

WP(MD) No.15371 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
10.12.2024

PRONOUNCED ON
28.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)Nos.15371 of 2023 &
WMP.(MD).Nos.12963, 13952 of 2023 and 6663 of 2024

Arunachalam

... Petitioner

VS.

1.The Assistant Commissioner,
Hindu Religious Charitable & Endowment Board,
Sivagangai District.

2.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

3.The Station House Officer,
Somanathapuram Police Station,
Sivagangai District.

4.The Manager/Executive Officer,
Arulmighu Koppudaya Nayagi Amman Koil,
Karaikudi, Sivagangai District.

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned



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order in Na.Ka.No.1900/2021/1/A4, dated 15.06.2023 issued by the first respondent and served on 21.06.2023 to the petitioner and quash the same.

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For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.P.Subbaraj Spl., G.P for RR1 & R2

Ms.M.Aasha G.A. (Crl Side) for R3

Mr.R.Sankar Ganesh for R4

Mr.K.Chengizkhan for RR5 & R6

ORDER

The challenge in the Writ Petition is to an order made by the first respondent under Section 79(1) of the Hindu Religious Charitable & Endowment, Act, 1959 (hereinafter referred to as “H.R.&C.E. Act”).

2. Heard Mr.RM.Arun Swaminathan, learned counsel appearing for the petitioner, Mr.P.Subbaraj learned Special Government Pleader appearing for the first and second respondent, Ms.M.Aasha, learned Government Advocate (Criminal side) appearing for the third respondent, Mr.R.Sankar Ganesh, learned counsel appearing for the fourth respondent and Mr.K.Chengizkhan, learned counsel appearing for the fifth and sixth

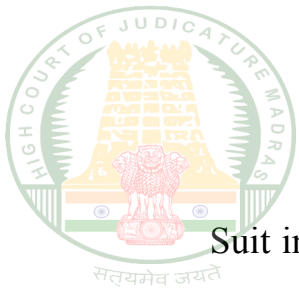


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respondents.

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3. The learned counsel appearing for the petitioner would submit that the petitioner is a lifetime Trustee of Arulmighu Koppudaya Nayagi Amman Koil. The petitioner is a Senior Auditor and using his self acquired funds had built a large hall for the welfare of the Women and devotees of the said temple in a property which do not belong to the temple. However, the fourth respondent temple claiming to be the owner of the premises had held that the petitioner to be an encroacher and initiated eviction proceedings under Section 78 of the H.R.&C.E., Act. The said order was challenged by the petitioner before this Court in W.P.(MD).No.11449 of 2021. When the said Writ Petition came up for hearing on 20.02.2023, it was pointed out by the petitioner that he has got effective alternative remedy of filing a Suit as envisaged under Section 79(2) of the H.R.&C.E. Act, as the petitioner had disputed the title. Hence, permission was sought for from the Court to withdraw the said Writ Petition with liberty to resort to the alternative remedy. The permission was also granted to the petitioner to withdraw the Writ Petition with liberty to file a Suit and the benefit of the Limitation Act was also included. Immediately thereafter the petitioner had preferred a



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Suit in O.S.No.120 of 2023, before the Sub Court, Devakkottai and the said

Suit has also been taken on file. When the suit was pending, the first respondent herein had issued an order under Section 79 (1) of the HR&CE Act without awaiting the results in the suit. Hence, he would submit that the order passed by the first respondent that too pending the suit is wholly arbitrary and is with a malice intention to make the suit infructuous, denying the statutory right available to the petitioner. Hence, he seeks this Court indulgence to the order impugned in this Writ Petition.

4.The learned Special Government Pleader appearing for the first and second respondents would submit that even though, the suit had been filed against the order passed under Section 78 of the HR&CE Act, the petitioner has not been granted with any interim orders. But, however, the petitioner is enjoying the fruits of the property belonging to the temple and is to unjustly enriching himself and therefore, petitioner would not be entitled for any relief as prayed for in this Writ Petition.

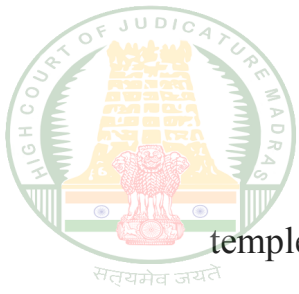
5.The learned counsel appearing on behalf of the fourth respondent would submit that the petitioner is not the owner of the property. Even



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according to the petitioner, the property is declared as a poramboke land but standing in the name of the temple. Therefore, it would not mean that the lands belong to the Revenue Department, but, only to the temple. Taking advantage of the wrong entries in the Revenue Records, the petitioner is attempting to usurp the property belonging to the temple. He would further submit that a Scheme Decree had been framed in respect of the temple and the petitioner cannot title himself, as a life trustee who is in sole management of the trust. The petitioner had not even attempted to give effect to the Scheme Decree as envisaged under the same. He would reiterate that the petitioner is a rank encroacher and no indulgence be shown to the petitioner.

