



O.A.No.628 of 2024
in
C.S.No.200 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :19.12.2024

Pronounced on :10.01.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

O.A.No.628 of 2024

in

C.S.No.200 of 2024

1.Mrs.K.Sankari
W/o Late Krishnan,
No.51/88, Pillaiyar Koil Street,
Maduvankarai, Guindy,
Chennai 600 032.

2.K.Rajan,
S/o Late Krishnan,
No.51/88, Pillaiyar Koil Street,
Maduvankarai, Guindy,
Chennai 600 032.

.. Applicants/Plaintiffs

/versus/

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.



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2.The Joint Commissioner Region-II,
Hindu Religious and Charitable
Endowment Department,
No.130, R.K.Mutt Road,
Mylapore, Chennai 600 004.

3.Fit Person/Executive Officer,
Arulmigu Loga Vinayagar Temple,
Maduvankarai, Guindy, Chennai 600 032. ..Respondents/Defendants

Prayer: Original Application has been filed under Order XIV, Rule 8 of O.S.Rules and r/w Order 39 Rule 1 and 2 C.P.C., to grant an order of temporary injunction restraining the respondents/defendants, their men, agents, servants or anybody interfering with the peaceful possession and enjoyment of 'B', 'C', 'D', 'E', & 'F' suit schedule property out of 'A' schedule property in the possession of applicants/plaintiffs pending disposal of the above suit.

For Applicants :Mr.A.R.Nixon

For R1 and R2 :Mr.R.Ramanlal, AAG
Assisted by
Dr.S.Suirya, AGP (CS)

For R3 :Mr.A.K.Sriram, Senior Counsel for
Mr.A.S.Kailasam Asso.

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ORDER

The application for temporary injunction, restraining the respondents and its men and agents from interfering with the peaceful possession and enjoyment in respect of Schedule 'B' to 'F' from out of 'A' schedule property, is the interlocutory relief sought by the plaintiffs in their suit, for a negative declaration that the Loga Vinayagar Temple is not the owner of 'A' schedule property covered in Section 78 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short “HR & CE Act”) initiated in the proceedings of the 2nd respondent dated 20.12.2018.

2. As the prayer on the face of it indicates that proceedings by the 2nd defendant already initiated under Section 78 of the HR & CE Act is pending for the past 4 years, it is appropriate to trace the source of litigation and whether the suit as framed is a *bonafide* attempt to protect the lawful enjoyment of the property, which is held to be the property of the temple as early as 04.04.1950 by the Competent Civil Court in



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O.S.No.38 of 1948. The facts leading to this suit is given in brief as below:-

In the year 1948, the Trustees of Loga Vinayagar Temple situated at Maduvankarai, near Guindy, Chennai, filed a suit O.S.No.38 of 1948 before the City Civil Court, Chennai, for delivery of possession and pay *mesne* profits in respect of 1.78 acres of punja land with trees, stone waters, water source etc. at S.No:98, Maduvankarai Hamlet of Vellacherri Village.

3. As per the plaint in O.S.No.38 of 1948, the Loga Vinayagar Temple, an ancient temple in existence for ages, is a public temple managed by the members of Vanniyar Community in that locality. The defendants 1 and 2 (Kullappa Naicker @ Ponnusami Naicker and Rangasami Naicker respectively) were taking leading part in maintaining the temple and the property of the temple, which is the schedule property. Since the management of the temple was not satisfactory, the Hindu Religious Endowment Board took up the matter and on 12.12.1946, the Assistant Commissioner of the Board appointed M/s Chakarapani



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Naicker, Kannappa Naicker and Raju Naicker as Trustees of the temple.

However, the defendants who were in control of the property, continued to be in possession of the property of the temple and when the newly appointed trustees by the Board called upon them to handover the possession of the temple property, they have replied through notice dated 21.01.1947 claiming the temple and the suit property as their own.

