

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.25894 of 2015

and

M.P.No.1 of 2015

L.Deivasigamani (alias) Sigamani ... Petitioner

Vs

1.State of Tamil Nadu,
rep.by its Secretary to Government,
Tourism, Culture, Religious and
Endowments Department,
Secretariat, Chennai-600 009.

2.Joint Commissioner,
Hindu Religious & Charitable,
Endowments Department,
Nungambakkam,
Chennai-600 034.

3.Joint Commissioner/Executive Officer,
Arulmigu Arunachaleswarar Thirukoil,
Thiruvannamalai,
Thiruvannamalai District.

4.Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Thiruvannamalai,
Thiruvannamalai District.

...Respondents

Writ petition filed under 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.No.13407/2014 dated 05.05.2015 and to quash the same and direct the respondents to transfer the lease in favour of the petitioner in respect of the property in Survey No.794, D.No.68, V.M.Street, Royapet, Chennai-14, measuring as extent of 2126 sq.ft.

For Petitioner

: Mr.C.Selvaraj, Sr. Counsel
for Mr.C.Kalaichelvan

For Respondents : Mr.P.Sanjay Gandhi,
Addl. Govt. Pleader for R1, R2 & R4
Mr.Sriram for R3

ORDER

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

2.This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to quash the order of the second respondent dated 05.05.2015, and to direct the respondents to transfer the lease in favour of the petitioner in respect of the property in question.

3.It is the case of the petitioner that the Trust, viz., Saiva Muthiah Muthaliar Garden Trust was owning a vast extent of land, which were given in lease to various persons and they were allowed to put up superstructure on the said lands, at their cost. One Mr.Vedachala Naicker was one such lessee and a piece of vacant site measuring an extent of 2126 sq.ft was leased out to him and thereafter, he has also put up superstructure on the said land and was paying rent to the Trust. Subsequently, the Trust handed over the properties to the third respondent/Arulmigu Arunachaleswarar Thirukoil, Thiruvannamalai. The said Vedachala Naicker was also recognised by the third respondent temple, as a lessee.

4.It is also the case of the petitioner that the said Vedachala Naicker partitioned his properties, and the petitioner, being the grandson of the said Vedachala Naicker, got the property in question and he has been paying the rent to the third respondent, regularly. While so, at the instigation of rivals, the Executive Officer of the Temple, started to take action under Section 78 of the HR & CE Act and he has also given a police complaint and filed a suit in O.S.No.3633 of 2014, before the XIII Assistant City Civil Court, Chennai, for permanent injunction and has also obtained an injunction, in the interlocutory application and the suit is pending.

5.It is also stated that all of a sudden, the second respondent issued a notice dated 31.12.2014, for which, the petitioner has also submitted his reply. Subsequently, he has also appeared for enquiry on several hearings. Since the third respondent demanded a sum of Rs.13,06,652/- towards arrears of rent, the petitioner has remitted a sum of Rs.55,050/- (calculated at the rate of Rs.215/- per month from 1995 to May, 2005), by way of demand draft. While so, the impugned order dated 05.05.2015, which was served on the petitioner on 30.07.2015, came to be passed by the second respondent, under Section 79(1) of the HR & CE Act, giving 15 days time to the petitioner, to vacate and hand over possession, driving the petitioner to approach this Court, by way of writ petition.

6. Heard Mr.C.Selvaraj, learned senior counsel appearing for the petitioner and Mr.P.Sanjay Gandhi, learned Additional Government Pleader, who takes notice on behalf of respondents 1 and 2 and Mr.Sriram, learned counsel who takes notice on behalf of the third respondent.

7. The learned Additional Government Pleader submitted that the temple administration has taken action to evict all the encroachers and the petitioner is one among them.

8. Learned senior counsel appearing for the petitioner submitted that the grandfather of the petitioner was allotted a vacant site for rent in the year 1947, who put up a superstructure in the said land and after his demise, the petitioner continues to be in occupation of the same and as such, the family members of the petitioner are in occupation of the property in question, for decades. The learned senior counsel would further submit that the petitioner cannot be treated as an encroacher and despite repeated requests made by the petitioner, the details of arrears of rent have not been furnished.

9. This Court is not inclined to go into the merits of the case. At the same time, taking into consideration the factual position and also the submission of the learned Additional Government Pleader that the petitioner is in arrears of more than Rs.14 lakhs, in the interest of justice, the petitioner is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the second respondent, within a period of six weeks from the date of receipt of a copy of this order and also make an application before the Commissioner, Hindu Religious and Charitable Endowment Department, Chennai, under Section 21 of the Hindu Religious and Charitable Endowments Act, for appropriate orders with regard to regularisation of the allotment or otherwise. On such payment as well as on presentation of an application, the Commissioner, Hindu Religious and Charitable Endowment Department, Chennai, is directed to consider the said application and pass orders on merits and in accordance with law, as expeditiously as possible, after affording due opportunity to the petitioner.

10. The impugned order shall be kept in abeyance for a period of six weeks and if the petitioner fails to comply with the conditions stated above, it is open to the respondents to proceed with eviction.

11. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Secretary to Government,
Tourism, Culture, Religious and
Endowments Department,
Secretariat, Chennai-600 009.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowments Department,
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Endowments Department,
Thiruvannamalai,
Thiruvannamalai District.

1 cc to M/s.A.S.Kailasasm & Associates , Advocate Sr.No.49232

2 cc to Mr. C.Kalaichelvan, Advocate Sr.No.44239

1 cc to Government Pleader.Sr.No.44845

nm(co)
pmk.8.9.2015

W.P.No.25894 of 2015

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