

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2/2/2016

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.1928 of 2016

Onkarnath Jaiswal

... Petitioner

Vs

1. The Commissioner
Hindu Religious Charitable Endowment
Nungambakkam
Chennai 600 034.
 2. The Joint Commissioner
Hindu Religious Charitable Endowment
Nungambakkam
Chennai 600 034.
 3. The Executive Officer
Arulmigu Katchaleeswarar Temple
No.77 Armenian Street
Chennai 600 001.
- ... Respondents.

Prayer :Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned notice dated 17/12/2015 Ref.No.Na.Ka.No.9641/2015 A2 passed by the second respondent and quash the same and consequently direct the respondent authorities to fix the fair rent for the petitioner's premises Door No.75, Armenian Street, Chennai 600 001, measuring an extent of 474 Sq.ft., as per the proceedings made on 6/3/2014 passed by the first respondent in Appeal No.52 of 2013 and signed and communicated to the petitioner on 1/4/2014 and the representation dated 3/2/2014 submitted by the petitioner to the third respondent within a time limit to be stipulated by this Court.

For Petitioner ...

Mr.S.Thankasivan

For respondents ...

Mr.K.V.Dhanapalan
Additional Government Pleader
for R.R.1 and 2.
Mr.S.D.Ramalingam
for R.3

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O R D E R

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal.

2. Heard Mr.S.Thankasivan, learned counsel for the petitioner, Mr.K.V.Dhanapalan, learned Additional Government Pleader for the respondents 1 and 2 and Mr.S.D.Ramalingam, learned counsel for the third respondent.

3. This writ petition has been filed praying to quash the impugned notice dated 17/12/2015 Ref.No.Na.Ka.No.9641/2015 A2, passed by the second respondent and consequently direct the respondent authorities to fix the fair rent for the petitioner's premises Door No.75, Armenian Street, Chennai 600 001, measuring an extent of 474 Sq.ft., as per the proceedings made on 6/3/2014 passed by the first respondent in Appeal No.52 of 2013 and signed and communicated to the petitioner on 1/4/2014 and the representation dated 3/2/2014 submitted by the petitioner to the third respondent.

4. Elaborate submissions were made by the learned counsel for the parties and ultimately, it came to light that the petitioner has not challenged the order, cancelling his lease on account of failure to pay the enhanced lease amount and therefore, the present challenge to a notice dated 17/12/2015, has held to be thoroughly misconceived.

5. The petitioner would harp upon the order passed dated 6/3/2014 and it is submitted that the Commissioner/Appellate authority, granted liberty to the petitioner to file his objections and direction was issued to consider the objections.

6. It is pointed out by the learned counsel for the third respondent temple that the challenge before the Commissioner in A.P.No.52 of 2013 was to a notice dated 23/8/2013 and after which the proceeding had concluded and an order came to be passed to the effect that the petitioner was declared as an encroacher and on account of non payment of the enhanced lease, the lease has been cancelled. Therefore, the third respondent, justifies the action taken by the Joint Commissioner under Section 17 (A) (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959).

7. The petitioner pleads ignorance about the order passed by the authorities. However, he is willing to challenge the same.

8. It is submitted by the learned counsel for the third respondent that as on date, Rs.25 lakhs is due and payable by the petitioner towards fair rent which has been fixed with effect from 31/10/2001. In this regard, a calculation sheet is produced before this Court.

9. For the above reasons, challenge to the impugned proceedings cannot be sustained. However, this Court feels that the petitioner may be granted a liberty to challenge the order passed by the authorities, cancelling the lease and such liberty can be granted, subject to stringent condition.

10. Accordingly, the petitioner is permitted to challenge the order passed by the authority, canceling the lease, subject to the condition that the petitioner, pays a sum of Rs.5 lakhs (Rupees five lakhs only) to the third respondent temple, within a period of two weeks, from the date of receipt of a copy of this order. If the petitioner complies with this condition, then, he is entitled to present an appeal as against the order, cancelling the lease and if such appeal is presented, the same shall be entertained, without rejecting the same, on the ground of limitation. If the petitioner fails to comply with the condition, imposed by this Court, within the time permitted, the benefit of this order will not enure to the petitioner and writ petition will stand automatically dismissed, without any further reference to this Court.

11. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mvs.

To

1. The Commissioner

Hindu Religious Charitable Endowment
Nungambakkam
Chennai 600 034.

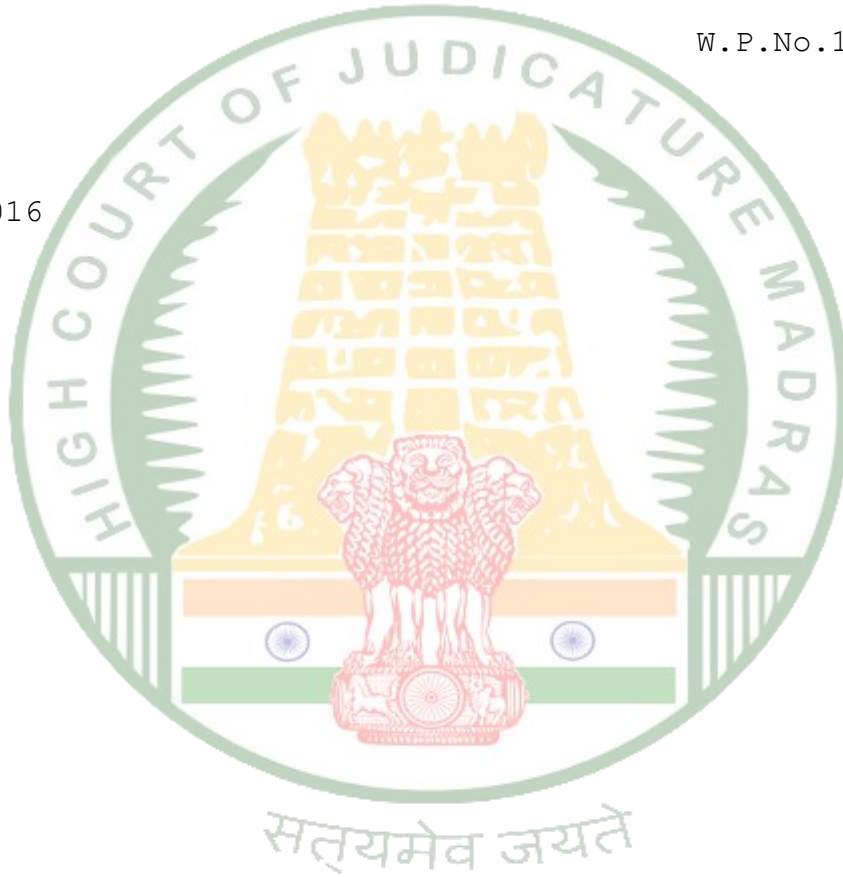
2. The Joint Commissioner
Hindu Religious Charitable Endowment
Nungambakkam
Chennai 600 034.

3. The Executive Officer
Arulmigu Katchaleeswarar Temple
No.77 Armenian Street
Chennai 600 001.

+1 cc to Mr.S.Thankasivan Advocate sr.7145
+1 cc to Mr.S.D.Ramalingam Advocate sr.6514

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