

In the High Court of Judicature at Madras

Dated: 02-09-2015

Coram:

The Hon'ble Mr. Justice M. Jaichandren

W.P. No. 32445 of 2012

Santhana Mercy

.. Petitioner.

Versus

1. The Secretary,
Government of Tamilnadu,
Tamil Development, Religious Endowment
and Information Department,
Fort St. George, Chennai-600 009.

2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam, Chennai-600 034.

3. The Joint Commissioner,
Thiruvannamalai Devasthanam,
Thiruvannamalai-606601,
Vellore District.

4. Sri Arunachaleshwarar Devasthanam,
Thiruvannamalai Rep. By Executive Officer
Thiruvannamalai-606 601,
Vellore District.

.. Respondent.

Prayer: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, to direct the respondents to consider the representations of the petitioner dated 23.4.2012 and 28.3.2012 submitted to the first and second respondents and to receive the rent payable by the petitioner as lessee by issuing the receipts for the same

For petitioner : Mr.S.Makesh

For respondents : Mr.K.V.Dhanapalan, Spl.G.P.
(R1 to R3)
Mr.A.S.Kailasam & Associates
(R4)

ORDER

Heard the learned counsels appearing for the parties concerned.

2. This Writ Petition has been filed praying that this Court may be pleased to issue a Writ of Mandamus to direct the respondents to consider the representations of the petitioner, dated 23.4.2012 and 28.3.2012 and to pass appropriate orders thereon and to receive the rents payable by the petitioner, as the lessee of the Sri Arunachaleswarar Devasthanam, Tiruvannamalai, relating to the property located at Plot No.94, Old Door No.17, Thiruvannamalai Thottam, Adyar Urur Village, Chennai-20.

3. The petitioner has stated that she is one of the five legal heirs of the deceased Sampoorna Ammal, who was the original lessee pertaining to the property in question. The lease had been granted, originally, in favour of Sampoorna Ammal, in the year 1930. After the death of Sampoorna Ammal, her legal heirs had been recognised as the tenants in the property in question. While so, the fourth respondent had filed an ejectment suit, in Ejectment Suit No.96 of 1984, on the file of the Court of Small Causes, praying for a direction to the defendants therein, including the petitioner to deliver the vacant land, as she had arrears of rent, payable to the Devasthanam. By a judgment and decree, dated 5.3.2003, the ejectment suit had been decreed in favour of the fourth respondent. However, no eviction proceedings had been initiated against the lessees, by the fourth respondent.

4. It had also been stated that one Lalitha had filed a suit for declaration of title, in respect of the property in question, in O.S.No.2182 of 2004, on the file of the VII Assistant Judge, City Civil Court, Chennai, against the fourth respondent and three legal heirs of Sampoorna Ammal, including the petitioner. However, two of the legal heirs, namely, Lingesan and Kanagalingam, had been excluded from the suit. The said suit had also been filed praying to restrain the defendants therein from interfering with her peaceful possession and enjoyment of the suit property, claiming that she had purchased the said property, from Lingesan and Kanagalingam, on 13.1.1981. The suit had been dismissed by a judgment and decree, dated 21.1.2008. However, Lalitha had been causing hindrance to the peaceful enjoyment and possession of the property in question, by the legal heirs of Sampoorna Ammal, including the petitioner.

5. It had been further stated that the fourth respondent, having recognised the petitioner as a tenant, has refused to receive the rental amounts payable by her, in inspite of the several representations made to the fourth respondent, including the representations, dated 23.4.2012 and 28.3.2012. However, it has also been stated that, as per the government order, in G.O.No.340, dated 6.8.2007, the persons utilising it for rental purposes for more than

thirty years, ought to be regularised. However, the fourth respondent had failed to follow the said Government Order. In such circumstances, the petitioner has preferred the present Writ Petition before this Court.

6. A counter affidavit had been filed on behalf of the fourth respondent stating that the plot of land, measuring around 2 grounds and 2395 sq.ft., bearing Door No.17, Ramasami Garden, Adyar, Chennai, belongs to the fourth respondent. Originally, the said plot of land had been leased out to Sampoorina Ammal. She had put up a tiled house in the said plot. She had been paying the rental amounts to the fourth respondent. After the death of Sampoorina Ammal, her two sons and three daughters, including the petitioner in the present Writ Petition, had inherited the tenancy rights and had become tenants under the fourth respondent. However, the tenancy had been terminated, based on the decree obtained by the fourth respondent, in the ejectment suit filed, in Ejectment Suit No.96 of 1984, on the file of the Court of Small Causes, Chennai. The two sons of Sampoorina Ammal had taken a stand that the land belongs to them, thereby, denying the title of the temple. The three daughters of Sampoorina Ammal, including the petitioner herein, had taken a contrary stand, by filing a miscellaneous petition, in M.P.No.810 of 1987, under Section 9 of the The Madras City Tenants Protection Act, 1921, for purchasing the land in question. However, the miscellaneous petition filed by the daughters of Sampoorina Ammal had been dismissed, as the property belonging to religious institutions had been exempted from the applicability of the provisions of the said Tenancy Protection Act, by way of the amendment brought forth by the State Government during the year, 1996. The judgment and decree passed in the ejectment suit, on 5.3.2003, had become final as no appeal had been filed against the said judgment and decree.

