

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2015

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THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.4045 of 2015

and

M.P.Nos. 1 and 2 of 2015

M/s.Radha Silk Emporium,
Represented by its Partner K.Jairam,
S/o.Kothandaraman,
No.1, Sannadhi Street,
Mylapore,
Chennai-600 004. Petitioner

- Vs -

1. Arulmigu Kapaleeswar Temple,
Represented by its Deputy Commissioner /
Executive Officer, D.Kaveri,
Joint Commissioner (incharge),
Hindu Religious & Charitable Endowment
Department, Chennai-600 004.

2. Corporation of Chennai,
Represented by its Commissioner,
Ripon Buildings,
Chennai-600 003.

3. The Executive Officer,
Corporation of Chennai,
Town Planning Section,
Works Department,
Ripon Buildings,
Chennai-600 003. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records relating to the communication of the first respondent in Na.Ka.No.535/2009/AA5 dated 12.02.2015 quash the same and directing the first respondent to restore possession of the property bearing Door No.15, Sannadhi Street, Mylapore, Chennai-600 004.

For Petitioner : Mr.R.Thiyagarajan, Sr.Counsel,
for Mr.V.G.Suresh Kumar
For RR1 : Mr.Suhrith Parthasarathy
For RR2 and RR3 : Mr.G.Anantha Rangan

O R D E R

The petitioner herein was recognized as a tenant by changing the tenancy from M/s.Bala Garments, in and by the proceedings of the Joint Commissioner HR & CE dated 24.09.2009. A request was made by the petitioner on the ground that the building in possession was in a dilapidated condition and therefore, requires for reconstruction at his costs. The first respondent in and by the proceedings dated 15.02.2011 granted such permission subject to the conditions imposed. One of the conditions is that the building has to be completed within a period of 11 months. The same condition was re-iterated in the proceedings dated 08.12.2011 as condition No.6 and in the proceedings dated 15.02.2011 as condition No.9 and ultimately permission has been granted on the no objection given by the corporation authorities on 20.09.2012. It appears that the petitioner did not put up the construction for some time till November 2014. Now the petitioner made an attempt to demolish the building which was objected to by the first respondent. Thereafter, the first respondent filed Writ Petition in W.P.No.31491 of 2014 and the same was disposed of on 29.01.2014 observing as under:

''4. In my view, the prayer sought for by the writ petitioner to temple is a misconceived one. The planning permission granted is in the name of the writ petitioner temple and it is an admitted fact that the Commissioner, HR & CE Department, by the order dated 15.02.2011 has granted permission for the third respondent to demolish the existing building and construct a new building on the same premises at their own cost and the letter dated 20.03.2012 reiterating that the property is leased out to the third respondent was sent by the writ petitioner to the second respondent. That apart another order has been passed by the writ petitioner in favour of the third respondent dated 08.12.2011 imposing certain conditions. As long as these proceedings granting permission are remain unaltered or modified, the question of issuing writ of Mandamus to forbear the third respondent from proceeding further does not arise.''

2. It appears that the Writ Appeal filed by the first respondent was also rejected. Pending the Writ Appeal, the first respondent issued order impugned dated 12.02.2015 stating that the lease executed in favour of the petitioner is cancelled for the non fulfillment of the condition imposed at the time of giving permission to put up construction and on the further ground that the petitioner is attempting to demolish the building which is 100 years old. The said building is said to be having wood carvings of antique value. Challenging the same, the present writ petition has been filed.

3. It is an admitted position that in pursuant to the order impugned dated 12.02.2015, possession has been taken over by the first respondent.

4. The learned Senior Counsel appearing for the petitioner submitted that the unilateral cancellation of the lease is contrary to law and such power can be exercised only for the reason assigned therein . The period of eleven months is not mandatory. In any case, the same cannot be a ground to cancel the lease executed. The petitioner has agreed to put up construction at its own costs. There is no orders as on today. The petitioner is ready and willing to put up the construction for the first respondent, who is not willing to give no objection certificate , since the permission is likely to expire in this month. Therefore, the impugned order is liable to be set aside.

5. The learned counsel for the first respondent has submitted that the petitioner has violated the condition stipulated in the permission granted. He has not intimated about the permission granted by the second respondent. Though such a application is made by the second respondent there is an alternative remedy under Section 21 of The Hindu Religious and Charitable Endowments Act, 1959 . There is no intimation by petitioner before indulging in the demolition, which is the condition incorporated and hence the order impugned has been passed. Therefore, no interference is required.

6. In view of the above, this Court is not inclined to go into the factual issues involved. It appears that the impugned order has been passed pending the writ Appeal. While exercising power under Section 34 (B) of the HR & CE Act, hearing the petitioner is mandatory. Admittedly the said exercise has not been done. As, the impugned order has got civil consequences and the first respondent seeks to cancel the lease entered into between the parties unilaterally, this Court is of the view that the impugned order cannot be sustained in the eye of law. Merely because there are provisions available to agitate this issue on merit, the same would not take away the jurisdiction of this Court when there is an appropriate procedure involved. Accordingly, the impugned order is set aside. Since this Court has not expressed any opinion on the

merits of the case, it is made clear that this order would not stand in the way of the first respondent from taking appropriate action in accordance with law.

This Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

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s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Deputy Commissioner / Executive Officer,
Arulmigu Kapaleeswar Temple,
Joint Commissioner (incharge),
Hindu Religious & Charitable Endowment
Department, Chennai-600 004.
2. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.
3. The Executive Officer,
Corporation of Chennai,
Town Planning Section,
Works Department,
Ripon Buildings,
Chennai-600 003.

+ 1 cc to Mr.V.G.Sureshkumar, Advocate SR 49392

+ 1 cc to Mr.Suhirth Parthasarathy, Advocate SR 49670

+ 1 cc to Mr.G.Anantharangan, Advocate SR 49561

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