



W.P.No.9116 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.03.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9116 of 2025
and W.M.P.No.10224 of 2025

S.Raman

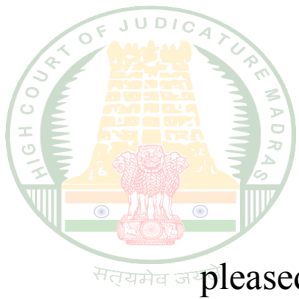
.. Petitioner

Versus

1. The Commissioner,
HR & CE Department,
Chennai.
 2. The Joint Commissioner,
HR & CE Department,
Nagapattinam.
 3. The Assistant Commissioner,
HR & CE Department,
Nagapattinam.
 4. Arulmigu Soundaraja Perumal Temple,
Rep. by its Executive Officer,
Nagapattinam Taluk and District.
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,

<https://www.mhc.tn.gov.in/judis>



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pleased to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his proceedings M.P.No.03/2025/C2, dated 21.02.2025 but signed on 03.03.2025 and quash the same as illegal, arbitrary, against law and violation of principle of natural justice and there by restraining the respondents herein from not to dispossess the petitioner from the subject matter of property situated at T.S.No.919/1, measuring an extent of 4885 Sq.ft., in Municipal Ward 2, Block-31, Perumal East Mada Street, Nagapattinam.

For Petitioner : Mr.S.Parthasarathy,
Senior Counsel,
for Mr.P.Dinesh Kumar

For Respondents : Mr.S.Ravichandran,
Additional Government Pleader
(HR & CE), for RR-1 to 4

ORDER

This Writ Petition is filed challenging the order made in M.P.No.3/2025/C2, dated 21.02.2025. The said order was passed in exercise of powers under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The said order directs the petitioner to vacate and hand over the subject matter of the property which is located in Nagapattinam district and taluk, Ward No.2, Block No.31, Perumal Keela Madavizhagam, town S.No.919/1, admeasuring 4885 Sq.ft.

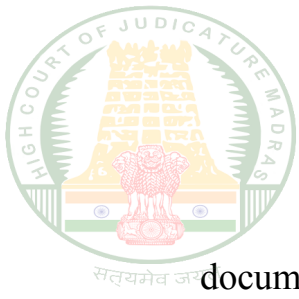


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2. The contention of the petitioner is that he purchased the property by a registered sale deed, dated 12.01.1967 and thereafter, has been enjoying the property. It is his contention that prior thereto, his vendors in title were only in possession and enjoyment of the property. He put up a pucca commercial structure and is enjoying the property. Suddenly, the order has been passed.

3. *Mr.S.Parthasarathy*, learned Senior Counsel for the petitioner would submit that the Writ Petition is straightaway filed without exhausting alternative remedies because there was no compliance of principles of natural justice in the instant case. When the petition is filed in M.P.No.03/2025C2, the petitioner, being the respondent in the said petition, filed an application requesting for supply of certain documents. Certain documents were supplied on 06.02.2025 and in respect of the rest of the documents, a memo was filed stating that they do not have the said



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documents. As a matter of fact, the said documents also would be very essential to determine the nature of the property.

4. Be that as it may, when the respondents chose to conduct the further hearing on 10.02.2025 and when the said memo was only taken on record, without affording any opportunity to file counter in the matter, straightaway, the impugned order was passed on 21.02.2025 and the order was signed on 03.03.2025. Therefore, the learned Senior Counsel would submit that in this case, no opportunity whatsoever is given to the petitioner to come up with the version. If opportunity is given, the petitioner can place all the title documents and convince the second respondent that he has a better title in respect of the property and that all further proceedings have to be dropped.

5. Per *contra*, Mr.S.Ravichandran, the learned Additional Government Pleader (HR & CE) for the respondent Nos.1 to 4 would submit that the petitioner has an effective remedy of filing a revision before the appropriate



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authority. In this case, when the petitioner sought for documents, the same were supplied and the Counsel received the same on 06.02.2025 and thereafter only, the orders were passed. Therefore, due opportunity was given and it cannot be said that the principles of natural justice are violated.

6. In reply thereof, the learned Senior Counsel for the petitioner would also rely upon the judgment of this Court in *V.Pokkilai Vs. State of Tamil Nadu and Ors.*¹, to contend that a detailed enquiry is contemplated under the Act and even the powers of the Civil Court are bestowed upon the second respondent under the regulations.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. What is contemplated under Section 78 is a summary enquiry to remove the encroacher. If it is the case of the respondent Nos.3 and 4 who

¹ MANU/TN/1719/2021

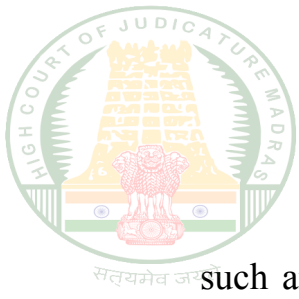


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have filed the petition before the second respondent that the petitioner is an encroacher, what is required is that affording an opportunity to the petitioner to explain his position and the reasons that are mentioned by the petitioner in the counter have to be considered and the documents that may be filed by the petitioner have to be taken into account. In the instant case, after receipt of the notice, the petitioner filed an application for production of certain documents. When the available documents were furnished on 06.02.2025 and a memo was filed on 10.02.2025, thereafter, from the records, it seems that straightaway, the order has been passed on 21.02.2025. Therefore, I am of the view that this case suffers from non-compliance of the principles of natural justice.

9. The petitioner may be given one opportunity to file his counter. It is made clear that the documents which are marked as **Exs.M-1 to M-9** have been supplied to the petitioner and the petitioner cannot insist the third respondent to supply all the documents. It would be open for him to make



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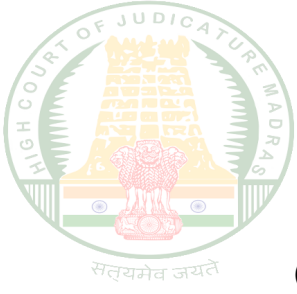
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such arguments of adverse inference if any. But, it is for the petitioner to produce such documents in support of his defence and file such counter even if he is claiming rival title. Therefore, one opportunity is granted to the petitioner to file his counter in the said M.P.No.3/2025/C2 and the petitioner shall also co-operate for the expeditious disposal of the application.

10. In view thereof, this Writ Petition is disposed of on the following terms:-

(i) The order, dated 21.02.2025 made in M.P.No.03/2025/C2 (signed on 03.03.2025) passed by the second respondent shall stand set aside;

(ii) The petitioner shall appear before the second respondent on 21.04.2025 and file his counter and also submit the documents which are relied upon. Thereafter, the second respondent shall continue the enquiry in the manner known to law and pass orders after duly considering the objections and documents that are produced by the petitioner herein within three months from 21.04.2025;



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(iii) Needless to mention that the petitioner shall also co-operate with the expeditious disposal of the petition;

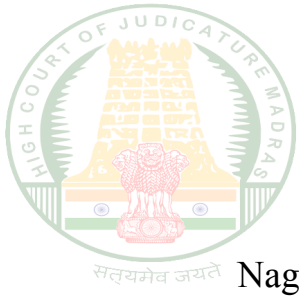
(iv) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.03.2025

Neutral Citation : no
grs

To

1. The Commissioner,
HR & CE Department,
Chennai.
2. The Joint Commissioner,
HR & CE Department,
Nagapattinam.
3. The Assistant Commissioner,
HR & CE Department,
Nagapattinam.
4. The Executive Officer,
Arulmigu Soundaraja Perumal Temple,



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Nagapattinam Taluk and District.

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