

In the High Court of Judicature at Madras

Dated: 23.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.11340 of 2015
and M.P.No.1 of 2015

Raju

.. Petitioner

Vs.

- 1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Board,
Villupuram, Villupuram District.
- 2.Arul Mighu Siva Subramaniasamy Thirukoil
Melapattampakkam Village,
Panrutti,
Cuddalore District.
Rep. by its Trustee
Dr.Chandra Sekaran
- 3.Vaidhiyanathan
- 4.The Assistant Commissioner,
Hindu Religious Endowment Board,
Cuddalore, Cuddalore District.
- 5.The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records of the impugned order made in br/K/e/f/vz;/5841/2014/,2 dated 15.10.2014 issued by the first respondent and to quash the same is illegal and consequently, direct the Second Respondent to hand over the possession of the Shop No.6 (Old No.5) situated in Melpattampakkam comprised in S.No.335 to the Petitioner.

For Petitioner : Mr.K.Arun Pradeesh
for M/s.K.Gandhi Kumar

For Respondent : Mr.P.S.Sivashanmugasundaram
Nos.1, 4 & 5 Special Government Pleader

For Respondent-2 : Mr.K.A.Ravindran

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has filed the present Writ Petition seeking a direction to call for the records of the impugned order, made in br/K/e/f/vz;/5841/2014/,2 dated 15.10.2014, issued by the First Respondent and to quash the same as an illegal one. Further, he has sought for passing of a consequential order by this Court in directing the Second Respondent to hand over the possession of the Shop No.6 (Old No.5) situated in Melpattampakkam comprised in S.No.335 to him.

A Resume of Facts:-

2.The Second Respondent/Arul Mighu Siva Subramaniasamy Thirukoil is having 12 shops situated in Melapattampakam Village, Cuddalore District. The Petitioner's father late Anaikutti Achari was a tenant under the Second Respondent in the shop bearing (Old No.5) New No.6 from the year 1992 onwards and doing business along with him. While that being so, on 10.10.2004, the Second Respondent entered into the rental agreement with his father and also with other shop owners by determining monthly rent at Rs.350/-. On behalf of the Second Respondent/Temple, one Chandrasekaran, Trustee is collecting rent from all the tenants. In fact, the Second Respondent's temple constituted a Committee consisting of five members for collecting and fixing the fare rent. But the trustee Chandrasekaran himself increased the rent without consent and knowledge of the five Members' Committee as per his wish and will. When dispute arose, his father questioned the illegal activity of the Second Respondent/Temple during the month of March 2012.

3.The stand of the Petitioner is that the Second Respondent/Temple voluntarily increased the rent from Rs.350/- to Rs.850/- to him and also to other shop owners. At that time, all the shop owners are forced to accept the same. Inasmuch as his father has no option, he also agreed for the rent fixed by the Second Respondent/Temple and also asked to execute the fresh tenancy agreement. But the Second Respondent/Temple does not executed the tenancy agreement in favour of his father but executed a new tenancy agreement to other shop owners. Indeed, the Second Respondent also refused to receive the rent from his father and therefore, on 16.03.2012, his father paid the rent through demand draft to the Second Respondent/Temple and the same was received by it. Thereafter, it was returned by the Temple. As such, his father deposited the rent in the Court. But the Second Respondent/Temple without following any legal proceedings, tried to evict his father by engaging the hooligans and his father with great difficulty, prevented the said illegal activity.

4.Added further, the plea of the Petitioner is that his father filed a suit in O.S.No.52 of 201,2 on the file of the Learned District Munsif, Panruti against the Second Respondent/Temple by seeking a relief of bare injunction restraining the temple authorities, its men, agents, servants or any other person claiming under it from evicting his father from the suit property without following due process of law. In the said suit proceedings, the Temple authorities filed a written statement through its Trustee Dr.Chandrasekaran on 17.07.2013. In the said written statement, the Second Respondent admitted that his father was a tenant and also paid the rent but however, the Second Respondent stated that his father had sub let the shop to one Santhanam and the said averment is totally false, besides the same is to be proved in the manner known to Law by adducing evidence.

