

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.7380 of 2017
and WMP.No.8036 of 2017

Seethalakshmi Athivaraga Aided Primary School,
Represented by its Secretary
N.V.Senthil Nathan
Srimushnam,
Kattumannarkoil Taluk,
Cuddalore District. ... Petitioner

Vs.

- 1.The Commissioner, HR&CE
Chennai.
- 2.The Joint Commissioner HR&CE
Villupuram.
- 3.The Executive Officer,
Arulmighu Boovaraghaswamy Temple Street,
Srimushnam, Cuddalore District. ... Respondents

Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari calling for the records pertaining to the notice
dated 01.12.2016 issued by the third respondent and to quash
the same.

For Petitioner :Mr.K.Venkatachalapathy,
Senior Counsel
for Mr.T.Vijay

For Respondents:Mr.M.Maharaja
Special Government Pleader (HR&CE)

ORDER

Heard the learned Senior counsel appearing for the
petitioner and the learned Special Government Pleader (HR&CE)
for the respondents. By their consent, the writ petition is
taken up for final disposal.

2. The petitioner school is an aided State Government
Primary School, having classes upto 5th standard. It was

established and run by Srimushnam Sri Dharmalingam Veerasamy Chettiar Educational Society, with an intention to provide education especially to the weaker section of the people in the said area. The land belongs to the third respondent-temple and it was originally leased out to the founder of the Trust, the then President, vide lease agreement dated 03.01.1965, and thereafter, a fresh lease agreement was entered between Mr.N.V.Senthilnathan, the present President (representing the petitioner-school in this petition) of the Trust and the third respondent . The petitioner-school was regular in paying the lease rent as agreed and never defaulted.

3. It is stated that the total extent of about 1.75 acres of land was leased out to the petitioner-school. With the aid of contribution received from public and other donors, the Management constructed class rooms and Noon Meal Kitchen in the said property. Even funds were allotted to the school under Tamil Nadu Self Sufficient Scheme (SSS) for the welfare of the student.

4. It is submitted that the third respondent-temple constructed a Anna Dhana shed, which covers an area of approximately 2000 sq.ft. in the said 1.75 acres of land that was leased out to the petitioner. It appears that the school property was fenced excluding the Anna Dhana shed by the petitioner-school. It is stated that the temple did not care to maintain the Anna Dhana shed. Since the Anna Dhana shed was not maintained properly, now it has become a shelter for the anti-social elements for illegal activities including liquor bar, which may endanger to the life of the school children. Even waste water and other cooking waste from the Anna Dhana Koodam was made to drain near the Noon Meal kitchen of petitioner-school, which may even cause health hazard to the children and other staff of the school. Considering the welfare of the children and school staff, the petitioner-school made a representation dated 19.10.2015 to the Commissioner, HR&CE Department, Chennai against the anti-social activities and poor maintenance of Anna Dhana Shed. But, no action progressed. Hence, the petitioner decided to fence the leased out area excluding the Anna Dhana shed and accordingly raised a cement wall in the said property. Resisting the same, the third respondent-temple sent an impugned notice dated 01.12.2016 stating that without obtaining prior permission from them, the petitioner-school had laid a cement fence, and the same should be removed within 7 days from the receipt of the impugned notice, failing which, appropriate proceedings would be initiated against the school management by considering them as encroacher. Challenging the said notice the petitioner is before this Court in this Writ Petition. In fact, the petitioner also submitted a reply to the impugned notice, vide letter dated 05.12.2016, in which it

was stated that since the original fence that was laid by the petitioner-school got damaged and in order to prevent the anti-social elements from entering into the school campus, the petitioner was forced to lay a cement slab fencing.

5. The learned Senior Counsel appearing for the petitioner contended that the property was leased out to the petitioner management in the year of 1965 and the school was permitted to put up a construction in the leased out area. He would also contend that since the land was leased out to the petitioner by the third respondent, the petitioner cannot be treated as an encroacher and no proceedings can be initiated against them. The petitioner management has also sent a letter to the Commissioner, HR&CE to renew the lease agreement on 12.12.2016 and the same is pending for consideration.

