

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.06.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.19959/2016 & WMP.No.17211/2016

Unnikrishnan

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Petitioner

Versus

1.The Commissioner
Hindu Religious & Charitable Endowments
Nungambakkam, Chennai-34.

2.The Joint Commissioner
Hindu Religious & Charitable Endowments
Nungambakkam, Chennai-34.

3.The Deputy Commissioner,
Hindu Religious & Charitable Endowments
Nungambakkam, Chennai-34.

4.The Assistant Commissioner,
Hindu Religious & Charitable Endowments
Nungambakkam, Chennai-34.

5.The Executive Officer
Arulmigu Kabalieswarar Kovil
Mylapore, Chennai 600 004. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus calling for the records sequel to the proceedings in Nata.Na.Ka.En.1376/2014/A2 dated 27.01.2016 issued by the 2nd respondent and to quash the same and consequently direct the respondents to de-seal the shop situated at No.22/23 Mangollai, Mylapore, Chennai 600 004.

For Petitioner : Mr.G.Gubendiran

For Respondents : Mrs.Rita Chandrasekar, Spl.GP
[HR & CE]

ORDER

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

2 The petitioner would state that his father, viz., Thiru.E.Prabhakaran, was allotted a commercial premises admeasuring to an extent of 154 sq.ft. during the year 1967 at Door No.22/23, Mangollai, Mylapore, Chennai-4 and his father was running a Tiffin shop by paying the monthly rent regularly. The 4th respondent temple had also recognised the lawful possession and enjoyment of the petitioner's father. The father of the petitioner died during the year 1992 and thereafter, the petitioner started running the business and also paying the rent. The petitioner had also approached the 4th respondent for transfer of leasehold in his favour and undertook to pay the necessary charges and despite several representations, no orders have been passed. The petitioner was issued with a show cause notice calling upon him to pay a sum of Rs.,148,312/-, representing the arrears and immediately, he remitted a sum of Rs.60,000/- and it was also received. The petitioner would further state that the 2nd respondent has issued a notice dated 03.08.2015 u/s.78[2] of the Tamil Nadu Hindu Religious and Charitable Endowments Act, stating that he is an encroacher and called upon him to offer his explanation within a period of 30 days from the date of receipt of a copy of the said notice and in response to the same, the petitioner submitted a representation stating that after the demise of his father, he is in possession and running the business and also approached the 4th respondent very many times for transfer of lease in his favour and since no orders are passed, the petitioner undertook to pay the arrears, if any. The grievance expressed by the petitioner is that without affording an reasonable opportunity whatsoever, the impugned notice came to be passed, treating the petitioner as an encroacher and the shop was also sealed on 31.05.2016.

3 The learned counsel for the petitioner would submit that it is false to say that the petitioner had sub-let the premises in favour of one Krishnamoorthy and the said person is an employee only and the business was run by the petitioner on the demise of his father and therefore, prays for appropriate orders including the lifting the seal of the premises.

4 Per contra, Mrs.Rita Chandrasekar, learned Special Government Pleader [HR&CE] who accepts notice on behalf of the respondents, has drawn the attention of this Court to section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and submitted that as against the impugned order, the petitioner is having an alternative remedy and he can avail the same by

presenting an appeal in the proper format along with the prescribed fee and under section 21[6] of the Act, the Commissioner is having power to stay the execution of any order or decision, of the nature, preferred to him under section 21[1] of the Act and therefore, prays for the dismissal of the writ petition.

5 This Court considered the rival submissions.

6 The petitioner, aggrieved by the impugned order, has submitted a representation dated 05.06.2016 to the respondents 1 to 3. In the considered opinion of the Court, the petitioner is having an effective alternative remedy u/s.21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and therefore, the writ petition challenging the impugned order passed by the 2nd respondent in the facts and circumstances, is not maintainable.

7 In the result, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

8 However, the petitioner is at liberty to present the appeal u/s.21 of the Act in the prescribed format after paying the prescribed fee within a period of two weeks from the date of receipt of a copy of this order and the 1st respondent, on receipt of the said Appeal Memorandum, shall entertain the same, if the papers are otherwise in order and give a disposal on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner. It is also open to the petitioner to move a petition for interim orders u/s.21 of the Act and the said interim application shall also be considered as expeditiously as possible and given disposal before passing the final orders in the main appeal.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

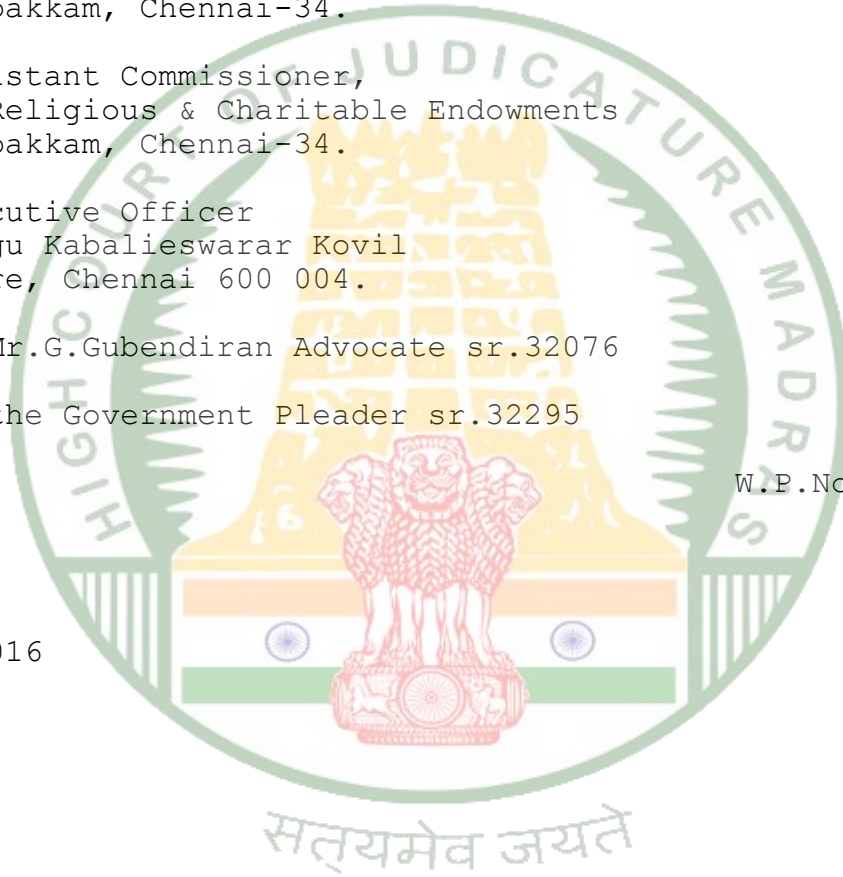
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+1 cc to Mr.G.Gubendiran Advocate sr.32076

+1 cc to the Government Pleader sr.32295

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