IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8724 of 2015
And
M.P.No.1 of 2015

S.Anandavalli ...Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu
   Commercial Taxes and Religious Endowments Department,
   Fort St.George
   Chennai - 600 009.

2. The Commissioner
   HR & CE, Nungambakkam,
   Chennai 600 034.

3. The Joint Commissioner/ Executive Officer,
   Arulmighu Arunachaleswarar Thirukoil,
   Thiruvannamalai Post and District.

4. The Joint Commissioner Administration,
   HR & CE Department,
   Villupuram Post and District. ...Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus against the respondents calling for the records of the Termination of Lease order cum Notice of the 3rd respondent in Na.Ka.No.461/2014/A3 dated 12.03.2015 quash the same and to direct the respondents 2, 3&4 to reconsider the entire matter afresh after granting a personal hearing to the petitioner who can be permitted to produce relevant records.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.M.L.Mahendran for R1, R2 and R4
Government Advocate

O R D E R

Heard Mr.V.Raghupathi, learned counsel appearing for the petitioner and Mr.M.L.Mahendran, learned Government Advocate appearing for the respondents 1, 2 and 4. With the consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

2.Petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to quash the order passed by the third respondent dated 12.03.2015 and to direct the respondents 2, 3 and 4 to reconsider the entire matter afresh after granting a personal hearing.

3.Petitioner is said to be in occupation of an extent of 1560 sq.ft of land in Door No.320/1, Avvai Shanmugam Road, Royapetta, Chennai 600 014. It is not in dispute that the land belongs to the third respondent Temple which was leased out to one Tmt.Kamalavalli. The petitioner is said to have purchased the said superstructure from the legal heirs of late Tmt.Kamalavalli with lease-hold rights by way of registered sale deed dated 03.02.1989 registered as document no.1144/1982 on the file of the Sub Registrar Mylapore.

4.The petitioner claims to be a lawfull lessee of the third respondent Temple and constructed a superstructure consisting of ground plus three floors. It is not known as to whether the third respondent has recognized the petitioner as its tenant and there is no averment in the affidavit filed by the writ petitioner stating that he has put up construction after approval from the third respondent Temple. The petitioner would state that initially the petitioner was paying rent at the rate of Rs.19/- per month. It was increased to Rs.456/- per month and subsequently, the third respondent fixed the rent at Rs.21,870/- per month which is according to the petitioner is exorbitant and the petitioner and other persons who are also lessees of the Temple land raised objection regarding the exorbitant rent which has been fixed.

5.Petitioner further submits that there is no calculation memo issued to the petitioner as to how the rent was increased to Rs.21,870/- and the third respondent in an arbitrary manner treated the petitioner as a defaulter and the petitioner was not informed as to from what date, he committed default. The petitioner would further state that he has been paying Rs.10,000/- per month instead of Rs.21,870/- per month and the details of payment have been given in paragraph no.4 of the affidavit. From the details furnished, it is seen that the petitioner has not been regularly paying Rs.10,000/-, but for a few months, he has paid only Rs.5,000/-.

6.Whileso, the petitioner received a notice dated 12.08.2014 directing the petitioner to remit the total arrears of rent of Rs.24,13,890/- within 15 days from the date of receipt of the notice, failing which the petitioner would be treated as encroacher under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Pursuant to such notice, a public notice was issued on 16.09.2014 published in the Tamil Daily. Aggrieved by that, the petitioner preferred an appeal to the second respondent, Commissioner, HR & CE on 17.09.2014.

7.In the appeal the petitioner contended that the third respondent has issued the order dated 12.08.2014 in a pre determined manner and it is not a notice, but only a final order. Further, it is stated that the third respondent failed to measure the property which was in possession of the petitioner and failed to follow the provisions of the Act and the instruction given by the Commissioner in letter Na.Ka.No.40651/2008/M3 dated 02.02.2009 which has given elaborate procedure for fixation of the fair rent. Therefore, it is submitted that the increase of the monthly rent from Rs.19/- to Rs.21,870/- is highly un-reasonable, un-fair and exorbitant.

8.The appeal presented before the second respondent was returned by proceedings dated 13.10.2014 stating among other things that against the public notice issued by the third respondent, no appeal shall lie under Section 69 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and the petitioner is at liberty to raise objections before the competent Authority namely the third respondent, in case if proceedings is taken under Section 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, if so advised.