5.That apart, even though the suit is pending, the Second Respondent/Temple filed a false complaint stating that as if his father has encroached the subject matter of the property instead of defending the case by hook or crook method, simply lodged a complaint before the First Respondent to evict his father from the shop bearing (Old No.5) New No.6 and the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Board, Villupuram without proper enquiry and also without considering the facts that the Civil Suit is pending before the Competent Court, simply passed an order on 15.10.2014 stating that within 15 days his father should vacate from the said place, if not, they would take action against his father and Vaithianathan. Moreover, it was mentioned that steps would be taken to evict his father from the premises under Section 79(1) of the Hindu Religious and Charitable Endowment Act, 1959, with the help of the Fifth Respondent.

6.It transpires that as against the order of the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Board, Villupuram, the Petitioner's father filed a Writ Petition before this Court in W.P.SR.120331 of 2014 dated 11.11.2014 which was returned for compliance of certain defects and after rectifying the defects, it was represented on 20.11.2014 and once again, it was returned for production to translation copies. In the meanwhile, his father died on 28.12.2014 and after the demise of his father, the Fourth Respondent also took possession of the shop and thereafter, he came to know that his father had filed a writ petition against the order of the First Respondent after making enquiry with the Advocate who look after his father's case. He had informed him to produce the death certificate and legal heirship certificate and it took some time for him to receive the certificates and as such, he could not file the writ petition immediately.

The Petitioner's Contentions:-

7.The Learned counsel for the Petitioner submits that the order of the First Respondent dated 15.10.2014 is an illegal, arbitrary and unsustainable one either in law or in facts.

8.The Learned counsel for the Petitioner urges before this Court that the First Respondent/Hindu Religious and Charitable Endowment Board, Villupuram ought to have considered that the suit in O.S.No.52 of 2012 is pending on the file of the Learned District Munsif, Panruti and as such, ought not to have rejected the Petitioner's petition and therefore, the order of the First Respondent dated 15.10.2014 is liable to be set aside.

9.The Learned counsel for the Petitioner vehemently submits that the First Respondent had taken a Civil Court jurisdiction in his hand and decided the matter to the effect that the Petitioner is an encroacher and the same is clearly unsustainable one in the eye of law.

10.The contention of the Learned counsel for the Petitioner is that the First Respondent had failed to appreciate that in the legal notice dated 09.02.2012, the Petitioner does not admit anything but made a statement that one Dhandapani had sublet his shop to somebody which does not mean that the Petitioner admitted that he had also sublet his shop and therefore, the impugned order of the First Respondent dated 15.10.2014 is liable to be set aside in the interest of justice.

11.The Learned counsel for the Petitioner proceeds to put forward an argument that the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Board, Villupuram had failed to consider the fact that according to the Respondent/Petitioner's case, the alleged Santhanam had requested to allot the shop to him since he was a tenant from 2004 but no record was produced to that effect. Hence, the said Santhanam has been used as an instrument by the trustee of the temple only to evict the Petitioner from the shop.

The Submissions on the side of the Respondents 1, 2, 4 & 5:

12.The Learned Special Government Pleader appearing for the Respondents 1, 4 & 5 contends that as against the order/proceedings dated 15.10.2014 passed by the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Board, Villupuram, the Petitioner has got an inbuilt, efficacious and alternative remedy prescribed under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, by way of preferring an Appeal/Revision as the case may be and as such, the present Writ Petition filed by the Petitioner is per se not maintainable in the eye of law.

Discussions and Findings:-

13.In the instant case on hand, there is no dispute that the Petitioner's father and one Viathianathan were issued with a final order on 15.10.2014 requiring them to remove the encroachment in respect of 200 sq. ft. extent of shop at Survey No.335 (Shop No.6) because of the reason that the place/land belong to the Second Respondent/Temple. Moreover, in the impugned order passed by the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Board, Villupuram dated 15.10.2014, clearly points out that Petitioner's father (since deceased Anaikutti Achari) and

Vaithianathan, S/o.Krishnamurthy Sengunthar presently are not lessee. The Petitioner filed the present Writ Petition in view of the fact that his father Anaikutti Achari expired on 28.12.2014.

