

W.P(MD)No.29606 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.29606 of 2024

and

W.M.P.(MD)Nos.25001, 26118 and 26119 of 2024

M.Sonai Muthu

... Petitioner

Vs.

1.The Joint Commissioner / Executive Officer,
Arulmigu Kallalagar Thirukovil,
Madurai District, Madurai.

2.The Inspector of Police,
Samayanallur Police Station,
Samayanallur, Madurai.

3.K.Manimaran

... Respondents

(R3 is impleaded vide Court order dated 17.12.2024 in W.M.P.(MD)No.25708 of 2024 in W.P.(MD)No.29606 of 2024)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to forbear the respondents 1 and 2 from dispossessing the petitioner over the property in Sy.No.221/6



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without following due process of law more specifically contemplated under Section 78 of the HR & CE Act.

For Petitioner : Mr.S.Ramesh
For R1 : Mr.S.Manohar
For R2 : M/s.M.Aasha,
Government Advocate (Crl.Side)
For R3 : Mr.C.M.Arumugam

ORDER

This Writ Petition has been filed by the petitioner to forbear the respondents 1 and 2 from dispossessing the petitioner over the property in Sy.No.221/6 without following due process of law as contemplated under Section 78 of the HR & CE Act (hereinafter referred to as 'the Act').

2.The learned counsel appearing for the petitioner would submit that the petitioner is in possession of the land having inherited the same from his ancestors. In the year 2017, a notice was served upon the petitioner by the Tahsildar, Madurai (North) for surveying the land and fixing the boundaries. In spite of the objections raised by the petitioner, the land was surveyed and boundaries were fixed and thereafter, the 1st respondent had issued notice, informing the petitioner that the possession of the land is to be taken by the 1st respondent. Even if the case of the 1st respondent is to be admitted that the



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petitioner is the encroacher of the property, he could be evicted only by following due process of law as prescribed under Section 78 of the Act. No proceedings were initiated against the petitioner. Even though the petitioner had approached this Court in the year 2023, the Writ Petition was disposed of, granting liberty to the petitioner to workout his remedy in a competent civil Court. Hence, he filed a civil suit in O.S.SR.No.1575 of 2024 on the file of the District Munsif Court, Madurai, where a question of maintainability was raised and hence, the petitioner had approached this Court in C.R.P.(MD)No.2461 of 2024, where a direction was issued to accept the plaintiff's assessment on the value of the property and number the suit.

3.He would further submit that there is a bar in the provision of the Act to initiate the said suit and the said suit is still yet to be numbered by the Court below. When that being so, the 1st respondent had registered a complaint with the 2nd respondent, seeking to take possession of the property from the petitioner. It was learnt by the petitioner that the 1st respondent had conducted an auction, in which the 3rd respondent was the successful bidder and he is attempting to trespass into the property, which has been in possession of the petitioner. Hence, he had approached this Court.



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4.Countering his argument, the learned counsel appearing on behalf of the 1st respondent would submit that even in the year 2018, the property was leased to one third party and he had also enjoyed the lease period, which would evidently indicate that the petitioner was not in possession of the property. Thereafter, fresh auction was conducted and the property was allotted in favour of the third respondent. Therefore, the petitioner cannot claim himself to be in possession of the property.

5.The learned counsel appearing on behalf of the 3rd respondent would contend that after being put in possession of the property, the 3rd respondent had cultivated the said land and had raised paddy crops. Therefore, the petitioner is not in possession of the property and the 3rd respondent should continue to be in possession of the property.

6.I have considered the rival submissions made by the learned counsel for the respective parties.

7.The claim of the 1st respondent is that the property belongs to the temple. On the contrary, the petitioner claims that the land has been inherited

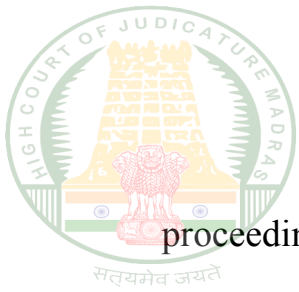


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by him being his family property. The dispute that is raised by the respective parties is as to who is in possession of the property. These disputed questions cannot be gone into by this Court under Article 226 of the Constitution of India. The petitioner had enclosed in his typed set of papers a letter issued by the Joint Commissioner dated 24.01.2018, in which it had been indicated that as the petitioner had not produced the documents requested in the earlier communication dated 05.01.2018, the possession had been taken over by the Temple. The communication dated 05.01.2018 was directed to be produced and therefore, the same was produced by the learned Government Advocate.

8.A reading of the said notice would indicate that the petitioner was alleged to be in possession of the property and has been in possession and enjoyment by cultivating the said lands. Hence, he was called upon to explain as to why action should not be initiated against him and if there is any failure, the possession would be taken. Even the complaint given by the 1st respondent against the petitioner to the 2nd respondent Police would indicate that the petitioner is in possession of the property.

9.In such circumstances, this Court is of the view that it is for the jurisdictional Joint Commissioner to enter upon the issue by initiating



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proceedings under Section 78 of the Act against the petitioner, in which the petitioner can substantiate his claim with regard to the enjoyment of the property in his own right.

10.At this juncture, it was pointed out that the 1st respondent, who is the Executive Officer, is also the jurisdictional Joint Commissioner. In such event, this Court is of the view that the Joint Commissioner, HR & CE Department, Sivagangai District shall conduct an enquiry into the claim made by the petitioner by initiating appropriate proceedings under Section 78 of the Act.

11.In fine, this Writ Petition is disposed of with a direction to the Joint Commissioner, HR & CE Department, Sivagangai District to conduct an enquiry into the claim made by the petitioner by initiating appropriate proceedings under Section 78 of the Act without awaiting report from the Assistant Commissioner, HR & CE Department as envisaged under Section 78(1) of the Act. Such enquiry shall be completed by the Joint Commissioner, Sivagangai within a period of two months from the date of receipt of a copy of this order.



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12. In the interregnum period, the petitioner shall maintain the crops and if before completion of the enquiry harvest has to be taken, such harvest of the crops shall be made in the presence of the Officer nominated by the 1st respondent and also the 3rd respondent and the produce of the harvest shall be kept in the office of the 1st respondent, which shall be disbursed subject to the outcome of the enquiry as directed by this Court hereinabove. It is made clear that the petitioner would not be entitled to claim any equity, if he fails to substantiate his claim. No costs. Consequently, connected miscellaneous petitions are closed.

21.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Note-1: Issue Order copy on 23.01.2025.

Note-2: Registry is directed to send a copy of this order to the Joint Commissioner, HR & CE Department, Sivagangai for complying with this order.



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K.KUMARESH BABU, J

Yuva

To
The Inspector of Police,
Samayanallur Police Station,
Samayanallur, Madurai.

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