

In the High Court of Judicature at Madras

Dated: 29.03.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.30618 of 2015
and
M.P.No.1 of 2015

Arulmigu Virudhagiriswarar Temple,
Rep. By its Executive Officer,
Virudhachalam.

..Petitioner

Vs.

1.Commissioner,
Municipality Office,
Virudhachalam.

2.Assistant Executive Engineer,
Tamil Nadu Electricity Generation and
Distribution Board,
Virudhachalam.

3.Tahsildar,
Virudhachalam.

4.Subramanian

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the first respondent to demolish construction unauthorisedly carried out by the fourth respondent in the temple land in survey number 124/1 Anna Street, Pudupet, Virudhachalam, measuring 4400 sq.ft. and consequently direct the 1 to 3 respondents to withdraw the electricity, water and sewer connection, if any given to the fourth respondent, in respect of the property.

For Petitioner : Mr.G.Surya Narayanan

For 1st Respondent : Mr.R.P.Prathap Singh

For 2nd Respondent : Mr.Varunkumar

For 3rd Respondent : Mr.P.S.Siva Shanmuga Sundaram
Special Government Pleader

For 4th Respondent : Mrs.AL.Gandhimathi

O R D E R
[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner/Temple has preferred the instant Writ Petition praying for passing of an order by this Court in directing the 1st Respondent/Commissioner, Municipality Office, Virudhachalam to demolish the construction unauthorisedly carried out by the 4th Respondent in the temple land in Survey No.124/1, Anna Street, Pudupet, Virudhachalam, measuring an extent of 4400 square feet. Further, the Petitioner has sought an order by this Court in directing the Respondents 1 to 3 to withdraw the electricity, water and sewerage connection, if any given to the 4th Respondent, in respect of the property. Also, the Petitioner has sought a relief of Interim Injunction being passed against the 4th Respondent from putting up any further construction in the temple land in survey number mentioned supra, pending disposal of the Writ Petition.

2. According to the Petitioner/Temple, the father of the 4th Respondent took 1375 sq. ft. of land for rent from the temple and that the 4th Respondent took 1375 sq. ft. of land on rent from the Petitioner/Temple in Survey No.124/1, Anna Street, Pudupet, Virudhachalam. The 4th Respondent is paying only a sum of Rs.167/- as rent in respect of the land to the Petitioner/Temple. As a matter of fact, the 4th Respondent does not have any right or authority to put up any construction in the property taken on lease by him from the temple without the written authority of the Petitioner/temple as well as the H.R. and C.E. Administration.

3. In this fact situation, during 1st Week of May, 2015, the 4th Respondent started putting up construction of a house in the landed property belonging to the Petitioner/Temple. When the Petitioner/Temple caused an enquiry with the 1st Respondent/ Commissioner, Office of the Virudhachalam Municipality, the officials of the Municipality refused to part with any information as to whether any permission was obtained by the 4th Respondent for putting up the construction in the temple land.

4. Added further, the 4th Respondent on 15.05.2015 gave a letter to the Petitioner/Temple authorities that he wanted to change the tiles of the roof and undertook not to put up any permanent construction. Immediately, the Petitioner/Temple issued Lawyer's Notice on 07.09.2015 for terminating the lease granted in favour of the 4th Respondent and his father. Thereafter, when the Temple Authorities had inspected the landed property, they found that the 4th Respondent is putting up construction and took photographs of the same and lodged a police complaint on 08.09.2015 for which the receipt was given by the police on the same day. The police had stated that

already they were informed that a suit is pending and the dispute is of civil nature and therefore they would not interfere.

5. Moreover, the plea of the Petitioner is that the 4th Respondent had filed a suit in O.S.No.216 of 2015 on the file of the District Munsif Court No.II, Virudhachalam for permanent injunction restraining the Petitioner/Temple from interfering with his construction activity. Also, the 4th Respondent filed an Interlocutory Application seeking a relief of temporary injunction restraining the Temple from interfering with the construction activity carried on by him. In fact, in the said interim application, only notice was issued. Therefore, the 4th Respondent is proceeding with his construction activity.

6. Further, the grievance of the Petitioner/Temple is that on 07.09.2015, it addressed a communication to the Respondents 1 to 3 making a request to stop the construction in issue and also not to consider any application seeking water supply and drainage connection etc. But, they are keeping quiet after receipt of the letter. In reality, the Officials of the 1st Respondent/Municipality are not furnishing details in writing as to whether any permission of the authority was taken for putting up construction in Survey No.124/1, Anna Street, Pudupet, Virudhachalam, which belongs to the Petitioner/Temple.

7. It comes to be known that the Petitioner/Temple issued a Lawyer's Notice dated 07.09.2015 terminating the lease granted to the 4th Respondent and his father. If the 4th Respondent is allowed to put up construction in the land belonging to the Petitioner/ Temple as stated supra, then, the Petitioner/Temple will be put to an irreparable loss and hardship. Further, the 4th Respondent had given an undertaking on 15.05.2015 that he would not put up any permanent construction in the temple land.

8. Inasmuch as the lease hold right of the 4th respondent was terminated by means of a Lawyer's Notice dated 07.09.2015, the 4th Respondent does not have right to proceed with the construction of the property. In this back drop, the Petitioner/Temple has filed the present Writ Petition.

