

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-02-2016

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 5636 of 2016
and
W.M.P. Nos. 4988 and 4989 of 2016

A. Kokila

.. Petitioner

Versus

1. The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam, Chennai - 600 034.
2. The Joint Commissioner ,
Hindu Religious and Charitable Endowment Board,
Nungambakkam, Chennai - 600 034.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam, Chennai - 600 034.
4. Thakkar/The Assistant Commissioner,
Arulmighu Sri Muthukumaraswamy Thirukoil,
46, Rasappa Chetty Street,
Poonga Nagar, Chennai - 600 003.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari to call for the records in Na.Ka.No.2762/2015/A2 dated 30.09.2015 passed by the second respondent and confirmed in R.P. No. 149 of 2015 D2 dated 08.02.2016 passed by the first respondent and quash the same.

For Petitioner : Mrs. R.T. Shyamala

For Respondents : Mr. P. Sanjay Gandhi
Additional Government Pleader
for RR1 to 3

ORDER

The petitioner has filed this writ petition questioning the correctness of the order dated 08.02.2016 passed by the first respondent, confirming the order dated 30.09.2015 passed

by the second respondent. By the said order dated 08.02.2016 of the first respondent, the first respondent, while confirming the order passed by the second respondent, directed the petitioner to vacate the shop in question which belonged to the HR & CE Department and to handover vacant possession of the same within 15 days failing which it was informed that necessary steps will be taken to evict the petitioner by invoking Section 79 of the Hindu Religious and Charitable Endowments Act (in short HR & CE Act).

2. It is the case of the petitioner that the forefather's of her husband were carrying on betel nut, coconut and flower business in front of the Muthukumaraswamy Temple and they were permitted to carry on the said business by the erstwhile Trustees of the temple on the Western side entrance of the temple in an area measuring 40 square feet. During the year 2005, the husband of the petitioner died and the tenancy was attorned in favour of the petitioner. The petitioner was paying the rent fixed by the Trustees of the temple without fail and as on 01.03.2015, the rent was fixed at Rs.6,250/- per month. While so, the fourth respondent issued a notice dated 28.04.2015 under Section 78 (2) of the HR & CE Act to evict the petitioner on the ground that she is a trespasser of the land belonged to the temple. Repudiating the claim of the fourth respondent, the petitioner has sent a reply on 05.06.2015 stating that she is not a trespasser and she is carrying on the business after duly paying the rent month after month. In spite of receipt of such reply, the second respondent issued a notice dated 10.07.2015 and called upon the petitioner to submit his explanation. The petitioner also appeared before the second respondent in person and filed her objections in the form of a counter affidavit on 09.09.2015 contending inter alia that she is regularly paying rent. The petitioner also produced the rental receipt from 2005 till September 2015. In spite of the same, the second respondent passed an order dated 07.10.2015 stating that the petitioner is a trespasser and she is unauthorisedly squatting on the property belonged to the temple. Aggrieved by the same, the petitioner filed WP No. 32479 of 2015 before this Court challenging the order dated 07.10.2015 of the second respondent. When the writ petition was taken up for hearing, it was contended on behalf of the Department that the writ petition is not maintainable and the petitioner has to file a revision under Section 21 of the HR & CE Act. Accordingly, WP No. 32479 of 2015 was disposed of on 13.10.2015 giving liberty to the petitioner to file a Revision under Section 21 of the Act. Immediately, the petitioner filed a Revision on 14.10.2015. During the pendency of the revision, the officials of the department came to the shop in question on 04.11.2015 and given an ultimatum to the petitioner to vacate the shop. The petitioner therefore filed another WP No. 35922 of 2015 before this Court and this Court granted an interim stay till the disposal of the revision pending before the first

respondent. Thereafter, the first respondent has passed the impugned order dated 08.02.2016 rejecting the revision filed by the petitioner. Challenging the same, the petitioner is before this Court with this writ petition.

3. The learned counsel for the petitioner would contend that the petitioner is a statutory tenant in respect of the property in question and she has paid the rent regularly without any default. The learned counsel for the petitioner would further contend that the first respondent, without considering the long and continued possession of the petitioner over the property in question and without taking into account the rental receipts produced, has erroneously confirmed the order passed by the second respondent. According to the learned counsel for the petitioner, as per Section 34 B of the Act, the respondents are having jurisdiction to pass an order only if the tenant committed wilful default in payment of rent. In the present case, as there is no default in payment of rent by the petitioner, the entire proceedings initiated by the respondents are vitiated and she prayed for allowing this writ petition.

4. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would only contend that the writ petition is not maintainable before this Court as the petitioner has to exhaust the remedy of revision available under Section 114 of the HR & CE Act. When an alternative and efficacious remedy of revision is available, the petitioner is bound to exhaust such remedy instead of filing this writ petition before this Court.

5. I heard the counsel for both sides and perused the records. Admittedly, as against the order passed by the first respondent, a remedy of revision is available before the Government as contemplated under Section 114 of the HR & CE Act. In such view of the matter, I am of the view that liberty shall be given to the petitioner to file a revision before the Government.

6. At this stage, the learned counsel for the petitioner submits that there is an imminent threat of eviction of the petitioner from the shop in question. Therefore, the learned counsel for the petitioner prayed this Court to grant an order of injunction restraining the respondents from evicting the petitioner till the disposal of the revision by the Government.

7. Such a prayer cannot be countenanced especially when the Government is competent to pass an order of interim stay during the pendency of the revision. Such discretionary power to be exercised by the Government cannot be substituted by this Court till the disposal of the revision by the Government. However, having regard to the submission of the counsel for the

petitioner that there is an imminent threat of eviction of the petitioner, there will be a direction to the respondents to maintain status-quo as on date for a period of two weeks so as to enable the petitioner to file a revision before the Government as contemplated under Section 114 of HR & CE Act.

8. Accordingly, the writ petition is disposed of. No costs. The respondents are directed to maintain status-quo as on date for a period of two weeks so as to enable the petitioner to prefer a revision as contemplated under Section 114 of the HR & CE Act before the Government. It is open to the petitioner to file the revision petition along with a petition for stay and in such event it is for the Government to consider the petition for interim stay on merits and in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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Hindu Religious and Charitable Endowment Board,
Nungambakkam, Chennai - 600 034.
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3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam, Chennai - 600 034.

+1cc to M/S.R.T.Shyamala, Advocate, S.R.No.9767

+1cc to the Government Pleader, S.R.No.10454

WP No. 5636 of 2016

rsi(CO)
srg(19/02/2016)