

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.No.26801 of 2015
and MP.No.1 of 2015

D.Ravichandran

... Petitioner

Vs

1 The Commissioner,
H.R. & C.E. Department,
119, Mahatma Gandhi Road,
Chennai-34.

2 The Joint Commissioner,
H.R. & C.E. Department,
119, Mahatma Gandhi Road,
Chennai-34.

3 The Executive Officer,
Arulmigu Agatheswarar Temple,
Villivakkam, Chennai-49.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to remove lock and seal and direct the respondents not to interfere with the peaceful possession of the building bearing Door No.25/A situated at Madras - Tiruvellore High Road, Villivakkam without following due process of law.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.K.V.Dhanapalan,
Additional Government Pleader,

O R D E R

Seeking to remove the lock and seal and put the petitioner back in possession of the building bearing door No.25/A situated at Madras- Tiruvellore High Road, Villivakkam, the present Writ Petition has been filed.

2. The facts governing the case are hereunder. Originally, the property was leased out to one person by name Swaminathan Mudaliyar. The petitioner's father is said to have purchased the lease hold right from the original lessee. The rent

was fixed thereafter, in the name of the petitioner's father. As the petitioner's father was not paying the rent including the arrears, proceedings were initiated. After due notice, the lease granted in favour of the petitioner's father was terminated, with effect from 15.08.2008.

3. The termination order was followed by the proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments [TNHR&CE] Act. Notices were issued to the petitioner under Section 78[2], which was duly acknowledged by him. He also participated in the proceedings before the respondent No.2. It was done so, in view of the fact that the petitioner's father died on 01.03.1994. The petitioner participated in the proceedings through his counsel.

4. Accordingly, an order was passed in 78[4] on 02.03.2009 by the respondent No.2, holding the petitioner was an unauthorised occupant. It was forwarded by an order dated 02.03.2009 asking him to handover the property, within 30 days from the date of receipt of a copy of this order. The petitioner did not file an appeal, in pursuance to the order passed in the Section 78 of the Act, action was taken under Section 79. Though number of years have been lapsed, the petitioner has not taken any steps.

5. It is admitted fact that, his father made a construction in the property for rental purpose to various third parties. When the respondents visited the property along with the police, the petitioner was found to be in occupation of the ground floor, with respect to one shop and the another shop was leased out to Automobile spares. Similarly, two shops have been leased out to third parties. The attempt made to take possession was opposed. Only two shops on the ground floor have been locked. There is also an arrears of amount, which the petitioner is liable to pay.

6. Learned counsel for the petitioner submitted that, even after the proceedings under Section 78, followed by Section 79, the petitioner has made substantial payment. He is also willing to pay remaining payment as required by respondents, as stated in the counter affidavit. Therefore, the lock will have to be removed.

7. In the light of the above facts, the order passed under Section 78 has become final, in which, the petitioner has taken part. There is huge arrears in which, the petitioner is liable to pay. When the proceedings have become final, this Court cannot exercise its discretionary power to put the petitioner back, that to, considering the facts involved in the case herein. The construction followed by induction of various third parties are obviously unauthorised and illegal. Thus, the petitioner does not have a case, either on law or on equity.

8. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

gya

To

- 1 The Commissioner,
H.R. & C.E. Department,
119, Mahatma Gandhi Road,
Chennai-34.
- 2 The Joint Commissioner,
H.R. & C.E. Department,
119, Mahatma Gandhi Road,
Chennai-34.
- 3 The Executive Officer,
Arulmigu Agatheswarar Temple,
Villivakkam, Chennai-49.

+1 cc to M/s. M. Gnanasekar, Advocate, sr.52265

+1 cc to Government Pleader, sr.52578

rsk co
kra 06/10

W.P.No.26801 of 2015

सत्यमेव जयते
WEB COPY