9.Further, it was stated that in case the petitioner prefers an appeal under Section 34-A(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act against the order fixing the lease rent, the same shall be filed in such form and in such manner as stipulated. Further it was stated that no appeal shall be entertained under Section 34-A(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act unless it is accompanied by satisfactory proof of deposit of the rent so fixed or re-fixed into the account of the Temple concerned and such amount shall be adjusted towards the rent amount payable by the lessee as per the order passed in the appeal.

10.In terms of the above order dated 13.10.2014, the second respondent declined to entertain the appeal petition filed by the petitioner on the ground that the proceedings dated 12.08.2014 against which the appeal was filed is a notice and the proper procedure to be adopted by the petitioner is to raise his objections.

11.In the light of the order passed while returning the appeal petition, the petitioner was entitled to raise his objections to the notice dated 12.08.2014. That has been done by the petitioner by raising his objections on 13.11.2014. Copy of the objections has been filed in the typed set of papers and the petitioner also enclosed copies of the rent receipts dated 18.04.2012, 19.02.2013, 23.08.2013 and 19.03.2013. Petitioner's objection is said to have been received by the second respondent. It is stated in the affidavit filed in support of the writ petition that on 14.11.2014, the petitioner has sent his objections by registered post. However, copy of the acknowledgement has not been produced. Thereafter, the third respondent has passed the impugned order stating that the petitioner is liable to pay the arrears apart from that treated the petitioner as encroacher and directing him to vacate and hand over vacant possession of the property within a period of seven days.

12.After hearing the learned counsels for the parties and perusing the materials placed on record, it is seen that the appeal filed by the petitioner before the second respondent was returned on the ground that an appeal is not maintainable against the order dated 12.08.2014, thereby the petitioner was informed that the order dated 12.08.2014 is only a show cause notice/ notice. Therefore, the petitioner was entitled to submit his objections, which according to the petitioner has been submitted on 13.11.2014. However, without considering the objections, impugned order has been passed holding that the petitioner is liable for arrears of rent as well as treating him as encroacher and calling upon him to vacate and hand over possession.

13.In my view, the third respondent before passing the order should have dealt with the objection given by the petitioner dated 13.11.2014 said to have been sent by the registered post on 14.11.2014. In the light of the above, the impugned order calls for interference. Accordingly, this writ petition is allowed and the impugned order is set aside. The matter is remanded to the third respondent for fresh consideration.

14.However, for the purpose of the petitioner being entitled to an opportunity before the third respondent, the petitioner should pay the rent which according to him has been paid at the rate of Rs.10,000/- per month from May, 2014. Even according to the petitioner, for the months of May, June, July, October and December, 2014, the petitioner has paid only Rs.5,000/- and not Rs.10,000/-. Therefore, the petitioner should pay the rent at the rate of Rs.10,000/- per month from March, 2014 till date and whatever amount paid by the petitioner shall be given credit to and the remaining shall be remitted and the petitioner shall continue to pay the rent at the rate of Rs.10,000/- till the third respondent considers the petitioner's objection and passes final orders on merits and in accordance with law.

15.Petitioner is directed to pay the rent at the rate of Rs.10,000/- per month, as per the above direction, within a period of three weeks from the date of receipt of a copy of this order. On effecting such payment, the third respondent shall afford an opportunity of personal hearing to the petitioner and pass orders on merits and in accordance with law. It is made clear that the amount of Rs.10,000/- per month paid by the petitioner shall be received by the third respondent without prejudice to the rights of the third respondent Temple. If the petitioner defaults in effecting the payment as directed above, the benefit of this order will not enure to the petitioner and the third respondent is entitled to proceed in accordance with law.

16.The writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu
   Commercial Taxes and Religious Endowments Department,
   Fort St.George
   Chennai - 600 009.

2. The Commissioner
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3. The Joint Commissioner/ Executive Officer,
   Arulmighu Arunachaleswarar Thirukoil,
   Thiruvannamalai Post and District.

4. The Joint Commissioner Administration,
   HR & CE Department,
   Villupuram Post and District.

1 CC to Mr.V.Raghupathi, Advocate SR.No. 17430

1 CC to the Government Pleader, SR.No. 17082

W.P.No.8724 of 2015
And
M.P.No.1 of 2015

RV (CO)
PSI (07.04.2015)