9. In the present case, the Petitioner has not impleaded the Hindu Religious Charitable and Endowments Department as a Party/ Respondent. However, on this Court's information, Mrs.Rita Chandrasekar, Learned Special Government Pleader for the Hindu Religious and Endowments Department, on appearance submits that if a representation is made by the Petitioner/Temple to the H.R. and C.E. Department, the Department is quite competent to pass appropriate orders.

10. At this stage, the Learned Counsel for the Petitioner/Temple brings it to the notice of this Court that though there are no averments in the pleadings, an information was provided to the Joint Commissioner, H.R. and C.E. Department in regard to the subject matter in issue.

11. It is not in dispute that the 4th Respondent is a tenant to the Petitioner/Temple. If the 4th Respondent/Tenant proceeds with certain construction, certainly, it is for the Petitioner/Temple to take necessary steps to stop/remove the unauthorised construction, in the considered opinion of this Court.

12. In this connection, the Learned Counsel for the Petitioner contends that as per Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Executive Officer of the Petitioner/Temple is competent to file the present Writ Petition before this Court.

13. It is to be borne in mind that the Petitioner/Temple had issued a Lawyer's Notice dated 07.09.2015 terminating the tenancy. Also, in said notice, it was, among other things, mentioned that the 4th Respondent's father had taken the land of the Petitioner/Temple on rent and that the 4th Respondent is presently in enjoyment of the same by paying a monthly rent of Rs.167/-. Further, at the time of acceptance of tenancy/lease, the condition was that without the permission of the temple, no construction should be constructed and subject to this condition, the rent was paid etc. Also, it was stated that a notice dated 15.05.2015 was issued by the Petitioner/Temple to the 4th Respondent mentioning that he made an endeavour to put up a construction without informing the Temple.

14. It is to be noted that when once a conclusion is arrived at that there is an encroachment of land belonging to a Charitable or Religious Institution, then, the procedure visualised under Section 78(2) and (4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, has to be adhered to. In reality, Section 78(4) of the Act would point out that (i) the authority should conduct an enquiry; (ii) the authority should be satisfied that there is an encroachment in the property; (iii) the authority should pass a speaking order recording reasons for removal of encroachment. Furthermore, the procedure envisaged under Section 78 of the Act is not repugnant to the procedure enjoined under Section 79 of the Act, as per decision in Narayanan V. State of Tamil Nadu reported in 2012 (4) MLJ 37.

15. That apart, it is to be remembered that Section 79(4) of the Act is a bar for the Civil Court in entertaining any suit or issuing any injunction order in respect of the proceedings taken by the Joint Commissioner under Section 78 of the Act. In fact, the bar is for the encroachers not to approach the Civil Court.

16.At this stage, it cannot be forgotten that the procedure contemplated under Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is more or less, a full-fledged enquiry as one available in a Civil Court, as per decision in K.V.Lakshmi Ammal V. The Joint Commissioner, H.R. & C.E. Department, Madurai and others, 2010 (1) CWC 490 (DB). Continuing further, the procedure adumbrated in Section 78(4) is a specific procedure and it is not a summary one.

17.At this juncture, this Court significantly points out that after the expiry of lease period, the position/status of a tenant is that of an encroacher and as such, the ingredients of Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 can rightly be invoked, as opined by this Court.

18.Indisputably, the Petitioner/Temple has every right to take appropriate steps to stop the illegal construction put up by the 4th Respondent, by adhering to the procedure enshrined under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

19.As far as the present case is concerned, in the affidavit of the Executive Officer of the Petitioner/Temple is conspicuously silent as to whether the Petitioner/Temple has filed the present Writ Petition, after obtaining requisite permission, concurrence or any authorisation in writing from the higher officials of the H.R. & C.E. Department. In fact, without resorting to the same, the Executive Officer of the Temple has straightaway filed the present Writ Petition before this Court.

20.Inasmuch as the Petitioner/Temple had not followed the procedure specified in Section 78 of the Act relating to the encroachment/removal of the 4th Respondent from the Temple land in the subject matter in issue, this Court, without haziness, comes to a resultant conclusion that the Writ Petition filed by the Petitioner /Temple is per se not maintainable and as a logical corollary, it is not entitled to claim the reliefs sought for in the Writ Petition. Consequently, the Writ Petition fails.

21.In the result, the Writ Petition is dismissed, leaving the parties to bear their own costs. It is made clear that the dismissal of the Writ Petition will not preclude the Petitioner/Temple to make a representation, as regards the demolition of unauthorised construction put up by the 4th respondent in the temple land and to remove him from the

temple property, to the higher-ups of the H.R. & C.E. Department, as specified under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl
To

- 1.The Commissioner,
Municipality Office,
Virudhachalam.
- 2.The Assistant Executive Engineer,
Tamil Nadu Electricity Generation and
Distribution Board,
Virudhachalam.
- 3.The Tahsildar,
Virudhachalam.
- 4.Mrs.Rita Chandrasekar,
Special Government Pleader,
For H.R. & C.E. Department.

+ 2ccs to M/s. AL. Gandhimathi, Advocate Sr.19847
+ 1 cc to Mr.M. Varunkumar, Advocate Sr.19752
+ 1 cc to Mr.R.P. Prathap Singh, Advocate Sr.9341

W.P.No.30618 of 2015

SR(CO)
Eu 15.04.16

सत्यमेव जयते

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