decree was passed in favour of the writ petitioners' mother Rajammal. The said position has not changed since then. Even today, the Temple is unable to produce relevant documents to establish their title in respect of the lands under the occupation of the writ petitioners.

9. In the light of the above, I am inclined to set aside the proceedings of the 1st respondent in Pa.Ma.No.44 of 2003 dated 22.11.2023 and accordingly, this Writ Petition is allowed. Consequently, connected Miscellaneous Petition is also closed. No costs.



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Index: Yes/No

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To

1. The Commissioner,
Hindu Religious and Charitable Endowments
Department, Uthamar Gandhi Salai,
Nungambakkam,
Chennai- 600 034.

2. The Executive Officer,
Avinashilingeswarar Temple,
Avinashi, Tiruppur District,
Tiruppur District.

3. The Joint Commissioner,
HR & CE Department,
Tiruppur.

P.B.BALAJI.J.,

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