



W.P.(MD) No.2351 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)No.2351 of 2023

and

W.M.P.(MD).Nos.2127 & 7099 of 2023

The Dharmapuram Adheenam,
Represented by its Adheena Karthar,
Sri-La-Sri Masilamani Desigha Gnanasambanda Paramachariar,
Sri Kumbahareswarar Swami Devasthanam,
Tirubhuvanam,
Tanjore District. ... Petitioner

Vs

1. The District Collector,
Tanjore District,
Tanjore.

2. The Tahsildar,
Thiruvudaimarudhur Taluk,
Thanjavur District.

3. The Executive Officer,
Thirupuvannam Village Panchayat,
Thiruvudaimarudhur Taluk,
Thanjavur District.

... Respondents



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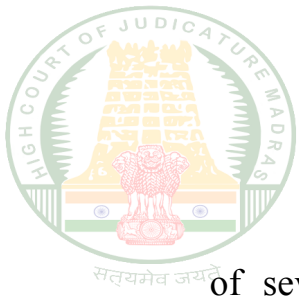
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, forbearing the respondents or their subordinates from dispossessing the Sri Kumbahareswarar Swami Devasthanam of its lands in Survey No.647/20, Thirupuvannam Village, Thiruvudaimarudhur Taluk, Thanjavur District without following the due process of law and consequently direct the respondents to restore the damage caused to the temple premises by the respondents.

For Petitioner	: Mr.M.Mahaboob Athiff
For Respondent Nos.1 & 2	: Mr.Kannan Additional Government Pleader
For Respondent No.3	: Mr.J.K.Jayaseelan, Government Advocate

ORDER

The petitioner is the Trustee of Sri Kumbahareswarar Swami Temple, Tirubhuvanam, Thanjavur District. He is also the Atheenakartha for the Dharmapuram Adheenam, which is the Hereditary Trustee of the aforesaid temple.

2. It is the case of the petitioner that Sri Kumbahareswarar Swami Temple is governed under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. It is stated that the temple is possessed

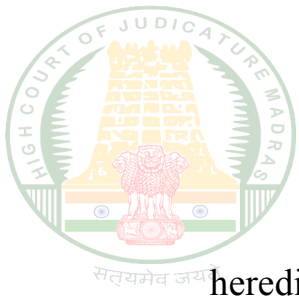


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of several extents of property. One amongst which is the property situated in New S.No.647/20, Tirubhuvanam Village, Thiruvudiyai Maruthur Taluk, Tanjavur District. The plea is that the temple was in possession of the said property for more than 300 years. To substantiate the said fact, the petitioner has produced a proceedings of the Assistant Commissioner, Hindu Religious and Charitable Endowment Department and the Inspector of Hindu Religious and Charitable Endowment Department dated 10.10.1954. The records of the temple maintained under the erstwhile Section 38(2) of HR &CE Act, 1927 was found to be correct by the aforesaid authorities. The records was also approved by the Deputy Commissioner HR &CE Department, Thanjavur.

3. The cause of action for this writ petition is that the Executive Officer of Tirubhuvanam Village Panchayat namely the third respondent started claiming the aforesaid property as that of the Panchayat. He attempted to remove the fence that had been laid by temple around the aforesaid property and wanted to take possession of the same. Noticing this fact, the Devotees and General Public were opposed to the high handed action of the third respondent. The petitioner pleads that as the



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hereditary Trustee of the Sri Kumbahareswarar Swami Temple, it has become its duty to protect the temple property. Hence, he come forward with the present writ petition for seeking the aforesaid reliefs. This Court entertained the writ petition and granted an Interim Order restraining the respondents from interfering the peaceful possession of the temple.

4. On service of notice, the third respondent/Executive Officer, Tirubhuvanam Village has filed a counter. According to him, the Revenue Department had handed over the property to the third respondent on account of the fact that all the lands which are classified as Grazing Ground, Cattle Stand, Threshing floor, Burial Ground, Cart Stand, Ponds, Kuttais etc., vested with the Panchayat, pursuant to the proceedings of the Commissioner of Land Administration, Chennai dated 24.11.1992.

5. According to the third respondent, since the property is the Poromboke land. The government is entitled to hand over the possession of the same to any person. As the third respondent has taken possession of the same. He pleads for dismissal of the writ petition.



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6. I heard Mr.M.Mahaboob Athiff, learned Counsel for the petitioner, Mr.Kannan, learned Additional Government Pleader for the respondents. Both the counsels reiterated the contentions that has been placed in the affidavit and the counter affidavit.

7. Mr.M.Mahaboob Athiff relied upon the proceedings under section 38(2) of the Madras Hindu Religious and Charitable Endowments Act, 1927 and stated that the property vested with the temple, the third respondent cannot take the possession of the property.