6. The learned Special Government Pleader for the respondents would submit that the third respondent has issued only a notice calling upon the petitioner-school to show cause as to why they should not be treated as encroachers for having encroached into the property belonged to the third respondent. The third respondent has not passed any final order as against the petitioner school. In fact, the petitioner also submitted their reply stating that the fence which they have already put up has got damaged and therefore, the present construction has become necessary especially to prevent anti-social elements from entering into the school premises. Such a reply submitted by the petitioner is being considered by the third respondent.

7. This Court heard the rival submissions and perused the materials placed before it. Admittedly, the order which is challenged in this writ petition is only a show cause notice calling upon the petitioner to show cause as to why they should not be treated as an encroacher. It is also an admitted fact that the petitioner school has submitted a reply dated 05.12.2016 to the show cause notice in which they have stated that the construction has become necessary to prevent the anti-social elements from entering into the school inter alia to ensure the safety and security of the school children.

8. Be that as it may. The reply dated 05.12.2016 submitted by the petitioner school is pending consideration of the third respondent. Therefore, it is suffice to state that the third respondent shall fix a date for enquiry, afford an opportunity of hearing to the petitioner and then pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Till a final order is passed, the third respondent shall not demolish the compound wall or fence as the case may be put up by the petitioner in the land in dispute.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ds

To:

1.The Commissioner, HR&CE
Chennai.

2.The Joint Commissioner HR&CE
Villupuram.

3.The Executive Officer,
Arulmighu Boovaraghaswamy Temple Street,
Srimushnam, Cuddalore District.

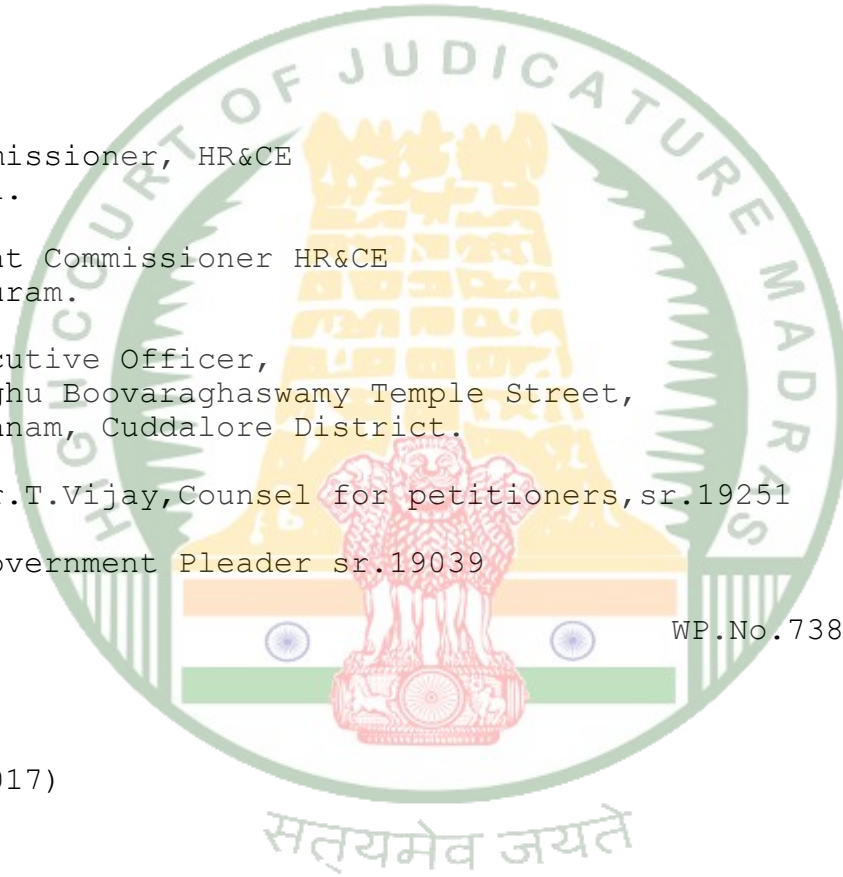
+1cc to Mr.T.Vijay,Counsel for petitioners,sr.19251

+1cc to Government Pleader sr.19039

WP.No.7380 of 2017

sj(co)

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