4. The suit in O.S.No.38 of 1948 was framed on the premise that the defendants, after appointment of new Trustees to the Loka Vinayagar Temple, cannot hold the temple property. Contrarily, the defendants 2 and 4 (Rangasami Naicker and Srirangammal respectively) claimed that the temple in a small and insignificant village was under the control and management of the grandfather of the 2nd defendant. The 2nd and 4th defendants ousted from performing the daily Pooja and Neiveidyam to the deity. The temple had no property of its own and the suit property belongs exclusively to the family of the 2nd defendant (Rangasamy Naicker). The said Rangasamy Naicker and his uterine



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brothers were always in possession of the property and enjoying it as their personal property. The villagers were never in possession of the suit schedule property. In fact, the 2nd defendant had constructed a building in which he is residing in one house and let out the remaining portion. In any event, the suit for recovery of possession is barred by limitation as the 2nd defendant has been in adverse possession exclusive to the real owner for over the statutory period.

5. O.S.No.38 of 1948 was allowed. Judgement and decree in favour of the plaintiffs was passed on 04.04.1950. Though the suit was allowed and delivery of possession in respect of 'A' schedule property was ordered, possession was not taken over by the HR&CE on behalf of the temple by filing Execution Petition. While so, 18 cents of land, out of 1.78 acres, was acquired by the Corporation of Chennai. In respect of the remaining land, Senkani Naicker, who is the father of the first plaintiff, executed a mortgage deed in favour of one Balan Naicker on 30.05.1964 and got the deed registered as Document No:1618 of 1964. The proceedings initiated by Ponnusamy Naicker under Section 101 of HR &



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CE Act on behalf of Sri Loga Vinayagar Temple against Senkani Naicker in M.P.No.29 of 1967 before the Deputy Commissioner, HR & CE was allowed to be dismissed for default and in M.P.No.59 of 1967 was dismissed by the III Presidency Metropolitan Magistrate, Saidapet on 15.12.1967.

6. On behalf of the Temple, Ponnusamy Pillai, the Managing Trustee filed O.S.No.3002 of 1966 against Chengani Naicker and 20 others alleging that the land mentioned in the suit schedule was let out for monthly rent to various persons, but taking advantage of the unfenced land, the first defendant Chengai Naicker in company of the other defendants had trespassed into the land and erected huts, in spite of protest and resistance. Hence, the suit for recovery of possession and temporary injunction was sought.

7. In the written statement filed by Chengani Naicker/the first



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defendant, he denied the status of Ponnusami Pillai as the Managing trustee of the Temple. Also, he denied interest or right of the plaintiffs over the temple and the land. According to the written statement filed by Chengani Naicker (father of the first plaintiff in the present suit), he and his ancestors have been worshipping and performing poojas to the Deity and it is not a public temple. He claimed that he is in occupation of a portion of the property and remaining portions are let out to nearly 50 persons for rent. He and his ancestors were using the income derived from the land for performing poojas and other ceremonies of the Loga Vinayagar Temple.

8. The Trial Court in O.S.No.3002 of 1966, by judgment dated 30.12.1969 dismissed the suit holding that though the plaintiff (temple represented by its Managing Trustee) had proved their title to the property, they have lost the same by non- enjoyment. They were not in possession for the past 12 years. The defendants, hence, perfected the title by adverse possession. At any rate, the plaintiff (temple trustee) had not taken possession as per the decree passed in O.S.No.38 of 1948 nor the



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defendants surrendered the possession to the temple.

9. After the dismissal of the suit, through proceedings in O.Mu.No:10667 of 1970, dated 22.07.1970, the Revenue Department issued patta for the suit property in the name of the first plaintiff's father. Then, the first plaintiff's father mortgaged the property to one Sowda Beevi in the year 1970 and later cancelled it. He after assigning a common passage of 200 sq.ft., (length 20 feet) sold it to several persons in parts based on the patta issued to him. Whiles, Jayalakshmi and Padmavathi, daughters of Ambujammal filed suit in O.S.No.3750 of 1983 against Chengani Naicker and two others alleging that the suit property measuring about 1 acre 78 cents belongs to one Chinnammal, who executed a Settlement deed on 16.05.1963 in favour of her daughter Ambujammal. All the land and building mentioned in the schedule to the suit. On the demise of Ambujammal, the property devolved on her two daughters, who are the plaintiffs in O.S.No.3750 of 1983. In this suit, the plaintiffs questioned the right of Chengani Naicker to mortgage the property to Sowda Beevi and permitting the third defendant to occupy the



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building in the suit schedule property illegally. This suit for declaring the mortgage executed on 20.05.1971 by Chengani Naicker in favour of the second defendant, Sowda Beevi, as illegal and non-est; and for recovery of the portion of the building in possession of the third defendant, without paying any rent, was dismissed 13.07.1985.

