

(2010) 02 MAD CK 0092

In the Madras High Court

Case No : W.A (MD) No. 694 of 2009 and M.P. (MD) No. 1 of 2009

K.V. Lakshmi Ammal

APPELLANT

Vs

The Joint Commissioner, Hindu Religious and Charitable
Endowment Department and Arulmighu Subramaniaswamy
Thirukoil

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 78,
78(2), 78(4)

Citation : (2010) 02 MAD CK 0092

Hon'ble Judges : Prabha sridevan, J;B. Rajendran, J

Bench : Division Bench

Advocate : G.R. Swaminathan, for the Appellant; K.M. Vijayakumar, for R. 1,
Additional Government Pleader and S. Manohar, for R. 2, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The writ appeal has been filed by the Writ Petitioner as against the order of this Court dated 08.12.2008 passed in W.P.

(MD) No. 10566 of 2009.

2. The petitioner would contend that the property comprised in Survey No. 945/6 measuring an extent of 1368 square foot referred to in the

impugned notice of the first respondent belongs to her absolutely. She would contend that even though the impugned notice was issued to her

husband, she is entitled to question the same in this proceedings. She would contend that originally the property was belonging to one Angu

Thayammal and Nani Pandithar. From whom one Govindasamy Naidu had purchased the property way back in the year 1953. As the property

was adjacent to the temple/the second respondent, originally, there was a proposal to have an exchange of the property way back in the year

1966. But, it did not fructify. Subsequently in the year 2007, according to the petitioner, the second respondent temple passed resolution that the

petitioner has encroached the property of the temple and therefore, subsequently, they have issued a notice on 14.02.2007 calling upon her to

vacate the property in question. Against which, she has challenged the notice in O.S. No. 135 of 2007 before the Principal Sub Court, Madurai

for the relief of injunction, which is pending.

3. According to the petitioner, after purchase of the property by the said Govindasamy Naidu and on his death one Kuppusamy purchased the

property in the year 1983 from the sons of Govindasamy Naidu and Kuppusamy is the brother-in-law of the petitioner's husband. She would also

contend that the said Kuppusamy executed a power of attorney in her husband's name and on the basis of power of attorney, her husband

executed a sale deed in favour of the petitioner on 27.01.2005 and therefore, she is the owner of the property.

4. Pending the suit in O.S. No. 135 of 2007, the second respondent has now chosen to issue a notice on 19.01.2009 u/s 78(2) of the Hindu

Religious and Charitable Endowments Act, 1959 and challenging the same, the petitioner has also given a detailed reply on 24.08.2009. The

petitioner apprehends that without holding an enquiry and without passing any final orders, the second respondent men may forcibly enter into the

property and hence, she has filed this Writ Petition.

5. She would also contend that the power u/s 78 of the Act cannot be employed in this case as the revenue records still stands in the name of her

vendor Kuppusamy and when there is a bona fide dispute existing in respect of title, the powers under the said provision cannot be enforced. She

would also contend that when the Civil Court is seized of the matter, it is not open to the authorities to invoke the statutory power conferred on

them. Hence, this Writ Petition.

6. The second respondent has filed a detailed counter stating that the notice issued on 19.01.2009, is only a show cause notice calling upon the

petitioner to say why the encroachment made by her in the property in question belonging to the second respondent temple should not be removed

and the fact that the petitioner had submitted to the jurisdiction of the first respondent by filing her objection on 24.08.2009. Hence, the Writ

Petition is not maintainable. According to temple authorities, the land in question and other lands comprised in Survey No. 196/14 and subdivided

as Survey Nos. 196/14A and 196/14B and the present Survey T.S. No. 945/6 were all the subject matter of the claim by the temple in regard to

the Hillock, Saravana Poikai, Vannankulam, Pancha Pandavar Kugai and Umari Andavar Koil, upto Giri Veedhi as demarcated in the plan filed in

O.S. No. 4 of 1920 on the file of the Additional Sub Judge, Madurai which was filed by the temple authorities against the Secretary of State for

India in Council through the Collector, Madurai and 12 others which ultimately culminated in the proceedings before the Privy Council in Appeal

No. 5 of 1930, dated 12.05.1931 which was reported in 1931 Privy Council 212 wherein, the property described upto Giri Veedhi measuring an

extent of 5,72,544 square foot on all the sides as per the Decree plan have been declared as property of the second respondent temple.

Furthermore, as per the Village "A" Register that the land comprised in S. No. 196/14 has been subdivided as 196/14A and 196/14B which have

been registered in the name of the temple. Before invoking Section 78 of the Hindu Religious and Charitable Endowments Act, 1959, the

respondent has duly passed a resolution of the Trust Board even as early as on 14.02.2007 and the petitioner has only challenged the validity of

the notice in O.S. No. 135 of 2007 and no suit is maintainable as against the notice issued by the temple. But, anyway it is pending as on date.

7. Inasmuch as the right of the land in question has already been concluded by the Privy Council that the temple is the owner of the property the

petitioner will have no right over the property and there is no prohibition or impediment in taking action for removal of the encroachment as

contemplated u/s 78 of the Hindu Religious and Charitable Endowments Act, 1959. Therefore, without even inviting an order u/s 78(4) of the Act,

the present Writ Petition is not maintainable. It is premature and has to be dismissed in limini. In any view of the matter, the petitioner has got an

effective remedy available under the statute and therefore, also the writ petition is not maintainable, nor any action could be taken without passing

the final order. With the above reasonings, the learned Single Judge has passed the order stating as follows:

20. It is not for this Court to decide the issues relating to the title of the property under dispute. Further, it is open to the petitioner to establish her title by way of civil proceedings, before the appropriate forum, in accordance with law. It is also seen that the impugned notice, dated 19.01.2009, has been issued by the first respondent, u/s 78(2) of the Hindu Religious and Charitable Endowments Act, 1959. Therefore, it would be open to the petitioner to raise all the issues before the first respondent, including the ground of lack of jurisdiction, raised by the petitioner, in the present writ petition. When it is open to the petitioner to pursue her remedy by way of a civil suit, before the civil forum, the writ petition preferred by her before this Court, under Article 226 of the Constitution of India cannot be maintained.

