

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.20160 of 2016

and WMP.No.17346, 17347 and 18935 of 2016

Mrs.Latha Bhatt .. Petitioner

vs.

1.The Executive Officer,  
Arulmigu Gangadeswarar & connected Temples,  
Gangadeswarar Temple,  
Purasawalkam,  
Chennai-600 084.

2.The Commissioner,  
Hindu Religious and Charitable Endowments,  
Nungambakkam High Road,  
Chennai-600 034. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in connection with his Notice dated 13.05.2016 issued in connection with the property at Door No.76, Gangadeswarar Koil Street, Purasawalkam, Chennai and quash the same.

For Petitioner :M/s.R.Srinivas

For Respondents :Mrs.Rita Chandrasekaran,  
Special Government Pleader for R2

Mr.A.K.Sriram for  
M/s.A.S.Kailasam for R1

O R D E R

By consent this Writ Petition is taken up for final disposal.

2. The father of the petitioner was granted lease of 5 grounds of land with a dilapidated superstructure bearing Door No.76, Gangadeeswarar Koil Road, Purasawalkam, Chennai-600 084 on 23.11.1983 for a period of five years by registered Lease Deed dated 23.11.1983 and according to the first respondent, after the expiry of the said lease, the original tenancy was treated as monthly tenancy and the rental amounts were accepted and receipts were also issued. The first respondent temple filed O.S.No.4266 of 2001 for recovery of possession and the petitioner had also filed O.S.No.3079 of 1999 praying for a declaration declaring the notice of termination of tenancy issued by the first respondent dated 21.04.1999 as null and void and the temple had also filed O.S.No.3203 of 1992 praying for permanent injunction restraining the original tenant from putting up further superstructure and despite that additional constructions have been put up and therefore, came forward with this writ petition.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that even in the earlier round of litigation in W.P.No.2911 of 2004, this Court, while dismissing the writ petition, vide order dated 18.6.2009, has recorded the fact the first respondent temple has given no objection to the Corporation of Chennai for granting required licence to run the hotel and despite the pendency of the Suit for recovery of possession, the first respondent has issued the impugned notice, calling upon the petitioner to vacate and deliver vacant possession within 15 days from the date of receipt of notice, failing which action will be taken under Section 78 of the H.R. & C.E. Act and would further submit that as per statutory procedure, only the jurisdictional Joint Commissioner can alone take appropriate action and not the first respondent and prays for interference.

4. Per contra, Mrs.Rita Chandrasekaran, learned Special Government appearing for the second respondent/H.R.&C.E. would submit that admittedly the suit for recovery of possession is pending for quite number of years and dehors the pendency of the Suit, it is open to the first respondent to initiate appropriate action and even as per the statutory provisions, the first respondent has sent a communication to the jurisdictional Assistant Commissioner, who in-turn will forward a report to the Joint Commissioner to initiate action under Section 78(2) of the H.R.& C.E. Act and such stage has not reached and the impugned order is merely a show cause notice for which the petitioner has to respond and thereafter, appropriate orders would be passed based on the petitioner's representation and hence, prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. The first respondent in para 8 of the counter affidavit has stated that he has no power to evict the petitioner from the premises and he has got power to complain about the encroachments to the Assistant Commissioner, H.R. & C.E. Department. It is the submission of the learned counsel appearing for the first respondent that it is merely a show cause notice and the petitioner is at liberty to respond to the same. However, the learned counsel appearing for the petitioner has expressed apprehension that the contents of the impugned notice reveal that straight away action would be initiated under Section 78 of the H.R. & C.E. Act and therefore, the possession of the petitioner is sought to be interfered with. In the considered opinion of the Court, the apprehension expressed by the petitioner may not be correct in the light of the stand taken by the first respondent in para 8 of the counter affidavit. It is the submission of the learned counsel appearing for the first respondent that the first respondent has to sent a report to the jurisdictional Assistant Commissioner, who in-turn has to approach the jurisdictional Joint Commissioner for initiating Action under Section 78 of the H.R. & CE Act.

7. In the light of the said submission of the learned counsel appearing for the first respondent coupled with the counter affidavit, the petitioner is granted liberty to respond to the impugned notice of the first respondent dated 13.05.2016, which is to be treated as show cause notice for which the petitioner is at liberty to respond by sending a reply within a period of two weeks from the date of receipt of a copy of this order and the first respondent, on receipt of the same, is directed to consider the said representation and pass orders in accordance with law within a period of two weeks thereafter and communicate the decision taken, to the petitioner. It is also made clear that any action taken to evict and dispossess the petitioner shall be strictly in accordance with law.

8. This Writ Petition is disposed of accordingly. No costs. Interim order already granted in WMP.No.17347 of 2016 is vacated. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

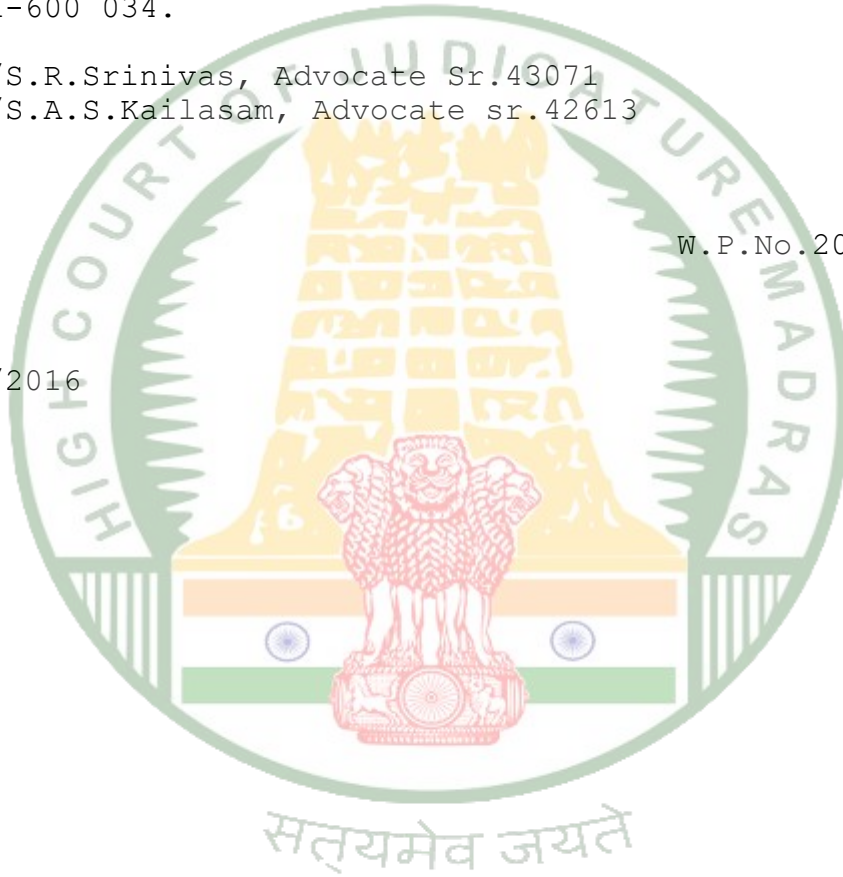
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+1cc to M/S.R.Srinivas, Advocate Sr.43071  
+1cc to M/S.A.S.Kailasam, Advocate sr.42613

W.P.No.20160 of 2016

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srg 22/08/2016



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