10. Thereafter, according to the plaint, the Government accepting Chengani Naicker as owner of the property had issued notice to pay tax and Chengani Naicker has been paying the Tax to the State regularly. After the demise of Changani Naicker on 05.08.1985, the petitioner became the absolute owner of the entire extent of land measuring 1.60 acres. The patta got mutated in favour of the first plaintiff herein from her father name on 20.05.1987. On 09.01.1990, the Thasildar issued possession certificate in favour of the first plaintiff. Meanwhile, the Urban Land Ceiling proceedings initiated in the year 1972 culminated in issuance of notice to the first plaintiff directing to surrender 5720.75 sq.m out of 6720.75 sq.m to the Government vide, order dated 06.07.1990. Against this order, the first plaintiff preferred appeal. In the



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mean time, the Urban Land Ceiling Act got repealed and the proceedings became redundant.

11. It is further contended in the plaint that in respect of the suit property, Sri Loga Vinayagar Temple name was included in the patta along with the first plaintiff. The first plaintiff filed suit for permanent injunction in O.S.No.6552 of 1992 before the City Civil Court against the temple and few others. The Temple through its fit person viz., P.Saravanan filed a suit in C.S.No.1668 of 1992 before the High Court of Madras against the first plaintiff and other occupants of the land to quit and deliver vacant possession.

12. In the suit C.S.No.1668 of 1992, the temple filed an application No: 1777 of 2018 for withdrawal of the suit with liberty to proceed against the illegal occupants of the temple land as per the provisions of HR&CE Act. In view of the said application, the said suit was dismissed as withdrawn.



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13. Whereas the suit filed by the first plaintiff in O.S.No.6552 of 1992 against the Temple and others before the City Civil Court, Chennai was allowed vide order dated 05.03.2004 with an observation that the temple cannot evict the plaintiff (K.Sankari – the first plaintiff in the present suit) and others, who are in possession, without following due process of law. The judgement and decree passed in O.S.No.6552 of 1992, dated 05.03.2004 was challenged by the temple in A.S.No.169 of 2004 before the Additional City Civil Court, Chennai. The appeal was dismissed on 28.03.2006 confirming the Trial Court judgment. The further appeal to the High Court in S.A.No.1257 of 2007 preferred by the Temple and in S.A.Nos.509 and 510 of 2012 preferred by the occupants of the suit land. These three appeals were disposed by this Court on 08.07.2013 through a common judgment, wherein the appeal preferred by the temple was allowed and the appeals by the occupants were dismissed. This Court held that, the K.Sankari (the plaintiff in that suit and the first plaintiff in the present suit) had not perfected her title by adverse possession as claimed. Hence, she is not entitled for injunction. Accordingly, the judgment and decree passed by the City Civil Court in



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O.S.No.6552 of 1992 was set aside. The petition for S.L.P.No:23686 of 2013 preferred by K.Sankari against the Temple before Supreme Court was also dismissed on 30.11.2015.

14. In the said circumstance, when the Joint Commissioner has intimated proceedings for eviction under Section 78 of the HR & CE Act, against the person in possession of the temple land, which is affirmed by the Revenue records and decree of the Trial Court in O.S.No.38 of 1948, the same is questioned in this suit on the ground that the HR & CE Department on 03.11.2016 initially issued Section 78 Notice for eviction. This notice was issued, when there was stay of proceedings granted by the High Court on 19.09.2016 during pendency of the suit in C.S.No.1688 of 1992 filed by the temple against the occupants. This first notice was withdrawn after initiating contempt proceedings against the Joint Commissioner, HR & CE. Therefore, the second notice under Section 78 for eviction is not maintainable and illegal. The plaintiffs and their predecessor were in possession and enjoyment of the property even prior to 1951. The temple lost its title and the statutory notice issued under



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Section 78 is hit by limitation. Even assuming the temple is the owner of the property, the eviction notice is void, in view of limitation. The schedule of the property mentioned in the notice under Section 78 of HR and CE Act is not the same, which is in exclusive possession of the first plaintiff. The 'A' register and PLR Register relied by the Temple are interpolated documents and are altered without notice or knowledge of the plaintiffs.

