

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.18258 of 2014

&

M.P.Nos.1 & 2 of 2014

Mr.A.Arun

... Petitioner

vs.

1. The Executive Officer
Arulmighu Kandaswamy Temple
Thiruporur, Chennai
2. The Secretary to Government
HR & CE Department
Fort St. George, Chennai - 9
3. The Commissioner
HR & CE Department
Nungambakkam, Chennai - 600 034
4. The Joint Commissioner
HR & CE, Department, Vellore -9
5. The Asst. Commissioner
HR & CE Department
Kanchipuram

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent and quashing the order dated 06.06.2014 passed in R.P.NO.54 of 2014 D2 and order re-possession of the shop No.85, Royapettah High Road, Chennai and directing the 1st respondent to take suitable action on the representation dated 10.12.2012 and 26.01.2013 of the petitioner.

For Petitioner : Mr.D.Selvam
for Mr.S.Pattabiraman

For Respondents : Mr.A.K.Sriram
for M/s.A.S.Kailasam & Associates
for R1

Mr.S.Kandasamy
Special Govt. Pleader for R2 to R5

ORDER

Heard Mr.D.Selvam, learned counsel for the petitioner assisted by Mr.S.Pattabiraman, Mr.A.K.Sriram, learned counsel for the first respondent and Mr.S.Kandasamy, learned Special Government Pleader appearing for Respondents 2 to 5.

2. The order impugned in this writ petition is an order passed by the Commissioner, HR & CE Department in R.P.No.54 of 2014 D2 dated 06.06.2014 confirming the order passed by the Joint Commissioner, HR & CE by which the petitioner was termed as encroacher of the temple land and he was evicted. Pursuant to the impugned order, the petitioner has been evicted and possession has been taken over by the Department. The petitioner has challenged the impugned order by contending that he has moved the City Civil Court by filing O.S.No.2651 of 2013 and an Advocate Commissioner has been appointed and he has also submitted his report on 28.01.2013. It is seen that the proceedings initiated under Section 78 of the HR & CE Act was in 2012 much prior to the appointment of the Advocate Commissioner. In any event, the petitioner has already been dispossessed. Therefore, at this stage of the matter, no interim direction can be issued by this Court to restore the possession.

3. The learned counsel appearing for the petitioner relied on the judgment of the Supreme Court in Assistant Collector of Central Excise, Chandan Nagar West Bengal Vs. Dunlop India Ltd., and others reported in (1985) 1 SCC 260 and contended that when there is alternative remedy provided under the statute, the remedy available under Article 226 of the Constitution of India is not a bar and the Court can entertain the petition.

4. Heard the learned Special Government Pleader appearing for

the respondent and perused the counter filed filed.

5. It is true that existence of an alternative remedy is not always a complete bar for entertaining a writ petition. However, it has to be pointed out that the impugned proceedings have been initiated under a special statute, namely HR & CE Act. The statute provides for remedy and the action initiated against the petitioner is under sections 78 and 79 of the Act and as against which the petitioner has availed the remedy and filed the appeal before the HR & CE. The next remedy is provided under Section 114 of the Act to file a revision. Without availing such remedy, the petitioner cannot invoke the writ jurisdiction of this Court. This view is supported by the decision of the Hon'ble First Bench in R.Sundaravelu Vs. The Commissioner HR & CE & Others in W.P.No.20064 of 2013 dated 23.07.2013.

6. In the light of the above, the petitioner has not made any ground to bypass the alternative remedy available to the petitioner under Section 114 of the HR & CE Act and hence, the writ petition is not maintainable. However, liberty is granted to the petitioner to file a revision under Section 114 of the HR & CE Act before the Government within a period of sixty days from the date of receipt of a copy of this order. If the petitioner files such revision, the revisional authority constituted under Section 114 of the Act shall entertain the revision petition without rejecting the same, on merits and deal with the matter in accordance law after notice to all parties.

7. The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

gpa

To

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Kanchipuram

+lcc to Mr.A.S.Kailasam & Associates, Advocate, S.R.No.9051
+lcc to the Government Pleader, S.R.No.9406

W.P.No.18258 of 2014 &
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SK(CO)
CA(26/02/2015)

सत्यमेव जयते

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