

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.6474 of 2010
and
M.P.No.1 of 2010

N.Sasikala

.. Petitioner

Versus

1. The Secretary to the Government,
Department of Public Welfare,
Fort St. George,
Chennai-600 009.
2. The Commissioner
Hindu Religious and Charitable
Endowment Board
Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.
3. The Executive Officer
Sri Chenna Malleswarar Sri Chenna
Kesava Perumal Devasthanam
At No.85, Devaraja Mudali Street,
Chennai-600 003.
4. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai-600 003.
5. The Chairman,
Chennai Metro Water
and Sewarage Board,
No.1, Pumping Station Road,
Chindradripet, Chennai-2.

[R5 impleaded as per the order dated
15/6/10 in M.P.No.2/10
in W.P.6474/10]

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Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus, forbearing the 4th respondent from putting up any construction on the vacant lease hold land measuring 604 sq.ft on the southern side of the building bearing old Door No.50/1 New No.50, Perumal Koil Garden Ist Lane, Chennai-600 079 and directing the 4th respondent to remove the hand pump put up on the leasehold land.

For Petitioner : Mr.S.Karpagavarthini
For Respondents : Mr.V.Jaya Prakash Narayanan (R1)
Special Government Pleader
Mr.R.P.Prathap Singh (R2 and R3)
Government Advocate (HR & CE)
Mr.G.Janakiraman (R5)
Metro Water

O R D E R

The prayer in this Writ Petition is for a mandamus forbearing the fourth respondent from putting up any construction on the vacant lease hold land measuring 604 sq.ft on the southern side of the building bearing old Door No.50/1 New No.50, Perumal Koil Gardne Ist Lane, Chennai-600 079 and directing the fourth respondent to remove the hand pump put up on the leasehold land.

2. The case of the petitioner is that one Mr.K.Annaswamy Mudaliar took lease of the land comprised in R.S.No.7854 belonging to the third respondent i.e. Sri Chenna Malleswarar Sri Chenna Kesava Perumal Devasthanam, who has put up superstructure in the said lease land i.e., at Door No.50/1 New No.50, Perumal Koil Garden Ist Lane, Chennai-600 079 and he paid property tax to the fourth respondent and also paid land rent to the third respondent. The said Mr.Annaswamy Mudaliar sold the superstructure together with the lease hold right in the land to Smt.Swarnambal under Sale Deed dated 19.08.1996 and she paid the property tax to the fourth respondent and the land rent to the third respondent. Further, Smt. Swarnambal sold the said superstructure to one Deivasigamani on 21.08.1981 and the said Deivasigamani sold the said property of the superstructure to the petitioner on 29.09.2008. Therefore, the petitioner is in possession and enjoyment of the property from the date of purchase.

3. Whiles0, in August 2009, the fourth respondent made an attempt to put up handpump in the land which was in possession of the petitioner which action the petitioner had objected. Ignoring the said objection, the fourth respondent succeeded in installing the handpump. The petitioner made a representation

to the third respondent about the installation of the handpump and for the removal of the same. He has also sent a legal notice to the fourth respondent on 12.08.2009 to remove the said hand pump. But, till date neither the fourth respondent had removed the said pump nor the third respondent has taken steps to protect the land belonging to the third respondent. Further, during first week of March, 2010 the officials of the fourth respondent came to his property and informed that they are going to construct a building in the vacant lease hold land on the southern side of his building, which is in his possession. He had also informed to the said officials of the fourth respondent that the entire vacant land in front of his building belong to the third respondent herein and that the fourth respondent is not entitled to construct any structure on the vacant land. The petitioner issued a telegram on 11.03.2010 calling upon the fourth respondent to stop from putting up any construction on the leasehold land. The illegal action of the 4th respondent to put up construction over the lease land was informed to the third respondent. Since, the third respondent did not take any steps, a detailed representation dated 12.03.2010 was sent to the respondents on 15.03.2010 calling upon the fourth respondent to refrain from putting up any construction or any structure over the vacant lease hold land on the southern side of his building and to remove the hand pump on the said lease hold land and also requested 2nd and 3rd respondents to take suitable steps to protect the land belonging to the 3rd respondent temple, which is let out on lease to safeguard the petitioner's possession and enjoyment of the property. But, no action has been taken so far. Hence, the petitioner has come forward with this writ petition seeking for the aforesaid relief.

4. The learned counsel for the petitioner submitted that since the petitioner is a valid licence holder of the building i.e. Superstructure constructed in the land belonging to the second respondent, without the said land being cancelled in the manner known to law, the petitioner would be entitled to have the possession and enjoyment of the property. Therefore, even nearby lands had also form part of the superstructure. Therefore, the fourth respondent have no right to enter and lay handpump in the said land. The said act of the fourth respondent is an highhanded act and hence he sought for allowing of this Writ Petition.

5. Per contra, the learned Government Advocate appearing for the third respondent would contend that there is no lease in favour of the petitioner and even assuming there were alienation of the superstructure that too beyond the period of five years, provisions of Section 34 of The Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, would attract and as per Section 34 of the said Act, any exchange, sale or mortgage and

any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

6. According to the third respondent, no such sanction is made either by the Government or by the Commissioner. Therefore, no one infact the petitioner have the right of tenancy. Therefore, the order transferring occupation, if any claimed by the petitioner would be wholly illegal in the teeth of the provisions as has been mentioned above. In that view of the matter, the learned Government Advocate prays for dismissal of this Writ Petition.

7. Heard the rival submissions made by both sides and also perused the materials on record.

8. Admittedly, the land in question belongs to the third respondent. However, through transfer of the right over the superstructure for several decades, the land ultimately came to the hands of the petitioner and that would not in any way alter the title of land. Moreover, a perusal of the photographs of the superstructure of the building, would go to show that the superstructure is in very worst condition and not worth for human living and is kept closed for several years. Even in respect of nearby vacant land of the superstructure, the handpump has been put up by the Corporation and that it was found fault with by the petitioner and he approached this Court by way of present Writ petition.

9. As rightly contended by the Government Advocate (HR & CE), the petitioner cannot have any right or title over the land, as per the provisions of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. At this juncture, it would be useful to extract Section 34 of the said act and the same reads as under:

34. Alienation of immovable trust property.- (1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution:

Provided that before such sanction

is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by [the Commissioner]:

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

10. Even assuming that the superstructure has been validly purchased by the petitioner, his right cannot extend to the vacant land located over the superstructure. Only, in the said land, the fourth respondent has put up the handpump for the benefit of the every one, hence there is no justification on the part of the petitioner to question the same.

11. In view of the same, this Court is of the considered view that the relief sought for in this Writ Petition cannot be granted. Hence, this Writ Petition stands dismissed. It is open for the third respondent to set right the superstructure which is already in the unusable condition in the teeth of Section 34 of the The Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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Department of Public Welfare,
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Ripon Buildings
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5. The Chairman,
Chennai Metro Water
and Sewerage Board,
No.1, Pumping Station Road,
Chindradripet, Chennai-2.

+1cc to the Government Pleader sr.62852
+1cc to the Special Government Pleader sr.63103
+2cc to M/S.G.Janakiraman, Advocate sr.62976
+2cc to M/S.R.Sundharlingam & S.Karpagavarthini, Advocate
Sr.63159

Writ Petition No.6474 of 2010

nrI[co]
srg 15/12/2016

सत्यमेव जयते

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