



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2016

CORAM

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THE HON'BLE MR.JUSTICE M.VENUGOPALW.P.(MD) No.10039 of 2016andW.M.P.(MD) No.7885 of 2016

S.A.Somu

.. Petitioner

vs.

1.The Commissioner,
Hindu Religious and
Charitable Endowment Department,
Nungambakkam, Chennai.

2.The Joint Commissioner,
Hindu Religious and
Charitable Endowment Department, Madurai -1.

3.The Assistant Commissioner,
Hindu Religious and
Charitable Endowment Department, Madurai -1.

4.The Executive Officer,
Arulmigu Madhanagopalaswamy Thirukoil
Madurai -1.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus and call for the records relating to the order No.Na.Ka.1824/2013-1/B.1 dated 24.05.2016 passed by the 3rd respondent and quash the same and consequently direct the respondents to forbear from interfering with the peaceful possession of the Door No.51.A/1, West Vadambokke Street, Arulmigu Madhanagopalaswamy Thirukoil Complex, Madurai-1 by the Petitioner by paying the monthly rent till the disposal of the Revision and Appeal.

For Petitioner : Mr.A.Thirumurthy

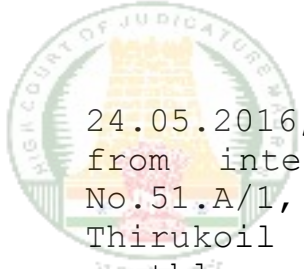
For R1 to R3 : Mr.V.Muruganandam

Additional Government Pleader

For R4 : Mr.S.Manohar

O R D E R

The Petitioner has preferred the instant writ petition praying to quash the order passed by the third respondent, dated



24.05.2016, and consequently direct the respondents to forbear from interfering with the peaceful possession of the Door No.51.A/1, West Vadambokke Street, Arulmigu Madhanagopalaswamy Thirukoil Complex, Madurai-1 by the Petitioner by paying the monthly rent till the disposal of the Revision and Appeal.

2.Heard the Learned counsel for the Petitioner; the Learned Additional Government Pleader appearing for the respondents 1 to 3 and the Learned counsel appearing for the fourth respondent.

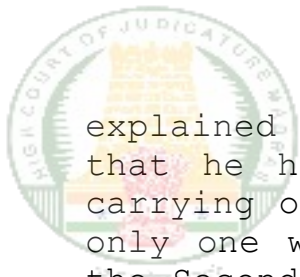
3.By consent, the main writ petition itself is taken up for final disposal.

4.According to the Learned counsel for the Petitioner, Door No.51.A/1 (measuring 138.75 sq. ft.) situated at T.S.No.970 in West Vadambokke Street, Arulmigu Madhanagopalaswamy Thirukoil Complex, Madurai-1, belonging to the fourth respondent/Temple, West Masi Street, Madurai, was let on lease to the Petitioner from 01.01.1998 as per Rules. A sum of Rs.700/- p.m. Was collected towards rent prior to 01.01.2001 and the rent was revised to Rs.933/-p.m. from 01.01.2001 and later revised to Rs.1244/- p.m. from 01.01.2004 as per letter of the fourth respondent, dated 30.04.2004.

5.It comes to be known that the rent was revised to Rs.1657/- p.m. from 01.01.2007. Later the fair rent was fixed at Rs.739/- p.m. from 01.01.2007 as per rental agreement dated 14.11.2008 and the rent was revised to Rs.838/- p.m. from 01.07.2010. The Petitioner is said to be remitting the rent fixed by the fourth respondent without any default so far.

6.The Leaned counsel for the Petitioner submits that the Petitioner is carrying the job of 'Rubber Stamp Making' in the rented property belonging to the fourth respondent/Temple and engaging only one worker. As a matter of fact, he has not subletted or sub-leased the said building to anyone, inasmuch as, this is the only source of income to him. The Learned counsel for the Petitioner brings it to the notice of this Court that the fourth respondent by means of letter, dated 20.11.2012 had directed the Petitioner to inform as to whether the building was let-out on sub-lease and in case of sub-lease, to take action to the effect to change of lessee's name. Indeed, the Petitioner had furnished a reply stating that the shop was not let-out on sub-lease and it is only used by him. By means of a letter dated 20.11.2012, the Petitioner was required to execute a Registered Sale Deed and he complied with the same.

7.The Petitioner was in receipt of notice, dated 18.10.2013, [https://hcservices.courtsonline.com/78\(2\)](https://hcservices.courtsonline.com/78(2)) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and he appeared in person on 29.10.2013 before the Second Respondent/Joint Commissioner and



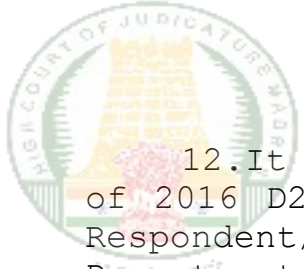
explained the facts. Added further, he submitted a reply stating that he had not let-out the building on 'sub-lease' and he is carrying out the 'Rubber Stamp Making Job' by himself and engaging only one worker to assist him. Further, he made a request before the Second Respondent not to pass orders in terms of Section 78(4) of the Act.

8.The real grievance of the Petitioner appears to be that the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai, had not passed any orders under Section 78(4) of the Act. (from October 2013 to July 2015) and to a shock and surprise, the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai, issued a notice on 13.07.2015 viz., a replica of the earlier notice, dated 18.10.2013, that too, without referring to his appearance for enquiry and the reply submitted on 29.10.2013.

