



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-06-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**WP No. 16149 of 2025
and WMP No. 18282 of 2025**

Tiruchendur Santhana Mariamman Kovil
Residents and Shop Owners Welfare Association,
Represented By K. Chandrasekaran,
S/o S. Kurusamy,
R/o.219, Santhanamariamman Kovil Street,
Tiruchendur,
Thoothukudi Distirict,
Tamil Nadu - 628 215.

Petitioner(s)

Vs

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

2.The Joint Commissioner
Hindu Religious And Charitable
Endowments Department,
14/1, Thiruvandran Road,
Palayamkottai, Thirunelveli - 627 002.



3. The Assistant Commissioner
Hindu Religious And Charitable
Endowments Department,
Alagesapuram,
Near American Hospital Roundtana,
Thoothukudi - 628 002.

4. Srillasri 27th Guru Maha Sannithanam,
Dharamapuram Adheenam,
Dharamapuram,
Mayiladuthurai - 609 311.

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Common Order dated 01.04.2025 passed in Miscellaneous Petition Nos.44 of 2022 by the second respondent against all the members of the petitioner and the enquiry contemplated under the Impugned Order by quashing the same as illegal and contrary to the order passed by the Honble Supreme Court in SLP.(Civil).No.13290 of 2023 dated 04.07.2023 and the direction of the Honble Division Bench in paragraph 37 of the Order dated 22.10.2024 passed by the Honble Division Bench in the clarification petition in W.M.P.(MD).No.23856 of 2023 in W.P.(MD).No.22574 of 2022.

For Petitioner(s): Mr.R.Manickavel

For Respondent(s): Mr.N.R.R.Arun Natarajan
Special Government Pleader



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ORDER

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 01.04.2025.

2.Heard Mr.Manickavel, learned counsel appearing on behalf of the petitioner and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing on behalf of the respondents.

3.The case of the petitioner is that one Markandan filed a Public Interest Litigation in W.P.(Md).No.22574 of 2022 claiming that certain properties belongs to the Dharmapura Adheenam and that the same has been encroached by third parties and therefore, steps must be taken to remove the encroachment under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959. The Division Bench of this Court disposed of the Public Interest Litigation by an order dated 07.12.2022. Based on the directions issued by the Division Bench, notice was issued for evicting the encroachers. The petitioner filed



Special Leave Petition before the Apex Court and the Apex Court disposed of the Special Leave Petition by an order dated 04.07.2023 in the following terms:

4. We have heard learned Senior Counsel petitioner on behalf of the Association and perused the material placed on record.

5. In our considered view, the direction as contained in Para 12 of the impugned order of the High Court is with respect to removal of encroachment by third parties on the land/property which vests in the temple/trust. The members of the petitioner Association who claim themselves to be true and bona fide owners and/or otherwise in lawful possession of their land/property, are thus, at liberty to approach the High Court seek and appropriate clarification to the effect that the directions issued by the High Court are not attracted in their case.

6. The Special Leave Petition is disposed of with liberty aforementioned.

7. In case the grievance of the true owners or those who are in lawful possession of the land/property is not effectively

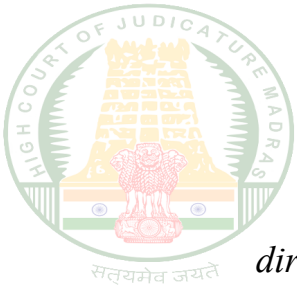


addressed by the High Court, they shall be at liberty to approach this Court again.

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4. Pursuant to the above order, the matter came to be listed before the Division Bench of this Court for clarification and an order came to be passed by the Division Bench dated 22.10.2024. The relevant portions in the order are extracted hereunder:

30. In view of this particular, statement of fact, we are of the opinion that instead of proceeding further on the basis of notices which can be impinged in a Court of law, it would only be prudent that the Joint Commissioner issues a proper show cause notice as contemplated under Section 78(2) of the HR & CE Act, giving the particulars of encroachment namely, the name of the encroacher, the survey number of the land encroached, the address of the land and the area of the land encroached and any other relevant particular. These notices will have to be necessarily served on each one of the 91 individuals whom the Joint Commissioner is of the opinion are encroachers. These notices must be issued in accordance with Form-A of the Schedule in the Rules issued under the HR & CE Act, particularly, Rule 3(i).



