

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.11531 of 2016
and
W.M.P.No.9955 of 2016

R.Gunaseelan

... Petitioner

Vs.

1. The Commissioner,
H.R. & C.E., Department,
Chennai-104.
2. The Joint Commissioner,
H.R. & C.E. Administration,
Myladuthurai.
3. The Executive Officer,
Arulmigu Chakkarapani
Swamy Temple,
Kumbakonam.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent in R.P.No.143 of 2015 dated 20.1.2016 and quash the same and consequently direct the respondents to remove the lock in the premises bearing Door No.40, 41, 42, Chakrapaniswamy South Street, Kumbakonam.

For Petitioner : Mr.M.Muthappan

For Respondents : Mrs.Rita Chandrasekar,
Special Government Pleader
(H.R. & C.E.)

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition, challenging the order of the first respondent in R.P.No.143 of 2015 dated 20.1.2016 and consequently to direct the respondents to remove the lock in the premises bearing Door Nos.40, 41, 42, Chakrapaniswamy South Street, Kumbakonam.

3. The case of the petitioner, in brief, is as follows:-

(a) The petitioner's father S.R.Radhakrishnan was inducted into possession as a tenant in respect of shop premises belonging to Arulmigu Chakkarapani Swamy Temple. He had been in possession as a tenant from 1975 onwards. After the death of his father, the petitioner and his brother S.R.Sekar @ Gunasekaran succeeded his estate as his legal heirs. In the said premises, the petitioner is running a retail shop.

(b) While so, the second respondent had commenced proceedings against the petitioner for eviction on the ground that he is an encroacher. It is alleged that after the death of his father, fair rent proceedings were initiated and fair rent was fixed and the petitioner committed default in paying the fair rent. However, no notice was served on the petitioner while fixing the fair rent and the petitioner has been paying the rent regularly and the third respondent has also been receiving the same without any protest or objection.

(c) On the basis of the said allegation, the second respondent proceeded with the enquiry and in response to the show cause notice, the petitioner filed a detailed reply. The main objection of the petitioner before the second respondent was that the fair rent fixation proceeding was not a contested one. But, without any intimation, the second respondent has passed an *exparte* order. Aggrieved over the same, the petitioner filed a revision under Section 21 of the H.R & C.E. Act before the first respondent and the first respondent has also without considering all his contentions, confirmed the order of the second respondent. Hence, challenging the same, the petitioner has come up with the present writ petition.

4. Today, when the matter was taken up for consideration, learned Special Government Pleader appearing for the respondents submitted that possession of the property was

already taken by the respondents as early as on 27.1.2016 and the revision filed by the petitioner under Section 21 of the H.R & C.E. Act before the first respondent was also dismissed and hence, the petitioner has to work out his remedy only under Section 114 of the H.R & C.E. Act. Thus, she prays for the dismissal of the writ petition.

5. Learned counsel appearing for the petitioner has also admitted that possession was already taken by the respondents.

6. Since possession was already taken by the respondents, this Court cannot give any relief to the petitioner. Hence, the present writ petition is dismissed. However, the petitioner is at liberty to work out his remedy under Section 114 of the H.R & C.E. Act. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sbi

To

1. The Commissioner,
H.R. & C.E., Department,
Chennai-104.
2. The Joint Commissioner,
H.R. & C.E. Administration,
Myladuthurai.
3. The Executive Officer,
Arulmigu Chakkarapani
Swamy Temple,
Kumbakonam.

+lcc to Mr.V.R.Anna Gandhi, Advocate, S.R.No.19940
+lcc to the Government Pleader, S.R.No.20353

W.P.No.11531 of 2016

SAI (CO)
CA(18/04/2016)