15. Claiming that out of 1.78 acres of land in the 'A' schedule property, the plaintiffs are in possession of B,C,D,E and F schedule property, with an ulterior motive, incorrect description is given in the eviction notice. Referring the earlier mortgage deed and tenancy agreements entered by her predecessor and herself with third parties, the suit for declaration that the Loga Vinayagar Temple is not a owner of the 'A' schedule property covered under Section 78 of HR & CE Act is filed as an indigent person.

16. Application No.628 of 2024 is filed for temporary



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injunction to restrain the respondents from interfering with the peaceful possession and enjoyment of the 'B' to 'F' schedule properties. pending disposal of the suit.

17. At this juncture, it is to be noted that, pursuant to the eviction proceeding initiated under Section 78 of the HR & CE Act, evidences were recorded in M.P.No.134 of 2018/A3-1, and order was passed on 03.08.2023 directing the occupants to vacant within 15 days. One of the aggrieved person by name K.Rajan (the second plaintiff in the present suit) has challenged the said order in W.P.No.24304 of 2023 on the ground that while the Act provides for a Revision before the Commissioner within 6 weeks from the date of eviction order, only 15 days time granted to vacate which defeats the right of appeal, hence, is void. This Writ Petition was dismissed on 17.08.2023 observing that, the revision petition filed with defect before the Commissioner has to be represented after curing the defect within one week and the same has to be numbered and heard along with stay petition. Till then, the possession of the petitioner shall not be disturbed.



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18. This Court while hearing the suit for admission along with the Interlocutory Application for temporary injunction, had referred to the above order passed by this Court in W.P.No.24304 of 2023 dated 17.08.2023 and granted interim injunction for a period of 3 weeks.

19. On receipt of the notice, counter filed by the fit person of the Temple reiterating the legal battle and the observation of this Court in S.A.No.1257 of 2007 holding that the occupants cannot have the privilege of injunction against the temple and no adverse possession can be claimed by the occupants, in view of Section 109 of the HR & CE Act. The Judgement of the High Court in S.A.No.1257 of 2007 was confirmed by the Hon'ble Supreme Court in S.L.P.No.23686 of 2013 and the Review Petition in Rev.P.No.1528 of 2016 also got dismissed vide order dated 12.10.2017. Therefore, the plaintiffs cannot have any right to claim title over the property through their predecessor Chengani Naicker by virtue of certain finding in O.S.No.3002 of 1966.



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20. Referring the Substantial Question of Law framed in S.A.No. 1257 of 2007 regarding the plea of adverse possession, it was negatived by this Court and the same was affirmed by the Hon'ble Apex Court.

21. The learned counsel appearing for the respondents/Temple submitted that, the present suit under the guise of challenging the order passed in the eviction proceedings initiated under Sections 78 and 79 of the HR & CE Act, the plaintiffs are trying to re-litigate the issue, that has already been settled. The temple being the true owner of the land, no injunction can be granted against the true owner, while the proceeding for eviction been initiated, as per law with the leave of the Court granted in C.S.No.1668 of 1992 and as per the direction of this Court in W.P.No.24304 of 2023.

22. The Learned Counsel appearing for the Temple, referring the observation of the Trial Court in O.S.No.3002 of 1966 dated



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30.12.1969 upholding the temple as the owner on the fact, but dismissed the suit on the ground of adverse possession and later in S.A.No.1257 of 2007, the High Court has categorically held that the occupants cannot have the advantage of adverse possession as against the temple, submitted that sale of the temple property by the plaintiffs' predecessor is a void transaction and not binding the temple. Those void transactions will not take away the right of the temple, in the light of Section 34 of the HR&CE Act.

23. While the earlier suit for injunction in O.S.No.6552 of 1992 filed against the temple reached finality on the dismissal of the SLP preferred by the plaintiffs, there can be no cause of action for the present suit for the same relief. While the plaintiffs are the party to the eviction proceeding initiated under Section 78 of the Act and the same is pending before the HR&CE Authority, parallelly Civil Court jurisdiction cannot be invoked, more so in view of bar under Section 108 of HR & CE Act.

