

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6112 of 2016

N.R.Ramakoti

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Petitioner

Vs

1 The Joint Commissioner,
H.R. & C.E. Administration Department,
Nungambakkam, Chennai-600 034.

2 The Assistant Commissioner,
H.R.& C.E. Administration Department,
Nungambakkam, Chennai-600 034....

Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd respondent herein to comply with the order of the 1st respondent made in his proceedings Na.Ka. No.11975/2010/A3 dated 21.4.2014 by evicting the encroacher and to handover the vacant possession to the petitioner.

For Petitioner : Mr.P.Madhan

For Respondent : Mr.P.Sanjay Gandhi
Additional Government Pleader

O R D E R

The petitioner has come forward with this Writ Petition praying for issuance of a Mandamus upon the 2nd respondent to comply with the order of the 1st respondent made in his proceedings Na.Ka. No.11975/2010/A3 dated 21.4.2014 by evicting the encroacher and to handover the vacant possession to the petitioner.

2. The petitioner is the hereditary trustee of Bank P.Singaravelu Mudaliar Trust, Chennai-84 and the Trust has been classified under Section 46(i) income category of the list published by the Commissioner, HR&CE for the purpose of levy of

contribution to the respondent Department.

3. The Trust was founded by late P.Singaravelu Mudaliar and through his last Will and testament dated 10.12.1902, the testator appointed three trustees viz., V.Singara Mudaliar, Nemam Somasundara Mudaliar, Ambattur Seeyala Mudaliar to look after the charities. Whiles, the Commissioner, HR&CE, by his order dated 20.4.1963 made in D.Dis.22556/63, has appointed the petitioner's father late N.T.Radhakrishnan as a sole trustee and he was looking after the trust till 1987 and after his demise, the petitioner was appointed as Hereditary Trustee in his proceedings Se.Mu.Na.Ka.8137/87/A3 by an order dated 26.10.1987.

4. The trust owns a building situate at No.95, Vellala Street, Purasawalkam, wherein one Mrs.Nirmala Ethiraj was occupying the trust property unauthorisedly without paying fair rent. Hence the petitioner sent a letter to the 2nd respondent viz., Assistant Commissioner, HR&CE to initiate action against her and on receipt of the same, the 2nd respondent initiated action and submitted a detailed report in Na.Ka.No.3188/2010/A-1 dated 11.11.2010 to the 1st respondent viz., the Joint Commissioner, HR&CE. After receipt of the report, the first respondent issued a show cause notice to the said Mrs.Nirmala Ethiraj through his proceedings dated 29.12.2010 made in Na.Ka.No.11975/2010/A3 directing her to submit her reply. But even after expiry of 15 months of the statutory notice period, as there was no reply from her, in continuance to the first respondent's action under Section 78 of the act, a notice of enquiry was sent to her in Na.Ka.11975/2010 dated 31.12.2012 directing her to appear for enquiry on 8.1.2013. On that day, she has not appeared for enquiry and also on the subsequent adjournments, but she has sent her reply to the first respondent on 4.2.2013. After conducting a detailed enquiry, the 1st respondent declared her as an encroacher by his proceedings Na.Ka.No.11975/2010/A3 dated 21.4.2014 and thereby directed her to vacate and handover the portion occupied by her to the Trust, failing which, she will be evicted with the help of police in order to remove the encroachment.

5. It is the grievance of the petitioner that though a year has been passed after the 1st respondent's order of eviction, the 2nd respondent has not chosen to comply with the order of eviction in letter and spirit. Taking advantage of this, as the encroacher Nirmala Ethiraj is causing innumerable troubles to all the other tenants, which resulted in filing of two suits for injunction by two of the tenants as against her and in the suit, the Trust was also made as a party and to safeguard the

interest of the Trust, the petitioner has also engaged a counsel to defend the case which leads to unnecessary financial loss to the Trust. Hence, he has filed the present Writ Petition seeking a direction directing the 2nd respondent to comply with the order of the 1st respondent and to vacate the encroacher and to hand over the vacant possession to the petitioner.

6. Today, when the matter is taken up for consideration, learned Additional Government Pleader submitted that the 2nd respondent, in furtherance of initiating action against the encroacher, has addressed a letter to the Joint Commissioner, Law and Order, Egmore on 29.1.2015 seeking Police protection, but till date, the said letter was not considered and once police protection is given, the 2nd respondent will comply with the order of the 1st respondent.

7. In view of the submissions made by the learned Additional Government Pleader, the 2nd respondent is directed to send one more communication to the concerned jurisdictional police authority along with a copy of this order seeking to render necessary police protection and after obtaining necessary police protection, the 2nd respondent is directed to comply with the order of eviction passed by the 1st respondent against the encroacher. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

msr

To

- 1 The Joint Commissioner,
H.R. & C.E. Administration Department,
Nungambakkam, Chennai-600 034.
- 2 The Assistant Commissioner,
H.R. & C.E. Administration Department,
Nungambakkam, Chennai-600 034.

+1 cc to Mr.P.Madhan, Advocate, sr.10989

+1 cc to The Government Pleader, sr. 11444

W.P.No.6112 of 2016

jsv co,

kra 30.03.2016