21. In such circumstances, the first respondent is directed to complete the proceedings initiated by him, by way of the impugned notice, dated 19.01.2009, u/s 78(2) of the Hindu Religious and Charitable Endowments Act, 1959, after giving an opportunity of hearing to the petitioner, the second respondent temple, as well as to the other parties concerned, within a period of twelve weeks from the date of receipt of a copy of this order, without being influenced by the observations made by this Court in this order.

Aggrieved against the dismissal of the writ petition on the ground that the petitioner has every legal right to raise all his objections before the appropriate authority, the appellant has preferred the present Writ Appeal.

8. The main and only ground raised by the appellant is that the proceedings initiated u/s 78 of the Hindu Religious and Charitable Endowments Act, 1959 are not maintainable in view of the existence of the bona fide disputes between the parties with regard to the subject matter of the property.

She would only say that statutory power available under the Act u/s 78 cannot be invoked in view of the bona fide disputes.

9. We heard both the parties.

10. At the outset it is pertinent to provide the impugned notice which reads as follows:

On perusing the afore referred notification issued by the Assistant Commissioner, HR&CE Department, that in prima facie the below mentioned

property have been encroached by Thiru.K.K. Viswanathan which was belongs to

Arulmighu Subramaniaswamy temple, Thirupparankundram,
Madurai.

S. No. Survey No. Site / Building land Area

(1) (2) (3) (4)

1 945/6 Site 1368 sq. ft.

And it has been announced herewith, that why the deemed encroacher Thiru.K. Viswanathan, should not be evicted from the aforesaid

encroached property, and written explanation have to be declared either on 23.3.2009 or prior to that date.

It is hereby informed that if the aforesaid encroacher fails to submit his explanation before the stipulated date action will be taken as per Section

78(4) Hindu Religious and Charitable Endowments Act 1959.

11. From a reading of the notice, it is clear that the second respondent has initiated the proceedings u/s 78(4) of the Hindu Religious and

Charitable Endowments Act, 1959, and issued a show cause notice calling upon her to explain why she should not be evicted from the encroached

property and it is also further clear that further course of action would be taken as per Section 78(4) of the Hindu Religious and Charitable

Endowments Act, 1959, if there is no explanation. It is also admitted that for the notice issued even though in 19.01.2009, belatedly the petitioner

had submitted her reply on 24.08.2009 and the application is pending for consideration before the appropriate authority.

12. Furthermore, a reading of Section 78(4) would indicate that the Act gives three statutory mandate on the competent authority. They are that

the authority should conduct such enquiry as may be prescribed and he should be satisfied that there was an encroachment and only by an order in

which he has to record reasons, he can direct removal of such a person. Therefore, the Act contemplates the authority should conduct such an

enquiry as prescribed. To analyse what has been prescribed under the Act, the relevant rule is extracted below:

20. The provisions of the CPC and the Civil Rules of Practice and Circular Orders shall apply, as far as practicable, to appearance of pleader and

to affidavits, production of documents, examination of witnesses, taking of oral evidence, proof by affidavits, filing of exhibits, issue of

commissions, return of documents not admitted in evidence, and other connected matters, and the inquiry shall be made, as far as practicable, in the manner laid down in the said Code for the trial of suits.

13. On a reading of the rules, it is very clear that the enquiry as contemplated u/s 78(4) is that the authority should give the necessary opportunity to the petitioner concerned including that of cross-examination of witnesses, production of documents, summoning of witnesses and also availing of the help of lawyer. It is more or less, a full-fledged enquiry of that of a Civil Court, when the proceedings are governed by the Act. The apprehension of the petitioner at this point of time even at the show cause notice stage itself is totally unacceptable. The petitioner knowing fully well that the remedy is given under the Act itself, has unnecessarily chosen to file writ petition to drag on the proceedings.

14. In fact, even in the writ petition, the learned Single Judge has very specifically stated that the first respondent is directed to complete the proceedings initiated by him, by way of the impugned notice, dated 19.01.2009, u/s 78(2) of the Hindu Religious and Charitable Endowments Act, 1959, after giving an opportunity of hearing the petitioner, the second respondent temple, as well as to the other parties concerned. It is not known why the appellant has chosen to file this appeal itself. The only reason being to squat on the property, she filed writ. If really she has the right over the property, it is always open to the petitioner to establish her right in respect of the property, in the manner known to law in the enquiry before the competent authority, wherein she would have an ample opportunity to produce documents, produce evidence and to submit the same even through a legal counsel. Under those circumstances, as rightly pointed out by the learned Single Judge, the writ petition is not at all maintainable.

15. The learned Counsel for the appellant relied upon a decision reported in State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and Others, for the proposition that if there is a bona fide dispute, summary procedure should not be imposed for evicting even from the public premises, eviction from the unauthorised occupation.

16. As stated supra since the Act contemplates specific procedure, whereby it is not a summary in nature it is an inquiry to be conducted "as far as practicable" like a suit, it cannot be treated as a summary procedure. In this

case, even though the petitioner is not able to establish anything on the title, it is always open for the petitioner to establish the same before the concerned authority after adducing evidence which cannot be done in a Writ Court. Hence, we have no hesitation in stating that the petitioner is not entitled to file Writ petition and nothing is warranted for our interference as the order passed by the learned Single Judge is correct and proper.

In the result, the Writ Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.