

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-7-2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.521 of 2015
M.P.Nos.1 & 2 of 2015

D.S.Narayanan

Appellant

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
 2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
 3. The Deputy Commissioner/Executive Officer,
Arul Migu Parthasarathy Swamy Temple,
Triplicane,
Chennai - 600 005.
- .. Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent as against the order dated 18.2.2015 passed in W.P.No.4241 of 2015.

Writ Petition filed under section 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records pertaining to the impugned order in Naka No.149/2009/A6 dated 26.01.2015 issued by the 3rd respondent and quash the same as illegal, without jurisdiction and untravirous and direct the respondents to renew the lease in respect of shop Door No.1, South Mada Street, Triplicane, Chennai - 600 005 in favour of the petitioner.

For appellants : Mr.D.Rajagopal
For Respondents 1 & 2 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader
For 3rd Respondent : Mr.R.Parthasarathy

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Assailing the order dated 18th February, 2015 passed in W.P.No.4241 of 2015, the writ petitioner has come up with this appeal.

2. The learned counsel appearing for the appellant/writ petitioner submits that the father of the appellant viz., late D.Sreeramulu Chetty was granted lease of Anaikatti Mantapam of Sri Parthasarathy Swami Devasthanam, Triplicane, Chennai, vide letter dated 19th April, 1948 and he continued in possession of the lease during his lifetime and thereafter on the death of appellant's father in 1988. The appellant made a representation on 25th November, 1988 for continuation of tenancy in his favour. The appellant continued to send several representations, however they did not yield any response. Subsequently, by letter dated 12th January, 2005 the lease deed was terminated. The appellant, being son and legal heir of the original lessee, continued to pay taxes and informed about the death of his father. However, without taking note of the subsequent development, termination order was passed and the appellant has been treated as encroacher, as the tenancy was not attorned in his favour after the demise of his father.

3 Mr.D.Rajagopal, learned counsel appearing for the appellant submits that in the event the appellant is held as encroacher, though he has continued in possession on the strength of payment made by him after the death of his father, he cannot be removed without taking recourse to the provisions of Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short "Act"). In the case on hand, the impugned notice dated 26th January, 2015 was issued by the Deputy Commissioner/Executive Officer of the third respondent without authority of law as under the Act, the jurisdictional Joint Commissioner alone is competent to issue notice on the alleged encroacher. Thus, the impugned notice deserves to be quashed being without authority of law.

4 On the other hand, Mr.R.Parthasarathy, learned counsel appearing for third respondent and Mr.P.S.Sivashanmugasundaram,

learned Special Government Pleader appearing for respondents 1 and 2 submit that before any action is taken for removal of encroachment, proper statutory notice under authority of Joint Commissioner will be issued, affording opportunity of hearing to the appellant/writ petitioner as required under law.

5 We have examined the aforestated submissions advanced by the learned counsel for the parties and perused the pleadings and documents appended thereto.

6 Section 78 of the Act prescribes for removal of encroachment by any person on land or building belonging to charitable or religious institution or endowment. Under sub-section (1), the Assistant Commissioner is required to make a report together with all particulars to the Joint commissioner having jurisdiction over the division, in which the religious institution or endowment is situated. On perusal of the report, the Joint Commissioner exercising power under sub-section (2), is required to cause to serve upon the encroacher a notice specifying all particulars of the encroachment and calling upon him to show cause before a certain date, why an order requiring to remove the encroachment before the date specified on the notice be not made.

7 Under the given circumstances, where the respondents have decided to issue a fresh notice as per the provisions of law, we are hesitant to consider the dispute, at this stage, on merit, as it is not necessary.

8 Resultantly, we dispose of the writ appeal granting liberty to the respondents to issue a proper notice as contemplated under Section 78 of the Act and take appropriate action in accordance with law and on its own merit. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

True Copy सत्यमेव जयते

Sub Assistant Registrar

vr/vvk

To

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

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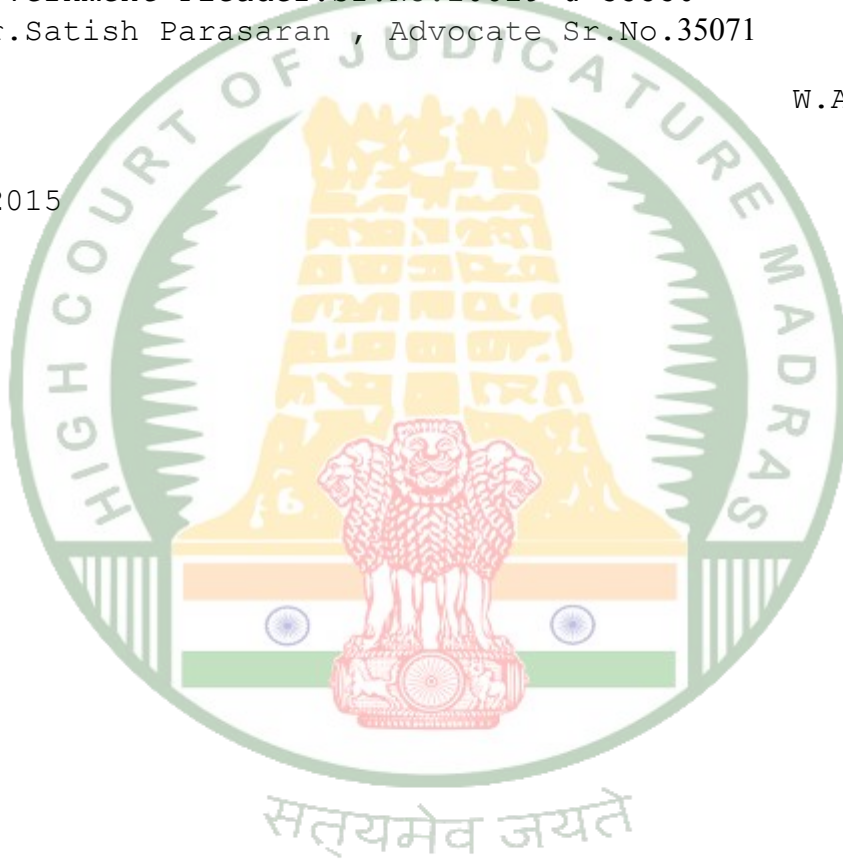
2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

3.The Deputy Commissioner/Executive Officer,
Arul Migu Parthasarathy Swamy Temple,
Triplicane,
Chennai - 600 005.

1 cc to Mr. D.Rajagopal, Advocate Sr.No.35519
2 cc to Government Pleader.Sr.No.20829 & 35550
1 cc to Mr.Satish Parasaran , Advocate Sr.No.35071

W.A. No.521 of 2015

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