

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.2005 OF 2017

Mr.G.N. Pandian

.. Petitioner

Versus

1. The Commissioner,
HR & CE,
Nungambakkam,
Chennai 600 034.

2. The Joint Commissioner,
HR & CE,
Nungambakkam,
Chennai 600 034.

3. The Asst. Commissioner,
HR & CE,
Nungambakkam,
Chennai 600 034.

4. The Executive Officer,
Arulmigu Thiruvaleeswarar Thirukoil,
Padi, Chennai 600 050.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings dated 22.12.2016 issued by the 3rd respondent and quash the same and consequently direct the respondent authorities to collect the lease from the petitioner and permit him to enjoy the property at Plot No.30 and 30A, comprised in Survey Nos.303/1 and 303/4, Sekkizhar Street, Jagadambigai Nagar, Padi, Chennai 600 050.

For petitioner : Mr. R. Krishnamurthy,
Senior Counsel
for Ms.D. Veda

For Respondents : Mr.M.Maharaja,
Spl.G.P. R1 to R3.
Mr.P.Wilson for

A.S.Kailasam Associates for R4.

O R D E R

The petitioner has come forward with this Writ Petition seeking Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings dated 22.12.2016 issued by the 3rd respondent and quash the same and consequently direct the respondent authorities to collect the lease from the petitioner and permit him to enjoy the property at Plot No.30 and 30A, comprised in Survey Nos.303/1 and 303/4, Sekkizhar Street, Jagadambigai Nagar, Padi, Chennai 600 050.

2. The petitioner claims that he is the absolute owner of the entire superstructure situate in Plot No.30 and 30A, comprised in Survey Nos.303/1 and 303/4, Sekkizhar Street, Jagadambigai Nagar, Padi, Chennai 600 050. Originally, one M.S.Viswanathan was the lessee under the 4th respondent temple in respect of the above said property and subsequently, he raised superstructure and compound wall etc after obtaining the permission from the 4th respondent vide its letter dated 24.6.1987 to sell the superstructure. Thereafter, the petitioner had purchased the superstructure of the said property from the original owner under a registered sale deed. After purchase of entire superstructure, the petitioner made improvements therein and converted the same as Kalyana Mandapam and till today, he is in possession and enjoyment of the same.

3. It is the further case of the petitioner that he started paying lease rents in respect of the above property regularly to the 4th respondent and further he has also made several written representations to the respondents for transfer of lease in his favour. Whiles, during the year 1989, the 4th respondent herein filed a civil suit in O.S.No.408 of 1989 before Sub Court, Poonamallee seeking recovery of possession from the petitioner, wherein, in I.A.No.1324 of 1989 moved by the 4th respondent for interim injunction, an order was passed holding that the petitioner is the lawful owner of the superstructure and that the respondents are not entitled for the relief of injunction. Aggrieved by the said order, the 4th respondent has preferred CMA No.89 of 1992 before the learned District Judge, Chengalpattu, who, dismissed the appeal vide Judgment dated 11.09.1992. Subsequently, the original suit in O.S.No.408 of 1989 filed by the 4th respondent was dismissed by the Sub Court, Poonamallee on 7.1.1998. The petitioner has been paying the lease rents regularly and has been requesting to transfer the lease in his favour from the name of the original lessee. In such circumstances, to the surprise of the petitioner, the respondents have initiated proceedings under section 78 of the HR&CE Act and a notice was issued to him by the 2nd respondent, to which, a detailed representation was also submitted by the petitioner on 19.6.2016.

4. It is the grievance of the petitioner that suddenly the respondents have passed an order dated 28.11.2016 holding that the petitioner is an unauthorised occupant of the said property and he should vacate the premises within 15 days therefrom.

