

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2016

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH

W.P.No.36559 of 2015
and M.P.No.1 of 2015

M/s.Radha Silk Emporium
rep. by its Partner K.Jairam
S/o.Kothandaraman
No.1, Sannadhi Street
Mylapore
Chennai-600 004.

... Petitioner

Vs

1. The Commissioner
Hindu Religious & Charitable Endowment Board
Nungambakkam High Road, Chennai-600 034.
 2. The Joint Commissioner
Hindu Religious & Charitable Endowment Board
Nungambakkam High Road
Chennai-600 034.
 3. Arulmigu Kapaleswarar Temple
rep. by its Joint Commissioner/Executive Officer
Hindu Religious & Charitable Endowment Department
Chennai-600 034.
 4. Corporation of Chennai
rep. by its Commissioner
Rippon Buildings
Chennai-600 003.
 5. D.Kaveri
W/o.Dalapathi Sankar
Joint Commissioner/Executive Officer
Arulmigu Kapaleswarar Temple
Hindu Religious & Charitable Endowment Department
Chennai-600 004.
- ... Respondents

Petition filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the communication of the 3rd respondent in Na.Ka.No.535/2009/A4, dated 07.11.2015, quash the same and to direct the 1st respondent to restore possession of

the property bearing Door No.15, Sannadhi Street, Mylapore, Chennai-600 004, pending disposal of the above Writ Petition.

For Petitioner :Mr.R.Thiagarajan
Senior Counsel
for Mr.M.Muthappan

For respondents : Mr.P.Sanjay Gandhi
Additional Government Pleader
for R.1 and R.2
No Appearance for R.3
Mr.P.V.Selvakumar for R.4
Mr.Arunkarthimohan for R.5

O R D E R

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus, to call for the records relating to the communication of the 3rd respondent in Na.Ka.No.535/2009/A4, dated 07.11.2015, quash the same and to direct the 1st respondent to restore possession of the property bearing Door No.15, Sannadhi Street, Mylapore, Chennai-600 004, pending disposal of the above Writ Petition.

2. The brief facts, which are necessary to dispose of this Writ Petition, are as follows:-

(i) The petitioner is a tenant in respect of the building situated at Door No.15, Sannadhi Street, Mylapore, Chennai-600 004. The said building belongs to the 3rd respondent. The said building was originally leased out to one Balakumar of M/s.Bala Garments. Subsequently, the tenancy was transferred in favour of the petitioner by the proceedings of the 1st respondent, dated 24.09.2009. The order of transfer was communicated to the petitioner by the Executive Officer of the Temple. The petitioner paid a sum of Rs.12,37,802/-, by way of arrears of rental due from M/s.Bala Garments and also by donation.

(ii) Since the said building was in dilapidated condition, the petitioner has written a letter to the departmental authorities bringing to their notice about the dilapidated condition of the building and also the structural stability of the building. The Joint Commissioner (HR&CE), by letter dated 15.02.2011, while granting permission to the petitioner to demolish the said building, allowed the petitioner to put up a new building, imposing certain conditions. Thereafter, the petitioner started demolition of the then existing building on 26.11.2014. While so, the petitioner received a notice, dated 27.11.2014, from the Deputy Commissioner/Executive Officer of the Temple, calling upon him to stop demolition on the ground that the period of 11 months granted by them to complete the

demolition and re-construction was already over. This was followed by a police complaint, dated 27.11.2014, and a notice, dated 28.11.2014, from the counsel of the Executive Officer. The said notice was received by the petitioner on 01.12.2014.

(iii) In the mean while, the Temple had filed W.P.No.31491 of 2014 and obtained an order of interim injunction, restraining the petitioner from making any further alteration to the building situated in Door No.15, Sannadhi Street, Mylapore, Chennai-600 004. The said Writ Petition was disposed of by this Court, by order dated 29.01.2015, wherein, in paragraph No.4 this Court has observed as follows:-

"4. In my view, the prayer sought for by the writ petitioner to temple is a misconceived one. The planning permission granted is in the name of the writ petitioner temple and it is an admitted fact that the Commissioner, HR&CE Department, by the order dated 15.02.2011 has granted permission for the third respondent to demolish the existing building and contract a new building on the same premises at their own cost and the letter dated 20.03.2012 reiterating that the property is leased out to the third respondent was sent by the writ petitioner to the second respondent. That apart another order has been passed by the writ petitioner in favour of the third respondent dated 08.12.2011 imposing certain conditions. As long as these proceedings granting permission are remain unaltered or modified, the question of issuing writ of Mandamus to forbear the third respondent from proceeding further does not arise."

