

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4241 of 2015

And

M.P.Nos.1 and 2 of 2015

D.S.Narayanan

... Petitioner

Vs.

1.The Commissioner

Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

2.The Joint Commissioner

Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

3.The Deputy Commissioner/Executive Officer

Arul Migh Parthasarathy Swamy Temple
Triplicane,
Chennai - 600 005.

... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records pertaining to the impugned order in Naka No.149/2009/A6 dated 26.01.2015 issued by the 3rd respondent and quash the same as illegal, without jurisdiction and untravirous and direct the respondents to renew the lease in respect of shop Door No.1, South Mada Street, Triplicane, Chennai - 600 005 in favour of the petitioner.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.S.Kandasamy

Special Government Pleader

O R D E R

Heard Mr.D.Rajagopal, learned counsel appearing for the petitioner and Mr.S.Kandasamy, learned Special Government Pleader appearing for the respondents.

2.The petitioner has filed this writ petition seeking issuance of certiorarified mandamus calling for the records pertaining to the impugned order in Naka No.149/2009/A6 dated 26.01.2015 issued by the 3rd respondent and quash the same as illegal, without jurisdiction and untravirous and direct the respondents to renew the lease in respect of shop Door No.1, South Mada Street, Triplicane, Chennai - 600 005 in favour of the petitioner.

3.The petitioner in this writ petition has challenged the order passed by the Deputy Commissioner/Executive Officer of the Arulmigu Parthasarathy Swamy Temple, Triplicane, Chennai, the third respondent herein dated 26.01.2015.

4.The facts which are necessary for the disposal of the writ petition are that the petitioner's father was inducted as lessee in respect of the property owned by the third respondent temple several decades back. The petitioner's father appears to have been carrying on business in the temple property which is a shop. After the demise of the petitioner's father, the petitioner appears to have continued the business. Further, tenancy has not been attorned in favour of the petitioner nor it has been transferred and the petitioner has not been recognized as a tenant of the third respondent temple till date. Till today, the rents are paid and the receipt is issued in the name of the deceased lessee.

5.It appears that Kumbabishekam is going to be conducted in the third respondent temple. Consequently, authorities have taken certain action to clear certain area in and around the temple. In this regard, impugned notice issued to the petitioner calling upon the petitioner to vacate and handover possession within fifteen days.

6.Learned counsel appearing for the petitioner referring to Section 78 of the Tamil Nadu Hindu Religious And Charitable Endowments Act submitted that the Deputy Commissioner/Executive Officer/ third respondent has absolutely no jurisdiction to issue impugned notice and therefore it is bad in law and liable to be quashed.

7.Learned Special Government Pleader appearing for the respondents submitted that impugned notice is not an eviction notice under Section 78 of the Tamil Nadu Hindu Religious And Charitable Endowments Act, but only an intimation given by the Deputy Commissioner/Executive Officer/ third respondent to the petitioner calling upon him to vacate the premises treating him as encroacher since the tenancy was not transferred in his name, nor his occupation was recognized and the competent authority under the Act is Joint Commissioner and if the petitioner does not vacate the premises appropriate action will be taken under section 78 read with 79 of the Tamil Nadu Hindu Religious And Charitable Endowments Act.

8. After hearing the submissions made by the learned counsel appearing for the petitioner and the respondent and the materials placed on record, firstly, it has to be seen as to the statutory provision which are relevant for the case on hand.

9. Section 78 of the Tamil Nadu Hindu Religious And Charitable Endowments Act deals with encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachment. Encroachment has been defined under Section 78 of the Act. In terms of sub-section (1) of Section 78 where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment, he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated. In terms of the explanation contained in Section 78(1), the expression 'encroacher' shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include (a) any person who is in occupation of the property without the approval of the competent authority sanctioning lease or mortgage or licence; and (b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him (2) where, on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not be made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

10. Section 79 of the Tamil Nadu Hindu Religious And Charitable Endowments Act deals with mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner.

11. The first issue to be considered is as to whether the petitioner would fall under the definition of "encroacher" as defined in the explanation of Section 78 of the Tamil Nadu Hindu Religious And Charitable Endowments Act.

12. Admittedly, petitioner's father only was the lessee of the temple. After his demise, the tenancy has not been attorned in favour of the petitioner nor the petitioner has been recognized as the tenant of the respondent temple. According to the petitioner he has made application for transfer of tenancy and such application was made after his father's demise in 1988 and in this regard a

acknowledgement is being produced which states that the respondent received the representation/ letter for transfer of tenancy from D.Sriramulu Chetty to D.S.Narayanan. Though, such a request was made by the petitioner, the petitioner has not pursued the matter and no orders have been passed till date. In the interregnum, the petitioner continued to run the business and the respondent did not recognize the petitioner as a tenant, but the rents remitted by the petitioner were received in the name of the original lessee/ the father of the petitioner who is since deceased.

13. In such circumstances, the petitioner has to be treated as a person who is in occupation without approval of the competent authority and the lease having not been attorned or transferred in favour of the petitioner, undoubtedly, the petitioner has to be termed as encroacher of the temple land. Having held so, it has to be seen as to whether the impugned order suffers from lack of jurisdiction.

14. It is submitted by the petitioner that the Deputy Commissioner/Executive Officer/ third respondent has no jurisdiction to issue the impugned notice and it is only the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated is having jurisdiction. There is no quarrel or dispute over this position. There cannot be any dispute that the Joint Commissioner is the person competent to initiate action. However, it has to be seen as to whether impugned proceedings is eviction notice.

15. The Learned counsel appearing for the petitioner after referring to the impugned notice submitted that the notice calls upon the petitioner to vacate and handover the possession which is a eviction notice and therefore, it is a decision to vacate the petitioner and a notice issued under Section 78 and 79 of the Tamil Nadu Hindu Religious And Charitable Endowments Act and the third respondent is not competent to issue the notice.

16. On a cogent reading of the notice, it is evidently clear that it has termed the petitioner as encroacher since as on date, the petitioner is not empowered to continue in possession since he has not been recognized as a tenant. After holding so, the petitioner has been given time of fifteen days and the impugned notice is not notice under section 78 of the Tamil Nadu Hindu Religious And Charitable Endowments Act, but, intimation to the petitioner stating that he would be treated as encroacher and action under Section 78 and 79 of the Tamil Nadu Hindu Religious And Charitable Endowments Act would be initiated. Therefore, the impugned notice does not suffer from lack of jurisdiction, being only an intimation to the petitioner stating action is liable to be taken against him by treating him as encroacher.

17.Hence, there is no error in the impugned order and the writ petition fails and the same is dismissed. In the event of the petitioner failing to complying with the request made by the third respondent, it is open to the competent authority to initiate action under Section 78 and 79 of the Tamil Nadu Hindu Religious And Charitable Endowments Act.

18.This writ petition is dismissed with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
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1 cc to Mr. D.Rajagopal, Advocate, SR.No.8912

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mg(co)
pmk.20.2.2015