24. It is also pleaded that the plaintiffs filed suit for injunction



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before the City Civil Court in O.S.No.4149 of 2019 on the file of XVII Additional City Civil Court, Chennai. The same was withdrawn and dismissed on 22.04.2024. Without getting liberty or leave to institute suit before the High Court for the same relief and by suppressing the fact of filing the earlier suit for the same relief, the present suit is filed, which is barred by law. The order of eviction obtained by following due procedure of law cannot be restrained by an order of interim injunction obtained by suppression of material facts. The plaintiffs/petitioners who have come to this Court with unclean hands are not entitled for any relief under equity. Hence, the petition for injunction has to be dismissed.

25. As a reply to the counter, the petitioners/plaintiffs had reiterated that the temple has no title. The dismissal of their injunction suit will not confer title to the temple. The judgment passed in the earlier suit O.S.No.38 of 1948 had not declared the title in favour of the temple. The present suit is for declaration of title, which has not gone into by any of the earlier litigation. Hence, it is maintainable and not hit by law. The right to occupy is a continuous right and protection from eviction is a



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civil remedy, which has to be agitated before the Civil Court. The manner in which the temple had derived title over the suit property is unknown. The possession of the plaintiffs is exclusive and uninterrupted.

26. The tug of war between the temple authorities and the occupants of the land in dispute is going on for more than 70 years. The first litigation commenced in the year 1948 in the form of O.S.No. 38 of 1948 filed by the Trustees appointed by the then Hindu Religious and Charitable Board. This is a suit for recovery of possession from the erstwhile trustees, who are the predecessors of the plaintiffs. Admittedly, the defendants in that suit stated that they are holding the property for a long period of time and perfected the title by adverse possession. This plea of adverse possession though accepted by the Court in the subsequent suit O.S.No. 3002 of 1966, it was later reconsidered in S.A.No.1257 of 2007 arising from O.S.No.6552 of 1992. The finding of the Higher Court in the subsequent suit will prevail. The plaintiffs cannot pick and choose certain observations made in a proceedings, which were made in the particular facts of the case, when it was taken up for



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consideration.

27. As far as the litigation between the temple and its occupants, particularly the plaintiffs/petitioners herein, they claim right to occupy and encumber the property mainly by taking advantage of the failure on the part of the temple authorities to take possession soon after the decree passed in favour of the temple in O.S.No.38 of 1948 vide judgement and decree dated 04.04.1950, followed by grant of patta by the revenue officials in the name of the first plaintiff herein in the year 1987. Certain proceedings under the Land Acquisition Act and the Urban Land Ceiling Act initiated against Chengani Naicker in respect of the suit property were also pressed into service. All these facts were taken into consideration by the Courts in one or other proceedings but unfortunately, all were not taken cumulatively, while deciding the case, which was taken up for consideration. This has led to resistance for takeover the property, by various persons, who have encroached upon the property under one pretext or another, preventing the temple from taking possession of it.



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28. The predecessor of the plaintiffs had come into possession of the property, while they were trustees of the temple. They had contested the suit filed by the newly appointed trustees of the temple in O.S.No. 38 of 1948 claiming that they are in enjoyment of the property from time immemorial and in possession of the property adverse to its true owner. They never claimed title over the property. The patta granted in their name was later cancelled and issued in the name of the temple, the veracity of this action was already brought to the Court for test.

29. The present suit is laid as if the plaintiffs/petitioners are attempted to be disturbed without following procedure established under law. This plea, on the face it, is false and contrary to the facts. The possession of the petitioners was not continuous and uninterrupted. The spate of litigations, cleverly orchestrated by the occupants in possession, whenever the temple attempts to recover the possession of the property is a clear proof that the possession of the plaintiffs whatsoever was neither peaceful nor uninterrupted. The plaintiffs fails to clear the triple test of adverse possession. That apart, the categorical finding of the High Court



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in S.A.No.1257 of 2007 at paragraph 16 extracted below, had put lid to crucial point by answering the Substantial Question of Law, “*whether the first respondent (Sankari) claim of adverse possession against the temple property, in view of specific prohibition under Section 109 of the TN HR & CE Act, 1959 and whether the lower Appellate Court's finding based on the adverse possession is sustainable?*”

“16. In the present case, the plaintiff has not perfected her title as she was there only for four years from the expiry of 12 year period of limitation as mentioned above, therefore, the concurrent findings of the courts below that the plaintiff perfected title by adverse possession are to be necessarily interfered with. Having regard to the above recent Judgment of the Apex Court in Mukesh Kumar's case, the decision relied on by Mr.Nixon in Rame Gowda's case (referred supra) cannot be made applicable here for the reason that the plaintiff already suffered a decree for recovery of possession. Therefore, once again asking the Temple to file a suit for recovery of possession is absolutely unacceptable. For all the above detailed reasons, this Court answers the sole question of law in favour of the appellant/temple and against the first respondent/plaintiff.”

