

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.10579 of 2016

& W.M.P.No.9276 of 2016

1. S.Saravanamurthy
2. V.Bala Subramaniam .. Petitioners

Vs.

1. The Secretary to Government,
Tourism and Hindu Religious Endowments
Department,
Secretariat, Chennai.
2. The Commissioner,
Hindu Religious and Charitable Endowment Board,
Chennai.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Coimbatore.
4. The Assistant Commissioner/Executive Officer,
Arulmigu Varasakthi Vinayakar Thirukoil,
South Ukadam, Coimbatore.
5. Hereditary Trustee,
Arulmigu Varasakthi Vinayakar Thirukoil,
South Ukadam, Coimbatore. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent to stay the operation of the common order, dated 25.02.2016 by the second respondent herein in R.P.No.58 to 79 of 2015, D2, pending disposal of the appeal, dated 14.03.2016 before the first respondent.

For Petitioner : Mr.S.D.Ramalingam

For Respondents : Mrs.Rita Chandrasekaran, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent to stay the operation of the common order, dated 25.02.2016 by the second respondent herein in R.P.No.58 to 79 of 2015-D2, pending disposal of the appeal, dated 14.03.2016 before the first respondent.

2. The affidavit filed in support of the Writ Petition is sworn to by the first petitioner and the second petitioner is the first petitioner's father's brother. They are joint owners of the property in Survey No--T.S.No.1876 to 1888, Ward No.3, Block Nos.23, 24 to an extent of 79 cents and 400 Sq.Ft. South Ukadam, Coimbatore. The petitioner's father late K.Subramaniam died on 02.11.2012 and their family is living in the said property for several decades from 1905. The said property is originally owned by their great grandfather and it was given on lease to one Muthusamy Chettiar on 16.11.1905, excluding the place where the petitioners' residence is situated in Old No.456, New No.690-A, Rangagounder, South Ukadam, Coimbatore, which was subsequently maintained and used by his legal heirs/descendants, who were enjoying the property by paying the lease rent to the petitioners' family.

3. It is the further case of the petitioners that the property was later on used by the descendants of Muthusamy Chettiar, who was also a hereditary trustee of Varasakthi Vinayakar Koil (for short, 'the Temple'). Kuppuswamy Chettiar, the hereditary trustee of the Temple filed a suit in O.S.No.351 of 1972 to declare him as hereditary trustee and in the said suit, Ex.A-2 was marked, which is a registered lease deed executed by Amirtham Pillai on 16.11.1905 in favour of Muthuswamy Chettiar, the trustee of the Temple and the property is a leasehold property, which was owned by Amirtham Pillai and the same is proof of title known to the Temple and the respondents-Department. The Revenue Records and the correlation statement vouch for the title in favour of the petitioners' predecessors. The third respondent, without verifying the records or enquiring the fourth respondent, passed an order in his proceedings No.23/2013/A1 and also in proceedings in No.24/2013/A1, both dated 28.04.2015 under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, by considering the petitioners as encroachers. The entire property covered under the said proceedings along with the Temple, was originally and still owned by their family, and admittedly, the fifth respondent took lease of the property and till date, paying annual lease amount to the petitioners' family.

4. It is further stated that the entire lease land in T.S.No.1888 is divided into several small portions and sub-leased to several parties and the fifth respondent-Trustee is collecting the lease rent till date and paying the agreed lease amount to the principal owners, the petitioners herein. The H.R. & C.E. Department has no right with regard to the above said private property. There are disputes between the hereditary trustee and the Department with regard to the Temple and its management and the land belongs to the petitioners' family, which is evident from the said judgment in O.S.No.351 of 1972, in which the Department is also a party.

5. It is the grievance of the petitioners that the impugned order is passed without even verifying the Temple records or its ownership and without any enquiry. The trusteeship of the fifth respondent has been approved in various judgments upto the Supreme Court, which ordered status-quo, by order dated 25.04.2011 with regard to the management of the Temple, in Civil Appeal No.8758 of 2011 preferred by the fifth respondent.

6. As against the above said order dated 28.04.2015, the petitioners have preferred statutory appeals to the second respondent-Commissioner and by common order dated 25.02.2016, the said appeals (Revision Petitions) were dismissed in R.P.Nos.58 to 79/2015 D2. Thereafter, appeal was preferred before the first respondent on 14.03.2016 with a stay petition, which is still pending. In the meantime, the second respondent, by official communication to the third and fourth respondents, gave direction to take steps to remove the petitioners from the property. After the demise of the first petitioner's father, the petitioners have been living with family in a portion of the property, but the original impugned notice was issued to the dead person. The proceedings under Section 78 of the said Act will not arise, as the petitioners are the lawful owners of the property and the Temple hereditary trustee is the tenant and the petitioners cannot be construed as encroacher. Since the said stay petition in the said appeal, has not yet been disposed of, the petitioners have filed the above Writ Petition for the above relief.

7. Learned Special Government Pleader appearing for the respondents opposed the prayer sought for in the Writ Petition and submitted that when the appeal is pending before the Government (first respondent), the Writ Petition is not maintainable and the petitioners have to work out their remedy only in the said appeal and there cannot be two parallel proceedings.

8. On the other hand, learned counsel for the petitioners submitted that since the respondents are taking steps to remove the petitioners illegally, and since the first respondent has

not taken into consideration the stay petition in the appeal, the petitioners have filed this Writ Petition. However, he submitted that it would suffice if a direction is issued to the first respondent to dispose of the stay petition within specified time. Learned counsel also submitted that in the earlier round of litigation in respect of the very same Temple, this Court, by order dated 07.07.2015 in W.P.No.19940 of 2015, directed the respondent-Government to dispose of the stay petition; the relevant portion of the said order, dated 07.07.2015, reads as follows:

"9. Therefore, this Court, in the light of the facts and circumstances of the case, without going into the merits of the claim projected by the petitioners, directs the 1st respondent to consider and dispose of the petition filed by the petitioners for stay in the appeal, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and till then the 2nd respondent shall maintain status quo as exists today. In the interregnum, the petitioners shall not create any third party rights in respect of the property in question.

10. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed."

9. Taking into consideration the facts and circumstances of the case, the submissions made on either side and also taking note of the above said order of this Court, dated 07.07.2015 in W.P.No.19940 of 2015, this Court directs the first respondent to take up the stay petition in the appeal and after conducting enquiry and giving an opportunity of personal hearing to the petitioners and necessary parties, pass appropriate orders and dispose of the stay petition, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioners and it is for the first respondent to decide the same in the stay petition. Till such time the stay petition is disposed of by the first respondent, the parties are directed to maintain status-quo as on today and the petitioners are also directed not to create any third party rights in respect of the property/Temple in question.

10. With the above observations and directions, the Writ Petition is disposed of. No costs. W.M.P. is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

CS
Copy to

1. The Secretary to Government,
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+1 cc to M/s.S.D.Ramalingam Advocate sr.18030
+1 cc to Government pleader sr.18492

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