



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

**W.P.(MD) Nos.25821, 28189 to 28192, 29666, 30000, 30100, 30133 of 2024 and
390, 392, 1133, 1242, 1713 and 1717 of 2025**

and

**W.M.P.(MD) Nos.21909, 23901, 23903, 23902, 23910, 25038, 25333, 25355,
25263, 25356 of 2024 and 1209, 1218, 254, 760, 761, 764, 255, 838, 257 and
258 of 2025**

In W.P.(MD) No.25821 of 2024:-

1.A.Ravi

2.K.Muthusamy

3.S.Ramamoorthy

4.A.Veerakumar

5.P.Dhanalakshmi

... Petitioners

/vs./

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai 600 034.



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2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tiruppur.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Karur.

4.The Executive Officer,
Sri Balasubramaniya Temple,
Kadapparai Village,
Vennamalai Post,
Karur Taluk, Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from taking further action with the Miscellaneous Petition Number 290/21, Na.Ka.No.1025/2020/A2 dated 29.06.2022 and Final Notice in Na.Ka.No.1025/2020/ A2 dated 10.09.2024 in accordance with law.

For Petitioners : Mr.D.Selvanayagam

For R1 to R3 : Mr.K.S.Selvaganesan
Additional Government Pleader

COMMON ORDER

In all these writ petitions, the primordial contention of the learned counsel for the petitioners is that they were all the purchasers of the lands from the holders of the settlement patta issued under Act 30/1963 and therefore, they



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cannot be considered as encroachers and the proceedings initiated under Section 78 of the HR & CE Act, 1959 (*herein after referred to as Act*) against them are all bad in law.

2. On the other hand, the learned counsel appearing for the fourth respondent in W.P.(MD) No.25281 of 2024/the Executive Officer, would submit that the settlement pattas granted in favour of the private individuals were challenged by the temple before the appellate authority, which had set aside the order and remitted the matter back to the Settlement Officer. Thereafter, the Settlement Officer had rejected the claim of the petitioners' vendors and other persons for grant of patta under Act 30/1963, against which further proceedings were initiated by them, which came to be concluded by a Division Bench of this Court in STA.No.17/1982. By order dated 11.08.1988, the Division Bench of this Court had dismissed the STA's filed by the aggrieved persons, whose claim for patta had been rejected. Hence, as of today, the petitioners can only be treated as encroachers of the temple property.



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3. At this juncture, the learned counsel appearing for the petitioners would submit that the petitioners had also moved the Division Bench of this Court seeking review of the order, as they had purchased the property when the earlier order of settlement stood intact and when the orders of rejections were passed, they were not made parties to the proceedings either before the Settlement Officer or in the subsequent appeals and therefore, such order cannot be binding on them.

4. Be that as it may, the proceedings under Section 78 of the Act had been initiated against most of the petitioners herein and they have been declared to be encroachers for further action to be initiated. When an order under Section 78(4) of the Act had been passed and if they were declared as encroachers disputing the title to the property of the temple, there is a remedy of filing a suit before the competent civil Court available to such persons under Section 79(2) of the Act.

5. In some cases, some of the petitioners have preferred a Revision before the Commissioner, HR & CE, which have also been rejected. It is to be noted that Section 21 of the Act, which provides a Revision, does not clothe the jurisdiction of Revision with the Commissioner if such order is appealable by way of filing a



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suit as provided under the Act. Therefore, any order passed under Section 21 of the Act could only be treated as non-est order passed without jurisdiction. Since those petitioners have invoked the wrong jurisdiction, this Court is of the view that if the petitioners are permitted to agitate their rights as provided under Section 79(2) of the Act, it would meet the ends of justice. However, considering the fact that the time limit granted under the provision is long expired, this Court is of the view that if the petitioners, whose cases have been decided under Section 78 of the Act and orders have been passed under Section 78(4) of the Act, they would be entitled to exhaust the remedy available under Section 79(2) of the Act provided the filing of the suit on or before 24.02.2025. It is also imperative that since the petitioners are permitted to exercise their statutory rights, their possession can also be protected till 10.03.2025.

6. It is further to be noted that some of the petitioners have already been disposed by the Department, as the lands were remained vacant and not used by them, without resorting to the provisions of Section 78 of the Act as ordered by the Division Bench of this Court. Hence, their statutory rights would also have to be protected and I am of the view that they could also invoke the provisions of



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Section 79 (2) of the Act, even though an order had not been passed under Section 78(4) of the Act, as their valuable rights have been set at naught by the Department.

7. In view of the same, all the Writ Petitions stand disposed of with liberty to the petitioners therein to approach the appropriate civil Court by exhausting the remedy available under Section 79(2) of the Act on or before 24.02.2025. It is made clear that the respondents shall not initiate any action against the petitioners till 10.03.2025. It is open for the petitioners to seek interim relief in their respective suits. It is further made clear that the competent civil Court shall not be bound by any of the observations made in this order. The respondents are at liberty to proceed further against the petitioners if they have not approached the concerned civil Court on or before 24.02.2025.

8. Since the petitioner in W.P.(MD) No.1133 of 2025 had already filed a suit in O.S.No.28 of 2025 on the file of learned Additional Subordinate Judge, Karur, he is at liberty to seek interim relief before the learned Additional Subordinate Judge, Karur. If any application is filed by him, the same shall also



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be taken up and disposed of by the learned Additional Subordinate Judge, Karur as expeditiously as possible. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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22.01.2025

To

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Chennai 600 034.
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K.KUMARESH BABU, J.

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