

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.07.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.20869 of 2015

&

M.P.Nos.1 & 2 of 2015

Elumalai

.. Petitioner

Vs.

1. The Commissioner

Hindu Religious & Charitable Department
No.119, Uthamar Gandhi Road
Nungambakkam
Chennai - 600 034

2. The Joint Commissioner

Hindu Religious & Charitable Department
Salem - 636 001

3. The Assistant Commissioner/ Executive Officer

Arulmigu Sugavaneshwarar Swamy Thirukovil
Salem Town Taluk
Salem - 636 001

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned notice of the 3rd respondent dated 08.07.2015 and to quash the same in respect of the petitioner's house is concerned and consequently direct the respondents to regularise petitioner's tenancy with the 3rd respondent temple forthwith.

For Petitioner : Mr.L.Chandrakumar
for Mr.N.Anand

For Respondents : Mr.M.L.Mahendran
Government Advocate (HR & CE)

O R D E R

By consent, the writ petition itself is taken up for final disposal.

2. The petitioner claims that he is a resident of Door No.3/122, Alagapuram Pudhur, Kutta Street, Salem- 636 016 for so many years and based on his possession, he has been issued with Ration Card, gas card, electricity service connection, voter identification card, house tax receipt, patta and other statutory benefits. The petitioner would concede that the said property is

situated in S.No.126/12 and other survey numbers belong to the third respondent.

3. It is stated by the petitioner that the third respondent has filed an application under Section 78(1) of the Hindu Religious and Charitable Endowment Act, 1959 (in short HR & CE Act) on the pretext that the petitioner is an encroacher. The said petition in M.P.No.23 of 2005 was ordered on 09.12.2013 by the second respondent. The petitioner, in the interregnum, has also submitted a representation praying for regularisation of his possession in terms of G.O.Ms.No.340 (Tamil Nadu Development, Endowments and News (A.Ni.4-2) Department dated 06.08.2007, but it was not taken into consideration by the second respondent, who ordered the said petition. The petitioner stated that aggrieved by the said order, he filed a revision before the first respondent and though the revision petition is pending before the first respondent, the third respondent has taken immediate and urgent steps to dispossess the petitioner. Apprehending the same, the petitioner came forward to file this writ petition.

4. Mr.L.Chandrakumar, the learned counsel appearing for the petitioner has drawn the attention of this Court to the typed-set of documents and submitted that even assuming that the petitioner is an encroacher, he has sought for the benefits in terms of G.O.Ms.No.340 (Tamil Nadu Development, Endowments and News (A.Ni.4-2) Department dated 06.08.2007 by submitting a representation and third respondent neither waited for the disposal of the representation by the first respondent nor for the disposal of the revision and seeks to dispossess the petitioner and prays for appropriate order.

5. Per contra, Mr.L.Mahendran, the learned Government Advocate, who accepts notice on behalf of respondents, strongly opposes this writ petition by stating that the petitioner and others are rank encroachers and only after affording reasonable opportunities to the petitioner, the second respondent has passed the order on 09.12.2013 under Section 78(1) of the Hindu Religious and Charitable Endowment Act, 1959 and though the petitioner claims that he has filed revision, on instructions, would submit that no revision is pending on the file of the first respondent and prays for dismissal of the writ petition. It is also brought to the notice of this Court by the learned Government Advocate that the trustee of the temple has filed W.P.No.20348 of 2015 before this Court seeking police protection and the Hon'ble Portfolio Judge dealing with writ petitions (criminal cases) has passed the order today, granting police protection to the third respondent.

6. This Court carefully considered the rival submissions and perused the materials placed before this Court.

7. It is the specific case of the petitioner that he has submitted a representation to the first respondent seeking regularisation of his possession in terms of G.O.Ms.No.340 (Tamil

Nadu Development, Endowments and Information (A.Ni.4-2) Department dated 06.08.2007 and also filed a revision. However, the learned Government Advocate, on instructions, would submit that the revision petition said to have been filed by the petitioner is not pending on the file of the first respondent and he does not know the fate of the revision filed by the petitioner seeking regularisation.

8. This Court, taking into consideration the above facts and circumstances and the fact that the third respondent is taking immediate steps to dispossess the petitioner, is disposing of this writ petitioner by permitting the petitioner to submit a revision under Section 21 of the Hindu Religious and Charitable Endowment Act, 1959 within a period of two weeks from the date of receipt of a copy of this order to the first respondent along with a petition for stay and on receipt of the same, the first respondent shall entertain the revision as well as the petition for stay, if the papers are otherwise in order without putting the issue on limitation and pass orders either in the stay petition or in the main revision within a period of eight weeks from the date of receipt of the said revision petition. Till then, both the parties shall maintain status-quo as exists today. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

gpa
To

1. The Commissioner
Hindu Religious & Charitable Department
No.119, Uthamar Gandhi Road
Nungambakkam
Chennai - 600 034

2. The Joint Commissioner
Hindu Religious & Charitable Department
Salem - 636 001

3. The Assistant Commissioner/ Executive Officer
Arulmigu Sugavaneshwarar Swamy Thirukovil
Salem Town Taluk
Salem - 636 001

1 cc to Mr.N.Anand , Advocate Sr.No.35067
1 cc to Government Pleader Sr.No.35165

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rv (coO)

pmk 13.7.2015

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