9.In reality, he was directed to appear and submit his explanation on the purported encroachment on or before 27.07.2015. He submitted his explanation on 24.07.2015 denying the aspect of sub-lease etc. The Second Respondent had not passed orders immediately. However, the Second Respondent had passed an order on 17.02.2016 directing the Petitioner to vacate the building within 30 days from the date of receipt of the order, failing which, he was further informed that action would be taken under Section 79 of the Act with the assistance of the Police.

10.The Learned counsel for the Petitioner urges before this Court that in the order, dated 17.02.2016, it was mentioned that the fourth respondent had sent the order, dated 16.04.2013 cancelling the tenancy granted to the lessee under Section 106 of the Transfer of Property Act, 1882, but the lessee had not handed over the shop building to the respondents and therefore, the Petitioner is an encroacher/an unauthorised occupant. The categorical case of the Petitioner is that the lease was extended upto 28.02.2014 and no notice was issued and further no enquiry was conducted prior to the alleged passing of the lease termination order, dated 16.04.2013. Also, that the termination order, dated 16.04.2013 was not served on him, till date.

11.At this juncture, the Learned counsel for the Petitioner projects an argument that prior to passing of the order under Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Second Respondent should have personally and specifically come to the conclusion as to whether the Petitioner is a tenant or an encroacher. However, the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai, had not come to the conclusion and relied upon the alleged termination order, dated 16.04.2013, passed by the third respondent and mechanically concluded that the Petitioner is an encroacher and the same is an illegal one in the eye of Law.



12. It is to be noted that the Revision Petition in R.P.No.113 of 2016 D2, filed by the Petitioner, is pending before the First Respondent/Commissioner, Hindu Religious and Charitable Endowment Department, Chennai, as against the order, dated 17.02.2016, passed by the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai. Also, in the Revision Petition, a stay petition has been filed under Section 21(6) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, wherein a prayer was made to grant interim stay of the operation and enforcement of the order, dated 17.02.2016 passed by the Second Respondent. From 11.04.2016, the Revision Petition No.113 of 2016 D2, was posted to the next hearing date on 14.06.2016. In effect, the Revision Petition No.113 of 2016 D2, is pending on the file of the First Respondent as on date. It is represented on behalf of the Petitioner that only for filing counter statement of the respondents, the matter was adjourned to 14.06.2016.

13. During the pendency of Revision Petition No.113 of 2016 D2 on the file of the First Respondent, the third respondent/Assistant Commissioner, Hindu Religious and Charitable Endowment Department, Madurai, had issued a notice in Na.Ka.No.1824/2013-1/M1, dated 24.05.2016, informing the Petitioner that they would remove the encroachment on 10.06.2016 as per Section 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, with the assistance of Police and Revenue Officials and possession would hand over to the fourth respondent/Temple.

14. In view of the crystalline fact that Revision Petition No.113 of 2016 D2, (filed by the Petitioner) is pending on the file of the First Respondent/Commissioner, Hindu Religious and Charitable Endowment Department, Chennai, as on date, and the next hearing of the Revision Petition is slated on 14.06.2016 and this Court taking note of the attendant facts and circumstances of the present case in a conspectus fashion, comes to a resultant conclusion that the respondents 1 to 4 are to await for the outcome of the decision/order to be passed in Revision Petition No.113 of 2016 D2 and till the dispose of Revision Petition No.113 of 2016 D2 (filed by the Petitioner), this Court in an unambiguous term, directs the respondents not to evict the Petitioner from the Petitioner property/shop in question and to dispose of the pending Revision Petition No.113 of 2016 D2, on the file of the First Respondent. The First Respondent is granted time till 30.06.2016 to dispose of the Revision Petition. Till such time, the Petitioner shall pay the monthly rent to the fourth respondent/Temple. It is open to the Temple Authorities to produce evidence/documents before the First Respondent, so as to enable him to decide the pending Revision Petition No.113 of 2016 D2. Liberty is granted to the respective parties to raise all



factual and legal pleas before the First Respondent. The Petitioner is directed to lend a helping hand and unstring co-operation to the First Respondent to dispose of the Revision Petition No.113 of 2016 D2, before 30.06.2016.

15. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

(*CORRECTED ORDER ISSUED

/True Copy/

Sub-Assistant Registrar

To:

(*TO BE SUBSTITUTED FOR THE ORDER ALREADY

DESPATCHED ON 08/06/2016

1. The Commissioner,
Hindu Religious and
Charitable Endowment Department,
Nungambakkam, Chennai.
2. The Joint Commissioner,
Hindu Religious and
Charitable Endowment Department,
Madurai -1.
3. The Assistant Commissioner,
Hindu Religious and
Charitable Endowment Department,
Madurai -1.
4. The Executive Officer,
Arulmigu Madhanagopalaswamy Thirukoil
Madurai -1.

+One cc to Mr.A.Thirumurthy for Victory Associates,
Advocate, SR.No.28341

+One cc to The Special Government Pleader, SR.No.28752

SDR/GSV/PM/SARI/8/6/2016/5P/7C

RL/7C/5P/ARK/PV/SARII/15/6/2016

W.P. (MD) No.10039 of 2016

07.06.2016