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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.10.2024

PRONOUNCED ON: 17.06.2025

CORAM:

THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.21053 of 2024
and W.M.P(MD)No.17840 of 2024

Panpozhi Town Panchayat – Grade II
Rep. by its Executive Officer,
Panpozhi,
Tenkasi District – 627 807. ... Petitioner

Vs

1. The Joint Commissioner,
   Hindu Religious and Charitable Endowments Dept.,
   Thoothukudi.

2. The Assistant Commissioner,
   Hindu Religious and Charitable Endowments Dept.,
   Tenkasi.

3. Arulmigu Thirumalaikumaraswamy Thirukoil,
   Represented by its Executive Officer/
   Assistant Commissioner,
   Panpozhi,
   Tenkasi District.

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4. The Tahsildar,
Shengottah Taluk,
Tenkasi District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order of 1st Respondent dated 19.06.2024 in I.A.No.3/2024 in M.P.No.141 of 2023 and quash the same as illegal and consequently forbear the Respondents 1 to 3 from conducting any proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 as against the Petitioner in respect of the lands in S.No.513 Panpozhi Village, Sengottah Taluk, Tenkasi District.

For Petitioner: Mr.D.Srinivasaragavan

For Respondents: Mr.K.S.Selvaganesan for R1, R2 & R4
Additional Government Pleader
Mr.S.Manohar for R3

ORDER

The present writ petition is filed challenging the impugned order of 1st respondent dated 19.06.2024 in I.A.No.3 of 2024 in M.P.No.141 of 2023 and consequently forbear respondents 1 to 3 from conducting any proceedings under Section 78 of the Hindu Religious and Charitable

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Endowments Act (hereinafter referred to as " HR & CE Act") in respect of land/property covered in S.No.513 of Panpozhi Village, Tenkasi District.

2. Petitioner Panchayat has filed the present Writ Petition challenging proceedings under Section 78 of HR & CE Act, in respect of S.No.513 on the premise that petitioner Panchayat is in possession and enjoyment of land/property measuring 11 acres and 10 cents comprised in S.No.513 at Panpozhi Village, Tenkasi District. Petitioner Panchayat have been in possession of above land for over 60 years. The above land/property belongs to Government and is classified as 'Tharisu' in Revenue Records and notes as "unassessed lands" in 'A' Register. Originally, petitioner was a Village Panchayat and has since been upgraded as Town Panchayat. Petitioner would submit that it planted more than 100 Mango Saplings sometime during 1960's and has been maintaining the same. Mango Trees in S.No.513 have been regularly auctioned by petitioner over the past 40 years. Petitioner have put up a manure yard to convert waste generated in their local body. Solid waste management activities is being carried in a portion of land/property in S.No.513. There are 2 other Survey Numbers

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that has been referred in the affidavit viz., S.No.514 and S.No.506. S.No. 506, measuring 5.74 acres of land belong to Arulmigu Karupasamy Koil i.e., 3rd respondent herein. S.No.514 is Government land classified as "Salai" in Revenue Records and 'A' Register. Land/property comprising in S.No.513 is connected to the main road by pathway in S.No.506. This pathway is a metal road constructed by petitioner by using its funds and used for decades by petitioner's employees to access land/property in S.No. 513.

3. 3rd respondent vide letter dated 04.08.2014 furnished list of properties to SRO, Panpozhi for the purpose of prohibiting registration by third parties in respect of properties mentioned therein which are temple properties. Importantly, list of properties vide letter dated 04.08.2014 did not include land/property comprised in S.No.513 and S.No.514. However, in the year 2019, 3rd respondent sent a letter dated 20.11.2019 to petitioner contending that land/property comprising in S.No.513 belonged to 3rd respondent temple and thus petitioner, by constructing building thereon is encroaching temple properties. Petitioner vide its letter dated 10.03.2022

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intimated 3rd respondent about its ownership and classification of land/property comprising in S.No.513 as Tharisu.

4. Respondents 2 & 3 initiated proceedings under Section 78(1) of HR & CE Act, before 1st respondent in M.P.No.26 of 2022 on the premise that petitioner had encroached lands/properties in S.No.516, S.No.517 and S.No.519 of Panpozhi Village.

5. Petitioner filed its counter stating that no temple lands have been encroached and the 3rd respondent temple is claiming title/right over land/property comprised in S.No.513 and S.No.514, when it has no title right over the said lands/properties.

6. 1st respondent appointed an Advocate Commissioner in M.P.No.26 of 2022 to note down physical features of property in dispute. Advocate Commissioner inspected property and filed his report to which petitioner filed its objection. It is relevant to state that S.No.513 was not the subject matter in M.P.No.26 of 2022. Thereafter, petitioner was served with order

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of 1st respondent dated 29.11.2023 of 1st respondent in I.A.No.1 of 2023 in M.P.No.141 of 2023 whereby 1st respondent has passed an order of injunction *inter alia* restraining petitioner from putting up any construction in the property comprised in S.No.513 and S.No.506. Aggrieved by above order, a Writ Petition was filed in W.P.(MD)No.29220 of 2023.