30. This issue, after reaching finality in all sense, the temple



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had initiated eviction proceedings and the same is under way. The second plaintiff K.Rajan had filed W.P.No.24304 of 2023 challenging the order passed in M.P.No.134 of 2018/m3, dated 20.12.2018 wherein this Court, after taking note of the facts of the case and the course of litigation, had disposed of the writ petition directing the Commissioner, HR & CE Department, to entertain the Revision Petition against the eviction order and the same is pending. While so, the maintainability of the present suit is highly doubtful.

31. In any event, the interim injunction is granted citing the direction of this Court in W.P.No.24304 of 2023. Whereas, the direction in W.P.No.24304 of 2023 is only in respect of entertaining the revision petition by the Commissioner, HR & CE filed against the order made in M.P.No.134 of 2018/A3-1, dated 03.08.2023 in which the occupant has suffered the eviction notice. The direction is not a leave to file a fresh suit *dehors* of Section 109 of the HR & CE Act.

32. There cannot be parallel proceedings before two Forums



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with inconsistent plea, one admitting the title of the temple and claiming protection, based on the adverse possession and another claiming title over the property through a prayer of negative declaration that the temple is not holding title over the property. It is not a fresh litigation which requires trial to decide the title or the right of the temple to initiate proceedings under Section 78 of the HR & CE Act followed by Section 79 of the said Act. While so, the attempt of the petitioners/plaintiffs is to re-agitate the issue in a different form, which is contrary to the established principle of law, such as, *resjudicata and estoppel*.

33. The combined reading of the judgment made in S.A.No.1257 of 2007 and the orders passed in C.S.No.1668 of 1992 and W.P.No.24304 of 2023, without any doubt, clearly indicates that the parties are supposed to agitate their respective rights in the proceedings initiated under Section 78 of the HR & CE Act. No parallel proceedings violating Section 109 of the HR & CE Act and no injunction violating Section 79(2) of the Act can be sustained.



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34. Apart from the litigations referred above, there are few more litigations filed by the occupants on different occasions to keep the chain of litigations alive on one pretext or another, which only indicates that the occupation of the suit premises without title, is sought to be protected under one reason or another.

35. For easy reference, the following provisions are extracted below:-

“Section 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 situation 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



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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 or 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 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 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.



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(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.

Section 79: Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner.—(1) Where within the period specified in the order under sub-section (4) of section 78, the encroacher has not removed the encroachment and has not vacated the property, the Assistant Commissioner having jurisdiction over the division may remove the encroachment and obtain possession of the property encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall render necessary help to the Assistant Commissioner.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Joint Commissioner under sub-section (4) of section 78 from instituting a suit in a Court to establish that the religious institution or endowment has no title to the property:

Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of section 78:

Provided further that no such suit shall be instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee, of the religious institution or



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endowment.

(3) No injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by the Joint Commissioner under section 78.

Section 108: Bar of suits in respect of administration or management of religious institutions, etc.

—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.

Section 109:. Central Act 36 of 1963 not to apply for recovery of properties of religious institution.—Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property.”

36. The facts and law without any pale of doubt proves that the relief of injunction is not maintainable.

37. Hence for the reasons stated, the Original Application for temporary injunction stands dismissed with costs.



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O.A.No.628 of 2024
in
C.S.No.200 of 2024

10.01.2025

Index:yes/no
Internet:yes/no
Speaking order/non speaking order
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DR.G.JAYACHANDRAN,J

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O.A.No.628 of 2024
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C.S.No.200 of 2024

delivery Order made in
O.A.No.628 of 2024
in
C.S.No.200 of 2024

10.01.2025