

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.16091 & 16092 of 2015
& M.P.Nos.1, 1, 2 & 2 of 2015

D.Selvi ... Petitioner in W.P.16091/2015

1. V.Nagarajan
S/o C.Venugopal Mudaliar

2. V.Chandrasekaran
S/o C.Venugopal Mudaliar
Represented by their Power Agent
D.Selvi, W/o R.N.Durai,
Q/6, Lloyds Colony, Royapettah,
Chennai-600 014. ... Petitioners in W.P.16092/2015

Vs.

1.The Secretary,
Government of Tamil Nadu,
Tourism, Culture and Religious Endowments
Department, Fort St. George,
Chennai-9.

2.The Commissioner, HR & CE.,
Nungambakkam, Chennai-34.

3.The Joint Commissioner/Executive Officer,
Arulmighu Arunachaleswarar Thirukoil,
Thiruvannamalai-606 601.

4.The Joint Commissioner, Administration,
HR & CE Department,
Villupuram Post and District. .. Respondents in both W.Ps.

Petitions are filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the undated notice of the third respondent, quash the same and direct the respondents not to interfere with the peaceful possession of the petitioners' property situate in Old No.339, Lloyds Road, Royapettach, Chennai-14, and Old No.340, New No.90, Avvai Shanmugam Salai, Royapettach, Chennai-14 respectively, without following due process of law.

For Petitioner
in both WPs.

.. Mr.R.Subramanian

For Respondents
in both WPs.

.. Mr.P.Sanjay Gandhi,
Additional Government Pleader for
R1, R2 & R4

Mr.N.Sathiamoorthy for R3

COMMON ORDER

By consent, the main writ petitions themselves have been taken up for final disposal. As the issues involved in both the writ petitions are one and the same, they have been taken up together and disposed of by way of a common order.

2.About 1000 sq.ft., of vacant land comprised in Survey No.794 bearing No.340 Lloyds Road, Royapettach, Chennai-600 014, and about 1109 sq.ft., of land situated in the very same place have been leased out by the HR & CE Department in favour of one Venugopal and Madurai Mudaliar, being brothers. It appears that both of them have put up construction without the consent of the temple authorities or the official respondents, which led to the filing of a suit in O.S No. 1439 of 1950. The said suit ended in compromise by a decree dated 04.11.1952. Subsequently, a settlement deed was executed followed by sale deed and another settlement deed. Suffice it is to state that the petitioners have traced their title to the superstructure through all these documents while the ownership of the land belong to the temple.

3. The respondents/Department issued a notice to Venugopal and Madurai Mudaliar, since deceased, calling upon them to pay the arrears as on 31.12.2014 and surrender vacant possession based upon the allegation that they sub-leased the property. On their evasion to respond, termination of lease was effected. In pursuant to the further notice issued on 27.04.2015, an attempt was made to take possession. Challenging the said notices, the petitioners have come forward with these writ petitions.

4. Thereafter, it appears that the temple has taken possession of the land in dispute. This Court has passed an interim order putting the petitioners on terms. A challenge was made before the Division Bench of this Court by the temple, in which, a direction was issued to dispose of the writ petitions with some observation. Therefore, these writ petitions are before me.

5. Mr. R.Subramanian, learned counsel appearing for the petitioners, submitted that the construction was put up long time back. The documents filed would show that what has been sold is only superstructure. Even assuming that the petitioners are

encroachers, then due process under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter referred to as "The Act") has to be resorted to. The allegation that the said land was handed over to one J.Jabin Aasir, for the purpose of conducting Pazhamudhir Solai, is not correct.

6. Per contra, the learned counsel appearing for the third respondent, including the learned Additional Government Pleader appearing for respondents 1, 2 and 4, submitted that at the time of first inspection, the land was kept vacant. Thereafter, a shop was put up in the name and style of "Pazhamuthir Solai" and it was functioning. The construction has been put up unauthorisedly by way of a huge building. Therefore, the statement that it was put up decades ago is not correct. Suffice it is to state that no prior permission was obtained for construction neither from the temple authorities nor from the official respondents. The entire alienations are hit by Section 34 of the Act. There is a huge arrears. The fair rent fixed for the premises in question is Rs.75,000/- per month. The property is situated in a commercially viable place and it is likely to fetch substantial amount as rent. The petitioners do not have a legal right. Being encroachers, the provision under Section 78 of the Act is not required to be followed. Therefore, no interference is required.

7. Except the narration of the above, this Court is not willing to go into the facts any further, since the petitioners being encroacher, the provision of Section 78 of the Act will have to be followed. There are atleast some documents to show that the superstructure put up by the petitioners have been in existence in the premises that belong to the temple for quite number of years. Even, in a case where a person is found to be in possession as an encroacher, then Section 78 of the Act has to be necessarily followed. In other words, the temple cannot take unilateral action on its own. Therefore, this Court is of the considered view that this is a fit case where the fourth respondent will have to be directed to initiate action under Section 78 of the Act.

8. Incidentally, the question for consideration is the arrangement that is required to be made till appropriate orders are to be passed by the fourth respondent. The total amount due in both the cases is to the tune of Rs.13,44,920/-. The petitioners had complied with the interim order passed by this Court at the time of admission of the writ petitions. Considering the facts and circumstances of the case, this Court is inclined to direct the respondents to permit the petitioners to be in occupation till appropriate orders are passed by the fourth respondent in exercise of power under Section 78 of the Act. This can be done subject to the condition that the petitioners pay another sum of Rs.4,00,000/- (Rupees four lakhs only) within a period of six weeks from the date of receipt of a copy of this order apart from paying a sum of Rs.25,000/- per month, in partial modification of the sum of

Rs.15,000/- directed to be paid by this Court by way of interim arrangement towards rent. The petitioners are directed to co-operate with the proceedings that would be initiated by the respondents. The amount indicated above is being fixed taking into account the interim order already passed and also fair rent fixed by the department.

9. Accordingly, the writ petitions stand disposed of by directing the fourth respondent to initiate and complete the proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act within a period of four months from the date of receipt of a copy of this order. In the mean while, the petitioners are directed to pay the rent as indicated above to the temple on or before the first week of every month. The third respondent-temple is directed to remove the seal forthwith. If the petitioners do not comply with the condition, it is well open to the temple to take possession with the help of the police. The petitioners are directed to co-operate with the proceedings that would be initiated by the fourth respondent under Section 78 of the Act. No costs. Consequently, connected miscellaneous petitions are closed.

raa

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary,
Government of Tamil Nadu,
Tourism, Culture and Religious Endowments
Department, Fort St. George, Chennai-9.
 - 2.The Commissioner, HR & CE.,
Nungambakkam, Chennai-34.
 - 3.The Joint Commissioner/Executive Officer,
Arulmighu Arunachaleswarar Thirukoil,
Thiruvannamalai-606 601.
 - 4.The Joint Commissioner, Administration,
HR & CE Department, Villupuram Post and District.
- + 2 ccs to Mr.R.Subramanian, Advocate SR 52111 & 52112
- + 1 cc to Mr.N.Sathiamoorthy, Advocate SR 52226

ggk(co)
prk25/9

W.P.Nos.16091 & 16092 of 2015