

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/3/2016

C O R A M

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.8077 of 2016

V.Vijayan

...Petitioner

Vs

1. The Commissioner
Hindu Religious & Endowment
Charitable Department
Chennai 600 034.
2. The Assistant Commissioner
Hindu Religious & Endowment
Charitable Department
Chennai 600 034.
3. The Joint Commissioner/
Executive Officer
Hindu Religious & Endowment
Charitable Department
Arulmigu Kapaleeswarar Thirukovil
Mylapore
Chennai 600 004. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned show cause notice in Na.Ka.No.1235/2016/A2 dated 4/2/2016 on the file of the third respondent and quash the same and directing the respondents to transfer the tenancy of plot of land at No.6 Pichupillai Road, Mylapore, Chennai 600 004 from the name of Late Vedhachalam to the name of the petitioner.

For Petitioner ... Mr.S.Kumaradevan
For respondents ... Mr.K.V.Dhanapalan
Additional Government Pleader
(HR & CE)

O R D E R

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal, at the admission stage itself.

2. Heard Mr.S.Kumaradevan, learned counsel for the petitioner and Mr.K.V.Dhanapalan, learned Additional Government Pleader (HR & CE) for the respondents.

3. This writ petition has been filed praying to quash the order, passed by the third respondent, in Na.Ka.No.1235/2016/A2, dated 4/2/2016 and consequently, direct the respondents, to transfer the tenancy of plot of land at No.6 Pichupillai Road, Mylapore, Chennai 600 004 from the name of Late Vedhachalam to the name of the petitioner.

4. The case of the petitioner is that the property situated at No.6 Pichupillai Road, Mylapore, Chennai 4 is owned by the third respondent Temple. The petitioner's forefathers and his father used to put temporary tents to the temple at the time of festivals. Hence the temple authorities, allotted a plot of temple land, with an extent of 2166 sq.ft, to the petitioner's grandfather for livelihood. After the demise of the petitioner's grandfather, the father of the petitioner is paying the rent regularly and after the demise of the father of the petitioner, the petitioner, requested the second respondent, to replace the name of his father with his name. But his request was not considered by the authorities. The petitioner paid the rent in intervals. Therefore, the third respondent had issued a notice, dated 21/7/2012, demanded the petitioner, to pay arrears of rent of Rs.1,13,340/-, within fifteen days, from the date of receipt of the notice, failing which they stated that they would take action under Section 78 of HR & CE of the said Act.

5. Accordingly, the petitioner paid a sum of Rs.50,000/-, as first instalment, on 16/8/2012. Thereafter, the third respondent pasted a notice, stating that the tenancy between the third respondent and his father was revoked, due to non-payment of arrears of rent of Rs.66,095/-, in spite of the demand notice, dated 20/6/2012. Hence the petitioner had filed a writ petition in W.P.No.26538 of 2012, praying for the issuance of a writ of certiorarified mandamus, to call for the records, relating to the notice, dated 27/8/2012, in Na.Ka.No.437/2012/A4, on the file of the second respondent and quash the same and to direct the respondents, to receive the arrears of rent amount from the petitioner.

6. On 11/12/2012, this Court had disposed of the writ petition and the operative portion of the order, reads as follows:-

"5. In view of the said stand taken by the learned counsel for the second respondent, this writ petition is disposed of given direction to the second respondent to follow the procedure as contemplated under Section 78 of the Act and if any

notice is issued, it is open to the petitioner to submit his objection and defend the eviction proceedings accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed."

7. Even after passing this order, the third respondent refused to receive the rent. Hence the petitioner had paid the rent by way of a Demand Draft, bearing No.880597 dated 11/1/2013 drawn on City Union Bank Ltd., Triplicane branch and that was accepted by the third respondent. From that month onwards, he was paying the rent regularly without any arrears.

8. On 4/2/2016, the second respondent had issued a show cause notice, under Section 78 (2) of HR & CE Act, 1959 by arraying the petitioner and his father as encroachers over the temple land. Hence the petitioner has come forward with the present writ petition praying for the relief as stated therein.

9. The learned counsel appearing for the petitioner would submit that the impugned show cause notice has to be served only under Section 80 of the said Act and hence the impugned show cause notice is against the principles of natural justice.

10. The learned Additional Government Pleader appearing for the respondents would submit that after receiving the show cause notice, the petitioner has to submit his objections. Without submitting his objections to the show cause notice, the petitioner has straightaway approached this Court. The learned Additional Government Pleader would further submit that if the petitioner submit his objections, the authorities concerned may consider the case of the petitioner.

11. Accordingly, the petitioner is directed to submit his objections to the second respondent, within a period of two weeks, from the date of receipt of a copy of this order and on receipt of the same, the second respondent is directed to consider and pass an appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

12. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Commissioner
Hindu Religious & Endowment Charitable Department
Chennai 600 034.
2. The Assistant Commissioner
Hindu Religious & Endowment Charitable Department
Chennai 600 034.
3. The Joint Commissioner/Executive Officer
Hindu Religious & Endowment Charitable Department
Arulmigu Kapaleeswarar Thirukovil
Mylapore
Chennai 600 004.

+lcc to M/s. S. Kumaradevan, Advocate, S.R.No.13991
+lcc to the Government Pleader, S.R.No.14524

SAI (CO)
EU(18/03/2016)

W.P.No.8077 of 2016



WEB COPY