According to the petitioner, the said order has been passed without considering the detailed objections submitted by the petitioner on 14.5.2013 and 8.6.2016. It is his further grievance that the respondents have passed the said order willfully suppressing the civil suit proceedings in O.S.No.408 of 1989 filed by them and the dismissal of the same on 7.1.1998 for non prosecution. Though the respondents are fully aware that the petitioner is the owner of the super structure and he has been paying the lease rent without any dues, they have initiated proceedings in the name of the predecessors in title to him by arraying him as second respondent. The respondents have proceeded under an erroneous notion that the petitioner is an encroacher and hence the entire action of the respondents is vitiated by suppression of material facts and lack of jurisdiction. Therefore, the petitioner filed O.S.No. 503 of 2016 before the District Munsif Court, Ambattur seeking permanent injunction, wherein, on an interlocutory application seeking interim injunction filed by the petitioner, Status - quo was ordered on 20.12.2016 in I.A.No.2088 of 2016. In spite of the same, the 4th respondent has initiated steps for taking possession from him. The 3rd and 4th respondent prepared the impugned proceedings dated 22.12.2016 and affixed the same in the petitioner's premises and thereafter, they locked the premises and affixed the impugned order thereon after receipt of petitioner's lawyer's notice dated 22.12.2016.

5. The 4th respondent filed a detailed counter affidavit stating that as per the order dated 28.11.2016, the petitioner was directed to vacate the property, pursuant to which, possession has also been taken by the respondents. As against the same, the petitioner has filed a revision Petition under section 21 of the H.R. & C.E. ACT before the first respondent on 23.12.2016 and it is pending. It is further stated in the counter that the petitioner has suppressed the fact that the order of status quo granted in O.S.No.503 of 2016 has been vacated by order dated 10.01.2017. Pursuant to order dated 27.1.2017 in W.P.No.2015 of 2017, the court directed the respondents/temple to remove the seal and permit the petitioner to conduct marriages on 2.2.2017 and 6.2.2017. Photographs were taken at the time of taking possession of the property on 22.12.2016 and also at the time of de-sealing the premises. According to the fourth respondent, the photographs will show that it is not safe to leave the property under the control of the petitioner. It is further stated in the counter that the reference made by the petitioner to letter dated 24.06.1987 issued by the then Executive Officer will not help him in any manner since the Executive officers of Temple under the H.R. & C.E. Department has no power to give a "no objection" and the said power is vested only with the 1st respondent herein. The question of suppressing the judgment and decree in O.S.No.408 of 1989 is immaterial since the said judgment and decree was on account of non-prosecution and it has not determined the rights of the parties. Therefore, the order passed by the respondents will not suffer from the principles of estoppel.

6. It is further stated by the fourth respondent that the marriage hall in the premises was de-sealed to enable the marriages already fixed on 2.2.2017 and 6.2.2017 to be held and the indulgence shown by this Court has been misused deliberately and fraudulently by the petitioner. Hence the premises has to be sealed again. In any case, since the order dated 28.11.2016 of the 2nd respondent has admittedly been executed and possession taken and the petitioner has also filed a Revision Petition before the first respondent and it is pending, possession of the premises will have to be with the Temple. When the petitioner has availed the alternate remedy as against the order under section 78 he is not entitled to file the present writ petition, hence, he prayed for dismissal of this Writ Petition.

7. The learned senior counsel for the petitioner would contend that the 2nd and 3rd respondents are very much aware of the order of status quo passed on 21.12.2016 itself. However, in blatant violation and with utmost disregard to the said court order passed the impugned proceedings dated 22.12.2016 and it is totally illegal and in violation of principles of natural justice. It is further pointed out that the petitioner's application for transfer of lease is still pending and till date, it has not been ordered. If that is considered and appropriate order is passed, it will settle out the entire dispute. As already mentioned, a civil suit filed by the department against the petitioner ended against them. Since the suit is only for injunction, the consideration of the application will ultimately rest the entire issue. The learned Senior counsel, therefore, would only seeks for the Department to consider the application after giving an opportunity. In the meanwhile, as per the earlier bookings made, a marriage is proposed to be held on 9.3.2017, for which, he seeks separate permission to allow him to conduct the marriage on that particular date.

