

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.28637 of 2016

and WMP.No.24697 of 2016

R.Gopal

.. Petitioner

vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai.

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

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Chennai-34.

4.The Executive Officer-cum-Fit Person,
Arulmighu Theyagaraswamy Thirukoil,
Thiruvottiyur,
Chennai-19.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the case in the proceedings of the second respondent in Na.Ka.No.15581/2008/A2 dated 22.07.2016 under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and quash the same.

For Petitioner : M/s.A.Edwinprabakar

For Respondents: Mr.M.Maharaja,
Special Government Pleader (HR&CE)

O R D E R

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

2. The petitioner would claim that he is a lessee of a plot in S.No.237/1 admeasuring to an extent of 128 Sq.Ft. of Arulmighu Theyagarajaswamy Thirukoil, Thiruvotriyur, Chennai, the fourth respondent herein and he is carrying on the business of selling flower and pooja articles. The petitioner would further state that his father late Mr.G.Ramakrishnan was the lessee of the above said shop and on his demise, the petitioner continues to be in possession and enjoyment of the same and he has also paid the property tax as well as electricity consumption charges. The petitioner would further state that on 10.04.2015, the third respondent issued a notice calling upon the petitioner to pay a sum of Rs.9416/- and subsequently he has paid a sum of Rs.5,000/- towards rental arrears. However, to the shock and surprise, the petitioner received a notice dated 11.02.2016 from the second respondent calling upon him to appear for enquiry by treating him as an encroacher and further directed him to pay rental arrears of Rs.7,464/-. The petitioner claims that he is an Asthma patient and suffering from severe wheezing and therefore, he could not appear for enquiry and in the interregnum, he has paid the entire rental arrears and apprehending dispossession in pursuant to the interim order passed by the second respondent, came forward with this writ petition.

3. The learned counsel appearing for the petitioner would submit that since the petitioner is having effective alternative remedy under Section 21 of the Hindu Religious and Charitable Endowments Act [H.R. & C.E. Act] and he may be permitted to avail the said remedy and some protection may be given as he is likely to be dispossessed from the property, despite the fact that his father as well as the petitioner were in possession for over 49 years.

4. Per contra, Mr.M.Maharaja, learned Special Government Pleader (H.R. & C.E.) accepts notice on behalf of the respondents and would submit that despite very many opportunities given, the petitioner did not appear for enquiry and taking into consideration all the relevant facts only, the impugned order came to be passed and prays for dismissal of the writ petition.

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

6. In the considered opinion of the Court, since the petitioner is having effective alternative remedy under Section 21 of the H.R. & C.E. Act, for the present, this writ petition is not maintainable. However, taking into consideration of the fact that the father of the petitioner as well as the petitioner are in possession of the property for over 49 years and the further fact that he has paid the rental dues, some interim protection may be given to the petitioner.

7. In the result, this Writ Petition is disposed of and the petitioner is at liberty to avail the alternative remedy available under Section 21 of the H.R. & C.E. Act by filing an appeal along with the Stay petition within a period of two weeks from the date of receipt of a copy of this order to the Government and the Government/H.R. & C.E. Department, shall entertain the same if the papers are otherwise in order and it is open to the Government either to take up the stay petition or the appeal and give disposal as expeditiously as possible. It is also made clear that till such time, the possession of the petitioner need not be disturbed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Chennai-34.
- 3.The Assistant Commissioner,
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4.The Executive Officer-cum-Fit Person,
Arulmighu Theyagaraswamy Thirukoil,
Thiruvottiyur,
Chennai-19.

+1cc to Mr.Edwin Prabakar, Advocate Sr.46588
+1cc to the Government Pleader Sr.46783

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