



W.P.(MD).No.31454 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.31454 of 2024

and

W.P.(MD)No.26338 of 2024

N.Sivakumar

...Petitioner

Vs

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

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

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

4.The Executive Officer,
Sri Balasubramaniaswamy Temple,
Kathaparai Village,
Vennimalai Post,
Karur Taluk,
Karur District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, forbearing the respondents from in any manner taking any further action on the basis of the order passed in Miscellaneous Petition No.259/2021 dated 18.10.2024 passed by second respondent in accordance with law.

For Petitioner : Mr.M.Shakul Hameed
For R-1 to R-3 : Mr.P.Subbaraj
Special Government Pleader
For R-4 : Mr.P.Athimoola Pandian

ORDER

Heard Mr.M.Shakul Hameed, learned counsel for the petitioner, Mr.P.Subbaraj, learned Special Government Pleader for the respondents 1 to 3 and Mr.P.Athimoola Pandian, learned for the 4th respondent.

2. The present Writ Petition has been filed seeking for a negative Mandamus forbearing the respondents from not proceeding with any further action based on the orders passed by the second respondent dated 18.10.2024.



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3. The learned counsel for the petitioner would submit that the petitioner is in possession of the land, which was originally issued with a settlement patta in the proceedings dated 31.08.1967. However, without considering the same, the second respondent passed an order on the proceedings initiated by the fourth respondent under Section 78 of the HR and CE Act, holding that the petitioner is an encroacher and directing the removal of the encroachment by proceedings dated 18.10.2024. He would further submit that the petitioner is the owner of the land, and the temple is not the owner, as the patta had been issued in the name of the predecessor-in-interest. Therefore, the provisions of Section 78 of the Act are not applicable to the case of the petitioner. The temple would have to file a suit challenging the settlement patta granted in the name of the petitioner's predecessor, but the impugned order was passed without following this procedure.

4. Countering his arguments, the learned Special Government Pleader appearing for the respondents 1 to 3 on the other hand would submit that the order has been passed under Section 78 of the Act against which an appeal is available before the first respondent which would be efficacious alternative remedy and that as against such an order and if the



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petitioner is still aggrieved against the order passed by the first respondent an appeal under Section 79 of the Act, the petitioner can file a statutory suit under Section 80 of the Act against which further appeal is also provided. When there is an efficacious alternative remedy available to the petitioner, the writ petition is not maintainable . Hence, he seeks dismissal of the Writ Petition.

5. I have considered the submissions made on either side and perused the materials available on record.

6. Admittedly, an order has been passed under Section 78 of the HR and CE Act against which an appeal to the first respondent is also available under the statute. Further remedy of filing a statutory suit before the civil court is also available to the petitioner which are all efficacious alternate remedy.

7. In such view of the matter, I am not inclined to entertain this Writ Petition and accordingly, the Writ Petition stands dismissed. However, the petitioner is at liberty to file an appeal under Section 79(2) of the HR and CE Act. If the petitioner approaches the appellate



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authority on or before 31.01.2025, the same shall be entertained by the first respondent without insisting upon the period of limitation available to the petitioner in filing such appeal. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.01.2025

NCC:yes/no

Index:yes/no

Internet:yes/no

Nsr

Note: Issue Order Copy on 03.01.2025.

To:

- 1.The Commissioner,
Hindu Religious Charitable and Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
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K.KUMARESH BABU, J.

Nsr

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