



W.P.No.24698 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2025

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.24698 of 2024
and
W.M.P. No.27022 of 2024 in W.P. No.24698 of 2024

Varada Reddy

... Petitioner

Vs.

- 1.The District Collector,
Krishnagiri District, Krishnagiri.
- 2.The Revenue Divisional Officer,
Hosur Taluk,
Hosur, Krishnagiri District.
- 3.The Taluk Tahsildar,
Hosur Taluk,
Hosur, Krishnagiri District.
- 4.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Board,
Krishnagiri District.
- 5.The Special Tahsildar,
Hindu Religious and Charitable
Endowment Board,
Krishnagiri District.



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6.Mr.Depaiah,
Hereditary Trustee,
Arulmigu Karagamman Thirukovil and
Gangamman Thirukovil,
Nallur Village, Hosur Taluk,
Krishnagiri District.

7.Village Administrative Officer,
Nallur Village and Post,
Hosur Taluk, Krishnagiri District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings in Muu.Mu.8572/2023/A1 dated 07.11.2023 passed by the third respondent and quash the same and consequently direct the respondents to maintain the newly laid concrete road which was laid with the approval of local panchayat and with the sanction of Government funds and for the benefit and welfare of the local community.

For Petitioner : Ms.R.Divyapreathika

For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1 to R3 and R7
Mr.K.Karthikeyan,
Government Advocate for R4 & R5



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ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Central theme of captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) is alleged encroachment in 'Survey Nos.16 and 20 in Nallur Village, Hosur Taluk, Krishnagiri District' (hereinafter 'said lands' for the sake of convenience and clarity), stated to be temple lands belonging to 'Arulmigu Karagamman Thirukovil and Gangamman Thirukovil, Nallur Village, Hosur Taluk, Krishnagiri District' (hereinafter 'said temple' for the sake of convenience and clarity) and alleged encroachment in said lands.

2. Ms.R.Divyapreathika, learned counsel for writ petitioner submits that R6 is the alleged encroacher. Mr.K.Karthikeyan, learned Government Advocate for R4 and R5, adverting to counter affidavit of R4 dated 08.12.2024 submits that it is not clear if R6 is alleged encroacher.

3. Mr.T.K.Saravanan, learned Additional Government Pleader for R1 to R3 and R7 submits that R3 (Taluk Tahsildar, Hosur Taluk, Krishnagiri District) has conducted a survey and it comes to light that

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the alleged encroachment is in the form of a tar road which is the access to said temple.

4. Mr.K.Karthikeyan, learned Government Advocate for R4 and R5 submits that there is alternate road to reach said temple and therefore the aforereferred tar road in the aforereferred Survey Nos.16 and 20 is an encroachment.

5. This Court is unable to conclude that laying a pucca tar road that has access to said temple can be construed as encroachment but we leave open this question for R4 to take a call for two reasons. First reason is, it is submitted that Survey Nos.16 and 20 are agricultural lands which are being leased out by said temple from time to time. The second reason is that if there is encroachment in temple land, the authority should kick start the proceedings for RoE (Removal of Encroachment) and it should be kick started by R2 on report from R4. It is ingrained in Section 78 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [Tamil Nadu Act 22 of 1959]' {hereinafter 'TNHR & CE Act' for the sake of brevity} which reads as follows:



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'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

(b)any person who continues to remain in the property after the expiry of 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



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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 (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.'

6. Counter affidavit of R4 more particularly paragraphs 14 and 16 aver that R4 has approached the revenue authorities for RoE. If



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said lands are temple lands, we have no hesitation in saying that this is plainly incorrect owing to the mechanism put in place by Section 78 of TNHR & CE Act. To be noted, vide Section 78 of TNHR & CE Act provides for proceedings to put encroachers on notice, give an opportunity to alleged encroachers vide a full fledged adjudication by a quasi judicial authority who is the jurisdictional Joint Commissioner of TNHR & CE Department. Therefore, we have no hesitation in writing that the rights and contentions of R6 and/or any other alleged encroacher or any other person/entity who may be put on notice if proceedings under Section 78 of TNHR & CE Act are kick started construing the access road to be an encroachment will stand preserved qua such adjudication. This means that instant order will not impact the rights of R6 and or any other person who may become noticee under Section 78 if kick started. In this view of the matter, we dispense with notice to R6, take up the captioned main WP with the consent of aforementioned three learned counsel and dispose of the same leaving it open to R4 to take a call as to whether the aforereferred road is an encroachment qua said lands at all and subject to such a call being taken, it is open to R4 to kick start proceedings for RoE under Section 78 of TNHR & CE Act.



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7. Captioned WP is disposed of in the aforesaid manner.

Consequently, captioned Writ Miscellaneous Petition (WMP) thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.)

(H.C.J.)

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Index : Yes

Neutral Citation : Yes

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