8. Learned counsel for the respondents would only contend that the petitioner has no legal right at all to be in possession of the property as a tenant. He would only contend that the petitioner is making huge profit out of the property. In the counter affidavit of the fourth respondent, it is contended that they will consider the application of the petitioner in accordance with law, of course, after giving an opportunity to the petitioner. Therefore, the respondents have no serious objection in so far as conducting marriage only on 9.3.2017. However, after conducting the marriage on 09.03.2017, the petitioner should not take any bookings for conducting any further marriage in the above property.

9. I heard the learned Senior counsel for the petitioner as also the respective counsel appearing for the respondents and perused the materials placed on record.

10. The main point arise for consideration in this petition is whether the petitioner, who is an alleged purchaser of the superstructure from the original tenant, is entitled for lease

in his favour as per his application. It is needless to mention that such a claim made by the petitioner has to be decided only by the first respondent/Commissioner, H.R.&C.E. Department, who is the competent authority.

11. The learned Senior counsel appearing for the petitioner also brought to the notice of this court that by order dated 28.11.2016 passed by the Joint Commissioner, the petitioner was treated as encroacher. As against the same the petitioner has preferred a revision before the commissioner, which has been returned for compliance. The learned Senior counsel also points out that the original application for grant of lease in his favour was pending and no enquiry has been ordered on the same so far.

12. In that view of the matter, without going into the merits of the case, it would suffice to state that the Commissioner/1st respondent shall deal with the petitioner's application for grant of lease along with the revision filed by the petitioner against the order dated 28.11.2016 passed by the Joint Commissioner treating him as an encroacher. The first respondent shall first consider the application preferred by the petitioner for grant of lease in his favour and decide whether the petitioner is entitled for grant of lease in his favour especially when he has submitted the application for grant of lease long back and also claimed that he has purchased the superstructure in the property from the erstwhile tenant after obtaining the consent from the department. The first respondent shall therefore consider whether any permission has been obtained by the erstwhile tenant from the department before selling the superstructure to the petitioner. The first respondent is further directed to give a clear finding with regard to the consequences of the dismissal of the suit filed by the department and consequently the pendency of the application filed by the petitioner seeking transfer of his name as a lessee. It is also brought to the notice of this Court that the petitioner has also filed a civil suit in O.S. No. 503 of 2016 and it is pending before the District Munsif Court, Ambattur. The pendency of the civil suit filed by the petitioner in O.S. No. 503 of 2016 shall also be taken note of by the first respondent at the time of considering the revision filed by the petitioner. It is needless to mention that the revision shall be considered by the first respondent after affording an opportunity of hearing to the petitioner. The Commissioner/1st respondent is also further directed to consider the application of the petitioner as well as the revision and pass a reasonable order on or before 30.06.2017.

13. In the above circumstances, this court permits the marriage proposed to be held on 9.3.2017 in the Kalyana Mandapam situate in the property, for which, the petitioner shall deposit 30% percent of the amount received with the temple before 8.3.2017 and in the meanwhile, as the matter is rested with the Commissioner to decide the entire issue, the petitioner is directed not to undertake any booking for marriage to be conducted in the marriage hall situate at the

above said property beyond 30.06.2017. Whenever any marriage is conducted before 30.6.2017, the petitioner is directed to deposit 30% of the amount of the collection amount to the temple. The petitioner has also given an undertaking before this Court that he will not unnecessarily drag on the matter before the Commissioner and will abide by the orders to be passed by the Commissioner on his application for grant of lease along and the same is recorded. The Commissioner, while passing the order, will also take into account the pendency of the suit in O.S. No. 503 of 2016 filed by the petitioner as the parties will abide by the order to be passed in the suit also.

14. With the above observation, this Writ Petition is disposed of. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Commissioner,
HR & CE,
Nungambakkam,
Chennai 600 034.
- 2.The Joint Commissioner,
HR & CE,
Nungambakkam,
Chennai 600 034.
- 3.The Asst. Commissioner,
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Chennai 600 034.
- 4.The Executive Officer,
Arulmigu Thiruvaleeswarar Thirukoil,
Padi, Chennai 600 050.

+1cc to Government pleader SR. 13405/17

+1cc to M/S. D. Veda, Advocate SR. 13290/17

+1cc to M/S.A.S. Kailasam Associates Sr. 12806/17

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