

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Twenty Second day of November Two Thousand Nineteen

PRESENT

THE HON'BLE MR JUSTICE M. SATHYANARAYANAN

and

THE HON'BLE MR JUSTICE N. SESHASAYEE

WMP Nos. 27258, 32698 & 32309 of 2019

IN WP.Nos. 27728, 32387 & 32053 of 2019

1 A. RADHAKRISHNAN

[PETITIONER IN WMP.NO.27258/2019]

2 T. R. RAMESH

[PETITIONER IN WMP.NO.32698/2019]

3 S. SATHYANARAYANAN

[PETITIONER IN WMP.NO.32309/2019]

Vs.

1 THE SECRETARY TO GOVERNMENT [RESPONDENTS IN WMP.NO.27258/2019]
TOURISM CULTURE AND ENDOWMENTS DEPARTMENT,
SECRETARIAT, CHENNAI -600 009

2 THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, SECRETARIAT,
CHENNAI 600 009

3 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS
DEPARTMENT, NO. 119, NUNGAMBAKKAM HIGH ROAD,
CHENNAI - 600 034

4 THE COMMISSIONER OF LAND ADMINISTRATION,
CHEPAUK, CHENNAI 600 005

1 ADDITIONAL CHIEF SECRETARY [RESPONDENTS IN WMP.NO.32698/2019]
TO GOVERNMENT, REVENUE AND DISASTER
MANAGEMENT DEPARTMENT, LAND ADMINISTRATION WING,
LA 1 (2) SECTION, GOVERNMENT OF TAMIL NADU,
FORT ST. GEORGE, CHENNAI 600 009

2 THE SECRETARY TO GOVERNMENT,
TOURISM, CULTURE AND RELIGIOUS ENDOWMENT
DEPARTMENT, GOVERNMENT OF TAMIL NADU,
FORT ST. GEORGE, CHENNAI 600 009.

3 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS
DEPARTMENT, 122, NUNGAMBAKKAM HIGH ROAD,
NUNGAMBAKKAM, CHENNAI 600 034.

1 THE SECRETARY, [RESPONDENTS IN WMP.NO. 32309/2019]
GOVERNMENT OF TAMIL NADU,
TOURISM CULTURE AND ENDOWMENTS DEPARTMENT,
SECRETARIAT, FORT ST.GEORGE, CHENNAI 600 009

2 THE SECRETARY,
GOVERNMENT OF TAMIL NADU,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
FORT ST. GEORGE, SECRETARIAT,
CHENNAI 600 009.

3 THE COMMISSIONER,
HINDU RELIGIOUS CHARITABLE ENDOWMENTS
DEPARTMENT, NO.119, NUNGAMBAKKAM HIGH ROAD,
CHENNAI 600 034.

4 THE COMMISSIONER OF LAND ADMINISTRATION,
CHEPAUK, CHENNAI 600 005.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of para 4(V) of G.O. Ms. No. 318 dated 30.08.2019 passed by the 2nd respondent (in WMP.No.27258/2019) till the disposal of this WP.No.27728/2019 and ;

(ii) to issue an order of interim stay on the operation of the impugned G.O. (Ms) No.318 dated 30/08/2019 as far as para 4 (v) dealing with temple lands, issued by Revenue and Disaster Management Department, land Administration Wing LA 1 (2), the 1st respondent herein, (in WMP.N.32698/2019) pending disposal of the WP.No.32387/2019 and;

(iii) To stay the operation of G.O.Ms. No.318 dated 30/08/2019 passed by the 2nd respondent (in WMP.No.32309/2019) pending disposal of the main WP.No.32053/2019 respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.A.RADHAKRISHNAN PART- IN-PERSON Advocate for the petitioner in all the petitions and of MR. V. JAYAPRAKASH NARAYANAN, SPECIAL GOVERNMENT PLEADER on behalf of the Respondents in all the petitions and of (*) Mr. P. SURESH and Mr. GURUPRASATH, ADVOCATE for the petitioners in WMP.No.32053 and 32698 of 2019 respectively the court made the following order:-

[Order of the Court was made by N. SESHASAYEE, J.]

Three petitions are filed for identical objective: To quash G.O.Ms.No.318 dated 30.08.2019, issued by the Revenue and

Disaster Management Department.

2. The present Miscellaneous Petitions are filed to stay a portion of the said G.O., which relates to the lands belonging to temple that are under the Administrative Control of the HR & CE Department.

3. G.O.Ms.No.318 was issued with an avowed objective of providing housing facility to the homeless encroachers of lands belonging to the Government, Local Bodies and Temples. (*)Para 4(V) of the said G.O., provides that, for the benefit of the encroachers of temple lands, the same may be regularised by issuing assignment patta to them by acquiring them for a price to be determined in terms of G.O.(Ms) No.200, dated 02.11.2018 of Department of Tourism, Culture and Religious Endowments.

4. Heard the party in WP.27728/2019, who appeared in person as well the counsel for the petitioners appearing in other two petitions. It may be mentioned that WMP.No.27258/2019 in WP.27728/2019 has been repeatedly posted to which were tagged the other two writ petitions successively as they all have a common prayer.

5. When the matter was taken up on 18.11.2019, both the party in person as well as the other counsel appearing for the petitioners brought to the notice of this Court about certain political statement made by those in the Government, promising assignment of temple lands to the encroachers thereof, and pleaded for hearing these petitions before any damage is done to their cause.