14.It comes to be known that the Petitioner's father Anaikutti Achari (during his life time) filed O.S.No.52 of 2012 for a relief of bare injunction and the same is pending. At this stage, it is to be pertinently pointed out that Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, speaks of 'Bar of suits in respect of administration or management of religious institutions, etc., under Section 9 of the Civil Procedure Code, Courts cannot entertain a suit which is not of a civil nature. By Sections 5 and 108 of the Act, the jurisdiction which would otherwise having vested in the Civil Court under Section 9 of the Civil Procedure Code in respect of public religious and charitable Trust have been taken away and vested in the authorities constituted under the Act as per decision of the Hon'ble Supreme Court in A.V.S.P. Chettiar & Sons Vs. T.Palaniswami Gounder reported in A.I.R. 2002 SC 2171. In reality, the matters not pertaining to administration and governance of religious institutions are triable by Civil Courts. A dispute among rival parties as to the conduct of utsav/utsavam in Temples would squarely fall within an ambit of Civil Court jurisdictions.

15.Apart from the above, Section 79 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, refers to 'Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner' and furthermore, Section 80 of the Act related to 'Eviction of lessees, licensees or mortgages with possession in areas'. Also, Section 81 of the Act refers to 'Appeals being projected against the orders of Joint Commissioner or Deputy Commissioner under Section 80 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959.

16.A cursory perusal of the contents of plaint filed by the Petitioner's father in O.S.No.52 of 2012 on the file of the Learned District Munsif, Panruti indicates that the Petitioner's father (since deceased) during his life time, in the cause of action paragraph in the said suit, had averred that the plaintiff and the defendant had entered into rent deed with regard to the suit shop for monthly rent of Rs.350/- for a period of two years. After lapse of rental period, the defendant/temple had permitted the plaintiff for continuing the tenancy in regard to the suit property by way of attorning the tenancy etc.

17.Be that as it may, on a careful analysis of respective contentions and in view of the divergent stand taken by the parties in the subject matter in issue, this Court, in the interest of Equity, Fair Play, Good Conscience and even as a matter of Prudence directs the Petitioner (being the son of the deceased father Anaikutti Achari) to assail the correctness of the order/proceedings in Na.Ka.No.5841/2014/E2 dated 15.10.2014 before the competent forum by filing a Revision/Appeal under the authority constituted under the Tamil Nadu Hindu Religious and Charitable

Endowment Act, 1959 within a period of two weeks from the date of receipt of a copy of this order. Further, liberty is granted by this Court to the Petitioner and other authorities of Hindu Religious and Charitable Endowment Board to raise all factual and legal pleas in the Revision/Appeal to be filed by the Petitioner, concerning the subject matter in issue. Also, the Petitioner is entitled to project a stay application/petition in accordance with Law and and if he files necessary Interlocutory Application in this regard, then, the competent authority who is hearing the application/petition is directed to consider it and to dispose the same in the manner known to Law and in accordance with Law within a period of two weeks. Thereafter, the Competent Authority of the Tamil Nadu Hindu Religious and Charitable Endowment Board who is hearing the Revision/Appeal is directed to dispose of the Revision/Appeal to be filed by the Petitioner under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, within a period of three weeks from the date of receipt of a copy of this order, of course, after providing necessary opportunities to the respective parties by adhering to the Principles of Natural Justice in true letter and spirit.

18. With the above observations and directions, the Writ Petition stands disposed of. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Board,
Villupuram, Villupuram District.
2. The Assistant Commissioner,
Hindu Religious Endowment Board,
Cuddalore, Cuddalore District.
3. The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.

+1cc to Special Government Pleader, Advocate, S.R.No.31272

+1cc to the Government Pleader, S.R.No.30862

RSI (CO)
EU(14/07/2015)

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and M.P.No.1 of 2015