8. Per contra, Mr.Kannan relied upon the proceedings of the Settlement Tahsildar, Thanjavur District, dated 15.02.1974 in R.P.Nos. 112 & 113/IA/KBC/74 and pleads that the petitioner temple had sought for patta under Section 12(1) of the Tamilnadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 and the said petition was dismissed. He states that the temple have not preferred any appeal or revision against the said order and therefore they are not entitled to make claim over the said property. In addition, he states that the Commissioner of Land Administration, in and by way of its proceedings dated



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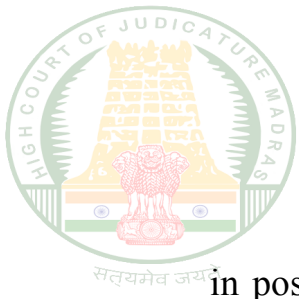
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24.11.1992, had instructed the Revenue Department to hand over certain Poromobokes to Panchayat. Acting on the said proceedings, the Village Administrative Officer, Tirubhuvanam Village was handed over the property to the third respondent. Hence, he states that the possession of the property continues with the third respondent.

9. I have carefully considered the submissions on both side and I have gone through the materials available on record.

10. On perusal of the proceedings of the Settlement Officer dated 15.02.1974, on whose order Mr.Kannan placed heavy reliance shows that the classification of the land is Natham. In addition, the patta that has been enclosed by the third respondent in Page No.20 of the typed set of papers shows that old S.No.79/4 has been classified as "தோப்பு". There are no records that has been produced by the third respondent to show that they had taken physical possession of the property from the temple.

11. On contrary, the records that has been produced by the writ petitioner shows that at least from 28.01.1950 downwards, the temple is



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in possession and occupation of the same. The vesting of lands cannot be based on a circular that has been issued by the Revenue Department. In terms of Section 134(2) of the TamilNadu Panchayats Act 1994, the Village Panchayats have been ***given a right to regulate certain poromboke, it is of course includes Thoppu.*** The said section also demands that the poromboke should be kept at the disposal of the Government. No where under the Acts has the Panchayats have been given power to take possession of the property, on the basis of certificate issued by a Village Administrative Officer under Section.134(2) of Tamil Nadu Panchayats Act. The Tamil Nadu Panchayats Rules have been framed in order to implement Section 134. These are The Tamil Nadu Panchayats (Restriction and Control to regulate the use of Porambokes in Ryotwari Tracts) Rules, 2000. Under Rule. 3, where the Poromboke land is to be regulated by the Village Panchayat, it cannot be used for any other than its original purpose. In case, the Village Panchayats seeks to modify the purpose, it falls on it to approach the District Collector of the concerned District, who change the usage.



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12. Mr.Kannan, is unable to point out any proceedings of the first respondent/District Collector, Thanjavur District, enabling the third respondent to convert the Thoppu Poromboke into a school. In case, there are any encroachments made on the lands which have been handed over to the Panchayats for maintenance, The Village Administrative Officer has been called upon B memos (penal charges) in terms of the Tamil Nadu Land Encroachment Act, 1905 and thereafter order of removal of such encroachments, if they are objectionable.

13. Even, if an order of removal of encroachment is passed in terms of Rule 9 of the aforesaid Rules, an aggrieved parties is entitled to file an appeal before the Revenue Divisional Officer and further, second appeal before the District Collector. As stated above, no records that has been produced by Mr.Kannan. to show the Revenue Department had taken physical possession of the property from the petitioner and thereafter handed over the same to the third respondent. The photographs that has been produced by Mr.Kannan, substantiate the plea that has been made by Mr.Mahaboob Athiff that where fencing around the property, the third respondent is attempted to remove the said fencing.



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14. Right from the time the law was declared by the Privy Council in *The Midnapur Zamindary Company Ltd. vs Naresh Narayan Roy and others, 1924 (XX) LW 770, 775*, no authority or person can take law into their own hands in this country and possession of the property. The third respondent, in case, he requires the property, he should have followed the law and take the possession. Apart from that, the Supreme Court of India in *Rame Gowda -vs- M.Varadappa Naidu, 2004(1) SSC 769* held that where a person is in settled possession of the property, possession of the same can be taken only in a manner known to law.

15. Even, I assume that the plea of Mr.Kannan as the highest, it merely points out that the Panchayat is entitled to manage the property, if it is under its possession. No proceedings have been produced before this Court, to substantiate, either Rule 9 of the aforesaid Rules or the Tamil Nadu Land Encroachment Act had been followed prior to ordering removal of the petitioner from the possession of the property. That being the position as the documents prima facie indicate the petitioner is in possession of the property, it will be entitled to a Mandamus.



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16. Accordingly, this writ petition is ordered. The respondents will not interfere with the possession of the petitioner except otherwise in accordance with law. It is needless to act, in case, the Panchayat or Revenue Department initiate proceedings for eviction of the petitioner, it will be open to the petitioner to show that it is entitled to be in possession of the property.

17. No costs.

18. Consequently, connected miscellaneous petitions are closed.

16.04.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
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V. LAKSHMINARAYANAN, J.

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