7. This Court vide its interim order dated 12.12.2023 directed 4th respondent to conduct an enquiry and submit a report as to Revenue Records of land/property in S.No.513 of panpozhi Village. A report was submitted by 4th respondent wherein it was stated that land/property in S.No.513 is classified as Government Poramboke 'Tharisu' after UDR and prior to that, it was classified as Government Poromboke 'Parai'.

8. This Court disposed of the above Writ Petition observing that as per Tahsildar Report, land/property comprised in S.No.506 belongs to 3rd respondent temple. Petitioner Panchayat has laid a road in S.No.506, a temple property without ascertaining ownership of land, thus 3rd respondent may initiate proceedings under Section 78 of HR & CE Act. If petitioner is

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aggrieved by proceedings under Section 78 of HR & CE Act, his remedy is to file an appeal under Section 21 of HR & CE Act.

9. While in respect of land/property comprised in S.No.513, it was found that same is classified as Government Poramboke 'Parai'. After recording the same, this Court observed that petitioner and Temple Administration would have to workout their remedy with regard to land/property comprised in S.No.513 before Appropriate Forum and that Temple Administration shall proceed under Section 78 of HR & CE Act, with regard to land/property comprised in S.No.506. 1st respondent included land/property comprised in S.No.513, in M.P.No.141/2023, which according to petitioner, is contrary to orders of this Court in W.P.(MD)No. 29220 of 2023 dated 21.12.2023.

10. Petitioner filed I.A.No.3 of 2024 to delete land/property comprised in S.No.513 from the schedule of properties in M.P.No.141 of 2023. The above I.A.No.3 of 2024 in M.P.No.141 of 2023 came to be dismissed by 1st respondent vide order dated 19.06.2024. It is against the

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above order petitioner have preferred the present Writ Petition.

11. This Court finds that present Writ Petition is liable to be rejected inasmuch as there is an effective alternate remedy against impugned order under Section 21 of HR & CE Act.

12. That apart, this Court finds that while Revenue Records would show that land/property comprised in S.No.513 is Government 'Tharisu' but if respondent temple is able to demonstrate that they were in possession of land on which present solid waste management is sought to be put up, then whether temple on the basis of its possessory title may invoke proceedings under Section 78 of HR & CE Act, would have to be examined. In terms of Revenue Records, title to said land may vest with the State. However, question may still arise whether by virtue of being in continuous possession, 3rd respondent has acquired possessory title that may grant temple to continue in possession and also a superior right viz., of construction or grant use thereof subject to conditions, requires examination.

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13. In this regard, it may be relevant to refer the judgment of Hon'ble Apex Court in ***Subramanya Swamy Temple, Ratnagiri vs. V.Kanna Gounder (Dead) by LRS*** reported in ***(2009) 3 SCC 306,*** wherein it was held as under:

> *"10.The High Court, in its impugned judgment proceeded on the basis that there had been no assignment in favour of the Temple by the State. It committed an error in relation thereto. The paramount title of the State is not disputed. It remains vested in the State. The State, however, having regard to the possession of the appellant over 32 acres of land classified the same as "Temple poramboke". It, by reason of the said classification, not only permitted the appellant to continue to possess the land but also granted a superior right, namely, to make constructions as also to grant lease thereof subject of course to the conditions laid down as noticed hereinbefore. The principle of possessory title was, thus, completely overlooked by the High Court.*
>
> *11.It is now well settled that in India, nobody can take possession of an immovable property except in accordance with law. The respondent was a licensee*

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under the appellant. He was evicted from the shop which was allotted in his favour. If he had encroached upon a portion of the poramboke land, he could have been evicted by the Temple on the basis of its possessory title."

14. It may be relevant to note the right of a party in possession vis-a-vis the owner as explained by Hon'ble Apex Court in ***Rame Gowda (dead) by Lrs. vs. M.Varadappa Naidu (dead)*** by Lrs. And another, reported in ***(2004) 1 SCC 769,*** wherein it was held as under:

*"**8.** It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful*

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owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. *It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram v. Delhi Admn. [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968*

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Cri LJ 806] , Puran Singh v. State of Punjab [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] and Ram Rattan v. State of U.P. [(1977) 1 SCC 188 : 1977 SCC (Cri) 85] The authorities need not be multiplied. In Munshi Ram case [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran

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Singh case [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession" (SCC p. 527, para 12):

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

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(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv)that one of the usual tests to determine the quality of settled possession, in the case of culturable land , would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.

10. *In the cases of Munshi Ram [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] and Puran Singh [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court has approved the statement of law made in Horam v. R. [AIR 1949 All 564 : 50 Cri LJ 868] wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter may be dispossessed by the true owner only by having recourse to the due process of law for reacquiring possession over his property."*

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15. It is submitted by the petitioner that during the pendency of the present writ petition, petitioner has been set exparte and the authority has continued to proceed under Section 78 of HR & CE Act. If so, the concerned authority is directed to issue notice to the petitioner and dispose of the proceedings as expeditiously as possible in accordance with law after affording the petitioner a reasonable opportunity of hearing.

16. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

17.06.2025

Index: yes/no
Speaking order: yes/no
Neutral Citation: yes/no

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MOHAMMED SHAFFIQ, J.

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