6. Mr.V. Jayaprakash Narayanan, the learned Special Government Pleader submitted that he is led by the learned Advocate General and sought some accommodation and prayed for an adjournment. Given the urgency of the matter as expressed, this Court decided to dispose these Miscellaneous Petitions filed for interim stay.

7. The submissions in support of the need for staying (*)Para 4(V) of the impugned G.O. are:

* The HR&CE Department, through its officials are enjoined with the statutory obligation for administering or preserving both the movable and immovable properties of all the temple over which it exercise control, solely for the benefit of the temples, and no other. Therefore, the Commissioner cannot deal with the properties of any religious institutions / temples for any purposes that do not confer any benefit on the OOm.

* Section 78 of the HR & CE Act has granted power to the authorities constituted under the said Act to initiate action against encroachers of the lands of religious institutions. In the context of the preambular statement in the impugned G.O., to let the encroachers to occupy the temple property without any resistance from the authorities, and the indifference or ineptitude of the authorities to invoke Sec.78 of the HR&CE Act for removing the encroachers promptly, are *prima facie*

indications that these authorities have failed the faith the legislature has reposed on them. The fact that these authorities by their continued neglect to preserve the properties of the temple by letting in the encroachers to occupy them, are in breach of their statutory duty.

- The present endeavour undertaken Vide the impugned G.O., adds insult to the injury when the Government wants to regularise the encroachments and thereby condone the abject neglect of these authorities in performing their duty in preserving the lands belonging to temples. When one would expect the Government to secure the lands of the temples to the temples, and to ensure that these lands are secured from encroachers, the Government has failed the expectations of the worshipers in legitimizing encroachment by attempting to regularize the same.

- In this regard, the Commissioner, HR & CE has issued a circular in Na.Ka.34111/2013/M3 dated 16.11.2018, to all Joint Commissioners, Deputy Commissioners and Assistant Commissioners working under him, that, permitting sale of the temple property under Sec.34 of the HR & CE Act for any public purposes or for purposes associated with any of the Departments of the Government, or their institutions for a price to be determined in terms of G.O.(Ms) No.200, dated 02.11.2018 of Department of Tourism, Culture and Religious Endowments. However, Sec.34 has granted power to the Commissioner of HR & CE, for sale of the temple-property, only when such sale is necessary and beneficial to the temple concerned. In other words, any sale within the meaning of Sec.34, cannot include sale of any temple property for any public purpose.

Reliance was placed on certain observations of this Court made in *P.Lakshmanan v. Superintendent of Police* [2018(3) CTC 493] and *V.Muthusamy v. The Joint Commissioner, HR&CE, Palayankottai, Tirumelveli District & others* [2018-1-Writ L.R.530].

8. In response, the learned Government Pleader submitted that the temple lands are not given free of cost, but in terms of G.O.(Ms) No.200, dated 02.11.2018, referred to above.

9.1 After weighing rival submissions, this Court finds that *prima facie*, there is merit in the submissions made in aid of an Order for stay of (*)Para 4(V) of the impugned G.O. Any attempt to regularise encroachers, and sanctifying encroachment is more likely to denude the temples of their properties, and any Act that involves loss of properties of the temple for purposes other than those intended for the benefit or necessity of the temple, may well contravene the spirit behind Sec.34 of the Act. And this process would also more likely to render Sec.78 of the HR & CE Act otiose.

9.2 This apart, even if (*)Para 4(V) of the impugned G.O. is considered on its face value, it shall not be put to use till a biometric evaluation of the encroachers of all the temple lands across the State, are undertaken and completed. Thus, a *prima*

facie case is made out for grant of interim orders.

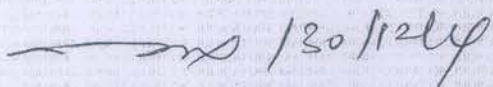
10. Interim stay of (*)Para 4(V) G.O. (Ms) No.318 dated 30.08.2019, issued by the Revenue and Disaster Management Department, in so far as temple lands are concerned, until further orders.

-sd/-

22/11/2019

(*) [BEING MENTIONED AS PER ORDER OF THIS COURT DATED 13/12/2019 BY MSNJ and NSSJ REGARDING IN THE ORDER PORTION]

/ TRUE COPY /


Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SECRETARY TO GOVERNMENT
TOURISM CULTURE AND ENDOWMENTS DEPARTMENT,
SECRETARIAT, CHENNAI - 600 009

2 THE SECRETARY TO GOVERNMENT
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GOVERNMENT OF TAMIL NADU,
FORT ST. GEORGE, CHENNAI 600 009.

C.C. to M/S.A.RADHAKRISHNAN PARTY IN P Advocate on payment of necessary charges

The Government Advocate, High Court, Madras - 104.

Order

in

WMP Nos.27258, 32698 & 32309 of 2019

IN WP.Nos. 27728, 32387 & 32053 of 2019

Date :22/11/2019

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SM/28/11/2019



HIGH COURT OF JUDICATURE

MADRAS

S. R. No. 14795

Carbon Copy application
made 13/12/19

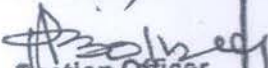
Application Returned.....200

Application Represented.....200

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30/12/19


Section Officer
C.C.C. Section