(iv) Aggrieved against the above order, a Writ Appeal in W.A.No.242 of 2015, was filed by the Deputy Commissioner/ Executive Officer of the Temple before this Court. During the pendency of the Writ Appeal, the Deputy Commissioner/ Executive Officer of the Temple passed an order dated 12.02.2015, terminating the petitioner's tenancy. This order was challenged by the petitioner by filing a Writ Petition in W.P.No.4045 of 2015. In the mean while, a Division Bench of this Court, by order dated 30.06.2015, dismissed the W.A.No.242 of 2015. This Court, while disposing of the W.P.No.4045 of 2015, by order dated 10.09.2015, has observed in paragraph No.6 of the order as follows:-

"6..... While exercising power under Section 34(B) of the HR&CE Act, hearing the petitioner is mandatory. Admittedly, the said exercise has not been done. As, the impugned

order has got civil consequences and the first respondent seeks to cancel the lease entered into between the parties unilaterally, this court is of the view that the impugned order cannot be sustained in the eye of law. Merely because there are provisions available to agitate this issue on merit, the same would not take away the jurisdiction of this court when there is an appropriate procedure involved. Accordingly, the impugned order is set aside. Since this court has not expressed any opinion on the merits of the case, it is made clear that this order would not stand in the way of the first respondent from taking appropriate action in accordance with law."

(v) Pursuant to the said order, the Deputy Commissioner/ Executive Officer of the Temple, issued a notice dated 14.09.2015, calling upon the petitioner to show cause, as to why the tenancy in favour of the petitioner should not be cancelled and calling upon the petitioner to appear in person on 23.09.2015, at 5.00 p.m., at the office of the Arulmighu Kapaleeswarar Temple. As against the notice dated 14.09.2015, the petitioner filed a Revision Petition before the Commissioner, HR&CE Department, Chennai-34. While so, the Commissioner (HR&CE), by order dated 26.09.2015, pointed out that the notice, dated 14.09.2015, was only a show cause notice and the petitioner can put forth his objections before the Deputy Commissioner/ Executive Officer of the Temple. In the mean while, the Joint Commissioner/ Executive Officer of the Temple, by order dated 07.11.2015, terminated the lease granted in favour of the petitioner in respect of Door No.15, Sannadhi Street, Mylapore, Chennai-4, by referring to the order in W.P.No.4045 of 2015 and the filing of the Revision Petition before the Commissioner (HR&CE). Challenging the said order, the present Writ Petition has been filed by the petitioner.

3. When the matter is taken up for consideration, Mr.R.Thiagarajan, the learned senior counsel appearing for the petitioner made his submissions reiterating the averments made in the affidavit. He would further submit that, now, the only grievance of the petitioner is that before passing the impugned order, an opportunity of hearing should have been given to the petitioner. Since, the impugned order has been passed, without giving an opportunity of hearing to the petitioner, the same is liable to be quashed.

4. Mr.P.Sanjay Gandhi, the learned Additional Government Pleader vehemently opposed the grant of the prayer sought for by the petitioner contending that the show cause notice, dated

14.09.2015, was issued to the petitioner, inspite of receiving the same, he has neither chosen to appear for enquiry nor gave his reply by way of objections, but, he has filed a Revision Petition before the Commissioner, HR&CE Department, Chennai-34 and therefore, there is nothing wrong in the impugned order and it needs no interference at the hands of this Court. He would further submit that it is in correct to state that no opportunity of hearing was given to the petitioner. He would further submit that the petitioner has got the right of appeal remedy before the Commissioner, HR&CE Department, therefore, he can very well work out his appropriate remedy by way of filing an appeal as against the order of the Joint Commissioner/Executive Officer of the Temple, dated 07.11.2015.

5. In the light of the above submission, suffice it to state, the petitioner is directed to file an appeal before the first respondent/The Commissioner, Hindu Religious & Charitable Endowment Department, within a period of two weeks from the date of receipt of a copy of this order and on filing such appeal, the first respondent is directed to afford an opportunity of personal hearing to the petitioner and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks thereafter.

6. This Writ Petition is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Commissioner
Hindu Religious & Charitable Endowment Board
Nungambakkam High Road
Chennai-600 034.

2. The Joint Commissioner
Hindu Religious & Charitable Endowment Board
Nungambakkam High Road
Chennai-600 034.

3.The Joint Commissioner/Executive Officer
The Arulmigu Kapaleswarar Temple
Hindu Religious & Charitable Endowment Department
Chennai-600 034.

4. The Commissioner,
The Corporation of Chennai
Rippon Buildings
Chennai-600 003.

+lcc to Mr.M.Muthappan, Advocate sr.14161

+lcc to Mr.Arun Karthik Mohan, Advocate sr.14245

W.P.No.36559 of 2015

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srg 08/03/2016



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