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31. *We direct the Joint Commissioner, issue fresh notices as directed and in accordance with the said form.*

32. *This order has been passed after discussion with the learned counsel for the petitioner and we are confident that after this clarification had been issued, the petitioner would not again re-agitate the issue. We direct that these notices in appropriate form must be issued by the Joint Commissioner, Hindu Religious and Charitable and Endowments Department to each one of the individual encroachers.*

33. *We also had a discussion about the time limit within which the entire proceedings should be conducted. It had been mutually agreed by all the learned counsels and by the learned Government Advocate that these notices shall be issued within a period of one (1) month from the date of receipt of a copy of this order.*

34. *Thereafter, the learned counsel for the petitioner stated that an explanation to the said notices would be issued by each one of the individual persons to whom the notices had been issued within a period of three (3) months from the date of receipt of the notices.*



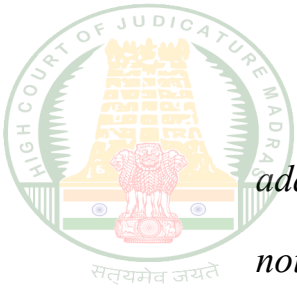
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35. *We direct that the notices must be issued by registered post with acknowledgement due and also a physical copy must be served on each such individual or on the person who is residing in the house or available in business establishment as the case may be and proper acknowledgement must be given and obtained.*

36. *Let there not be evasion of receipt of the notice and let the notice be served in proper form and in appropriate procedure. The explanations must be submitted, as stated by the learned counsel for the petitioner, within a period of three (3) months from the date of receipt of the notices. Let it be directly served in the office of the Joint Commissioner, Hindu Religious and Charitable and Endowments Department, Tuticorin, who may issue an acknowledgement for receipt of the explanations.*

37. *We would grant one (1) further month for the Joint Commissioner to consider the explanations and to take a decision whether to proceed further or not. Thereafter, after that particular decision is taken, we would grant six (6) months time for the parties to adduce evidence, oral and documentary.*

38. *We are conscious of the fact that the parties have already*



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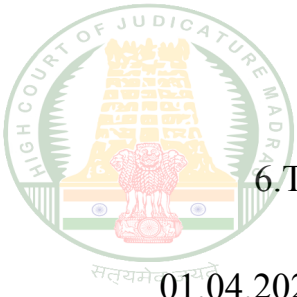
adduced oral and documentary evidence pursuant to the earlier notices issued under Section 78(1)(a) of the HR & CE Act.

However, the parties may tender fresh evidence. The evidence already recorded may not be considered by the Joint Commissioner, unless specifically accepted by the parties.

39. On conclusion of the adducing the evidence, we give one (1) month for the Joint Commissioner, to pass final orders. We direct the Joint Commissioner to follow the procedure as contemplated under Section 78 of the HR & CE Act in letter and spirit. Let there not be any deviation in that regard.

40. The time schedule framed would indicate that from the date of receipt of a copy of this order, the proceedings should end within a period of one (1) year/ twelve (12) months.

5. Pursuant to the above order, notice came to be issued under Section 78 of the HR & CE Act and the explanation was also submitted by the petitioner stating that the Adheenam does not have any right or title over the subject property and the members of the petitioner cannot be considered as encroachers.



6. The 2nd respondent through the impugned proceedings dated 01.04.2025 came to a *prima facie* conclusion that the issue raised by the petitioner has to be enquired since rival claims have been made and after taking note of the directions issued by this Court, directed the petitioner Association to cooperate for the enquiry. This order has been put to challenge in the present writ petition.

7. In the considered view of this Court, the impugned proceedings of the 2nd respondent is perfectly in line with the directions issued by the Division Bench. The 2nd respondent has not reached any final conclusion and the enquiry has not even reached the stage under Section 78(4) of the Act. Hence, this Court cannot interfere with the preliminary order passed by the 2nd respondent.

8. The learned counsel for the petitioner submitted that the directions issued by the Division Bench was not in line with the order passed by the Apex Court. This issue cannot be gone into by me sitting as a single Judge and if at all the petitioner is aggrieved by the directions issued by the Division Bench, they



must only agitate the same in the manner known to law and it cannot be decided by a Single Judge.

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9. In the light of the above discussion, this Court does not find any ground to interfere with the impugned proceedings of the 2nd respondent. It is made clear that the 2nd respondent will pass orders after affording an opportunity to all parties concerned and such order will be passed within the scope of Sections 78, 79 and 108 of the Hindu Religious and Charitable Endowments Act, 1959, within the time frame fixed by the Division Bench.

10. This writ petition is disposed of in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

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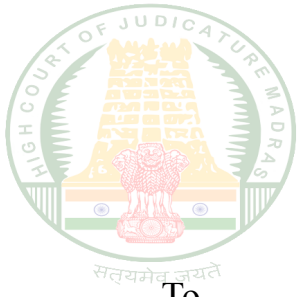
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

SSR



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N.ANAND VENKATESH J.

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