7. It has also been stated that subsequent to the passing of the judgment and decree in the ejectment suit, no rent had been paid, in respect of the property in question. The question of settlement, by way of a compromise, does not arise in the present case, as the fourth respondent has no power to do so. As per Section 43 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, a statutory permission ought to have been obtained from the second respondent, for entertaining the request of the petitioner. However, the no such permission had been obtained by the petitioner, till date.

8. It had also been stated that the amounts received by the fourth respondent relating to certain persons had been received without prejudice to the issue relating to their tenancy and as compensation for the damages for the use and occupation by the persons concerned. The amounts had not been received by the fourth respondent as rental arrears, in respect of the property in question. As such, the Writ Petition filed by the petitioner is devoid of merits. Therefore, it is liable to be dismissed.

9. The learned counsel appearing on behalf of the petitioner had relied on the decisions, reported in Bhuneswar Prasad and another Vs. United Commercial Bank and others, (2000) 7 SCC 232 and M.Muthu Vs. Arulmigu Sundareswararswamy Devasthanam, 2001 (1) CTC 438, to substantiate his claims that the tenancy in respect of the property in question had been continued, by the conduct of the parties concerned.

10. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner being a legal heir of Sampoorana Ammal, who was a tenant in the property in question belonging to the Sri Arunachaleswarar Devasthanam, administered by the fourth respondent, has a right to continue as a tenant, as the tenancy had not been terminated, specifically. Further, the tenancy had been continued, by the conduct of the fourth respondent, by making a publication in the newspaper, asking Sampoorana Ammal to pay the arrears of rental amounts. The fourth respondent had also accepted the amounts sent by some of the legal heirs of Sampoorana Ammal. However, the fourth respondent is not accepting the amounts sent by the petitioner, to continue the lease in her favour.

11. Per contra, the learned counsel appearing on behalf of the respondents had submitted that the petitioner has no right to claim that she should be continued as a tenant of the property in question. The lease in respect of the property in question, granted in favour of Sampoorana Ammal, said to be the mother of the petitioner, had been terminated by way of a judgment and decree, in the ejectment suit, in Ejectment Suit No.96 of 1984 and it had become final. Thereafter, no lease had subsisted, either in the name of Sampoorana Ammal, or in the name of her legal heirs. In such circumstances, the petitioner has no right to demand that the fourth respondent should accept the amounts paid by her and to continue the lease in her favour, in respect of the property in question. The learned counsel appearing on behalf of the fourth respondent had relied on the decision, reported in S.Venkatasamy Vs. S.Rajaram, 1995 AIHC 3210, in support of his contention.

12. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the relief prayed for by her, in the present Writ Petition. Even though Sampoorana Ammal, said to be the mother of the petitioner, was granted the lease, in respect of the property in question, by the fourth respondent, the said lease had been terminated by way of a judgment and decree made, in the ejectment suit, in Ejectment Suit No.96 of 1984. It is not in dispute that the said judgment and decree had become final. Further, there is nothing to show that the lease had

been continued in favour of the petitioner, by the conduct of the respondents. The paper publication had been made only for the collection of the arrears of the rental amounts from the original lessees. The petitioner has no right to claim that the lease should be continued in her favour, even if she is willing to pay the rental arrears of Sampoorana Ammal. As such, the present Writ Petition filed by the petitioner is devoid of merits and therefore, it is liable to be dismissed. Hence, it is dismissed. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamilnadu,
Tamil Development, Religious Endowment
and Information Department,
Fort St. George, Chennai-600 009.

2. The Commissioner,
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4. The Executive Officer,
Sri Arunachaleswarar Devasthanam,
Thiruvannamalai
Thiruvannamalai-606 601,
Vellore District.

1 cc to A.S.Kailasam & Associates, Advocate Sr.No.47057/15
1 cc to Mr. S.Makesh, Advocate Sr.No.46933/15
1 cc to Government Pleader.Sr.No.48145/15

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pmk.6.10.2015