

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2016

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

W.P.No.40706 and 40707 of 2015
and M.P.Nos.1 of 2015

Dr.Raja Saravanan

... Petitioner in both W.Ps

Vs.

1. The Deputy Commissioner/
Executive Officer,
Arulmigu Parthasarathy
Swamy Thirukkoil
Triplicane,
Chennai,

2. The Joint Commissioner,
O/o.Director of Commissioner for
Hindu and Religious and
Charitable Endowments,
Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034,

3. The Commissioner for
Hindu Religious and
Charitable Endowments,
Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.

... Respondents in both W.Ps.

Petition in W.P.No.40706 of 2015 is filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the 2nd respondent to deliver back the papers original Appeal Memo, Impugned Order, Batta Memo, copy, etc., filed in the Appeal Petition filed against the Order dated 12.3.2015 made in Na.Ka.No.715/2012/A6 on the file of 1st respondent forthwith enabling the petitioner to file the Statutory Appeal to the third respondent.

Petition in W.P.No.40707 of 2015 is filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the 2nd respondent herein to dispose of the Stay Petition filed along with the Appeal Petition submitted to 2nd respondent on 31.7.2015 against the Order dated 13.7.2015 made in Na.Ka.No.715/2012-A4 on the file of the first respondent in terms of the Order of this Hon'ble Court

dated 21.8.2015 made in W.P.No.26663 of 2015 forthwith safeguarding the interest of the petitioner.

For Petitioner : Mr.R.Loganathan
in both W.Ps

For Respondents: Mr.K.V.Dhanapalan,
in both W.Ps. Addl.Govt.Pleader

O R D E R

The petitioner has been informed by the 1st respondent in the Order dated 12.8.2015 that the tenancy of the petitioner would be terminated on his failure to pay the rent and action would be taken under Sections 78 and 79 of the Hindu religious and Charitable Endowments Act, 1959 (in short, 'H.R. & C.E.Act'). The said order was challenged by the petitioner in W.P.No.26663 of 2015, wherein, this Court, after hearing the parties, passed the following order in the said writ petition on 26.8.2015:

'5. Admittedly, the petitioner has filed an appeal before the respondent no.2. The said appeal is a statutory appeal. If the appeal is not in order, the respondent no.2 will have to return the same within two weeks from the date of receipt of a copy of this order. Thereafter, the petitioner can rectify the defects pointed out and re-present the same within a further period of two weeks. After the receipt of the same, the respondent no.2 will have to consider the stay petition and pass appropriate orders. As the impugned order mainly says that appropriate action will be taken under Sections 78 & 79 of the Hindu Religious and Charitable Endowments Act, which would admittedly take sufficient time, this Court is not inclined to stay the same at this stage as the said order says only proposes to take action under the above said provisions. However, it is made clear that if the stay petition is filed, the respondent no.2 will have to pass appropriate orders at the earliest within two weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner will have to co-operate with the disposal of the stay petition.'

2. The appeal filed by the petitioner was returned by the proceedings of the 2nd respondent dated 8.10.2015 stating that under Section 34A(3) of the H.R. & C.E.Act, it would lie only before the 3rd respondent. Similarly, the appeal filed against the consequential order was also returned.

3. The petitioner has come forward to file these writ petitions alleging that the back papers pertaining to the appeal petition filed before the 2nd respondent against the Order dated 12.3.2015 made in Na.Ka.No.715/2012/A6 on the file of 1st respondent, have not been returned to the petitioner, though the proceedings dated 8.10.2015 of the 2nd respondent states that they have been returned. Learned counsel also submitted that the 2nd respondent will have to be directed to dispose of the stay petition submitted to the 2nd respondent on 31.7.2015 against the Order dated 13.7.2015 made in Na.Ka.No.715/2012-A4 on the file of the 1st respondent.

4. As rightly submitted by the learned Additional Government Pleader appearing for respondents, the appeal filed on 31.7.2015 is only consequential. As against the fixation of fair rent, an appeal would only be maintainable to the 3rd respondent - Commissioner for Hindu Religious and Charitable Endowments Act under Section 34A(3) of the H.R. & C.E.Act. Such appeal mandates a pre-deposit. Therefore, the consequential prayer sought for in W.P.No.40707 of 2015 is also not maintainable.

5. Considering the facts and circumstances of the case, the petitioner is given a further period of four weeks time from the date of receipt of copy of this order to file appeal before the the 3rd respondent under H.R.& C.E.Act under Section 34A(3) of the Hindu Religious and charitable Endowments Act, 1959 against the Order dated 12.3.2015 in Na.Ka.No.715/2012/A6 on the file of 1st respondent. While presenting such an appeal the petitioner is at liberty to file the same without the original order, which is stated to be still with the 2nd respondent. However, it is made clear that the appeal can only be entertained, subject to the condition the petitioner satisfies the condition of pre-deposit, as mandated by law. However, till such time, status quo as on today shall be maintained. It is made clear that if the petitioner does not comply with the condition of pre-deposit by filing appeal as indicated above, it is open to the respondents to proceed as per law.

The writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner/
Executive Officer,
Arulmigu Parthasarathy Swamy Thirukkoil
Triplicane,
Chennai,
2. The Joint Commissioner,
O/o.Director of Commissioner for
Hindu and Religious and Charitable Endowments,
Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034,
3. The Commissioner for
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Charitable Endowments,
Uthamar Gandhi Road,
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+ 2 ccs to Mr.R. Loganathan, Advocate Sr.5&6

W.P.Nos.40706 and 40707
of 2015

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