6.The learned counsel appearing for the impleading parties who seeks to implead themselves as fifth and sixth respondents in this Writ Petition would contend that the proposed respondents are representatives of Karaikudi Senjai Nattars who have much concern for the welfare and development of the temple. He would further submit that the petitioner claiming himself to be a hereditary trustee had indulged in many irregularities and the disputes including the properties belonging to the

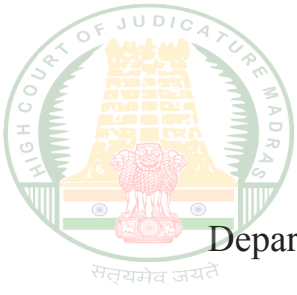


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temple. When a Scheme Decree had been framed by the appropriate Court pursuant to the proceedings initiated under Section 64 of the Act, the petitioner claiming to be a life trustee of the temple under the Scheme Decree had not attempted to even appoint other co-trustees as envisaged under the Scheme Decree. Such person cannot be granted any relief by this Court, if at all any relief would be granted, the petitioner should be put on terms as he is enjoying the fruits of the property belonging to the temple. Hence, he seeks dismissal of the Writ Petition.

7.I have considered the rival submissions made by the learned counsels appearing on behalf of their respective parties and perused the material placed on record.

8.Even though, the petitioner claims to have right over the property, a perusal of the averments of the affidavit would indicate that there is a claim by the Revenue Department namely the second respondent herein that the property belongs to the Revenue Department. Therefore, his case is that the property does not belong to the HR&CE Department. The petitioner seems to take advantage of the claim of title between the Revenue and the HR&CE



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Department. An averment has also been made by the learned counsel appearing on behalf of the fourth respondent that the temple is governed by a Scheme Decree as made in A.S.Nos.116 & 117 of 1956. Even though, the petitioner claimed that he had filed a Statutory Civil Suit under Section 79(2) of the HR&CE Act against the order passed under Section 78 of the Act, it could be seen that the petitioner had not been benefited with any interim orders restraining the authorities from taking any further action pursuant to the order passed under Section 78(4) of the HR&CE Act.

9.It is also worthwhile to note that the judgment of this Court made in W.P.No.34496 of 2012, wherein the learned Single Judge of this Court after analysing the various provisions of the HR&CE Act as well as the Revenue Standing Orders and Government Orders in the matter of classification had held that when the lands classified as poramboke lands in possession and enjoyment of the temple and if the temple is shown to be in possession of the said lands in the Revenue Record, the Revenue Department would not be entitled to utilize/alienate/transfer the same and construct permanent structures therein for the purposes other than the beneficial interests of the temple. Even if it is the case that there is dispute that has been raised by the



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Revenue Department, it is not disputed that the temple is in possession of the lands. I have come to this conclusion in view of the building plan permission granted by the appropriate local authority, if the land belongs to the Revenue Department, the appropriate local authority would not have granted any building permission. The building plan reveals that the same had been issued in the name of the petitioner only as a trustee of the temple and not in his individual capacity as claimed by him.

10. Further having filed a Statutory Civil Suit before the competent Civil Court, it is for the petitioner to also seek interim protection in the said proceedings and cannot initiate an independent proceedings under Article 226 of the Constitution challenging the same. Having already invoked the efficacious alternative remedy, the petitioner can very well approach the Civil Court seeking for appropriate relief.

11. In view of the same, the Writ Petition is dismissed with liberty to the petitioner to approach the Court before which the suit filed by him is pending and in that event, the same shall be taken up by the concerned Court and dispose of the same as expeditiously as possible, however not



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later than six (6) months.

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12.Before parting of this case, since it has been brought to the notice of this Court that there is a Scheme Decree made in A.S.Nos.116 & 117 of 1956 and there is an allegation that the Scheme Decree has not been given effect to and the petitioner alone is acting as a life trustee of the temple, the jurisdictional Joint Commissioner of the HR and CE, Sivagangai, is directed to give effect to the Scheme Decree made in A.S.Nos.116 & 117 of 1956, within a period of three (3) months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

28.01.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Gba

Note:Registry is directed to mark a copy of this order to the Joint Commissioner, Sivagangai.



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K.KUMARESH BABU.,J.

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To

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Sivagangai District.
- 2.The Tahsildar,
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A Pre-delivery order made in
W.P.(MD)Nos.15371 of 2023 &
WMP.(MD).Nos.12963, 13952 of 2023 and
6663 of 2024

28.01.2025

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