

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN  
AND  
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Appeal No.195 of 2017 and  
CMP Nos.3141 and 3142 of 2017

The Correspondent  
Singaram Pillai Higher Secondary School  
Villivakkam, Chennai - 600 049. ...Appellant

vs.

- 1.The Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Nungambakkam High Road,  
Nungambakkam, Chennai - 600 034.
- 2.The Joint Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Nungambakkam High Road,  
Nungambakkam, Chennai - 600 034.
- 3.The Executive Officer,  
Agastheeswarar Thirukkoil,  
Villivakkam, Chennai - 600 049. ...Respondents

Appeal filed under clause 15 of the Letters Patent  
against the order dated 31.01.2017 made in W.P.No.2297 of 2017.

W.P.No.2297/2017:

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 of the first respondent and to quash the order dated 24.10.2016 made in R.P.221/ 2016 D2 (Confirming the order dated 18.01.2016 of the second respondent made in Nada. Na. Ka. No.12368/ 2008) and consequently direct the first and second respondents to deliver possession of the property comprised in R.S.No.165/1 measuring an extent of about 4 Acres and situated in Villivakkam Taluk forthwith

For Appellant : Ms.Narmadha Sampath

For Respondents

1 & 2 : Mr.M.Maharaja, Special Government  
Pleader (HR & CE)

## J U D G M E N T

K.K.SASIDHARAN, J.

Introductory:-

The appellant has been in possession and enjoyment of seven acres of land owned by a Public Temple. The appellant purchased one acre of land and continues to keep the balance six acres as a Lessee. The appellant is in arrears of Rs.72,58,688/- by way of lease rent. The order fixing fair rent has become final. Since the appellant failed to discharge the arrears, the lease was terminated by Hindu Religious and Charitable Endowment Department (for short HR & CE Department). The temple took possession of the property. Thereafter, the petitioner filed a writ petition challenging the order passed by the Commissioner, HR & CE Department, dismissing the revision petition. The writ petition was dismissed. Feeling aggrieved, the appellant is before this Court.

Summary of Facts:-

2. The appellant filed a writ petition in W.P.No.2297 of 2017 before the Writ Court challenging the order dated 24 October 2016 in R.P.No.221 of 2016 on the file of the Commissioner, HR & CE Department, Chennai, confirming the order passed by the Joint Commissioner, Chennai, directing eviction from temple land.

3. Before the Writ Court, the appellant contended that the School has been in possession and enjoyment of seven acres of land owned by Agastheeswarar Thirukoil, Villivakkam. The School subsequently purchased one acre of land, as per Sale Deed, dated 31 March 1992. The remaining extent was utilised as a playground on payment of rent. The appellant contended that there was no basis for revising the rent to Rs.45,610/-. According to the appellant, the School was wrongly treated as Encroacher and eviction proceedings were taken by the Joint Commissioner. The Commissioner, without advertng to the contentions raised by the appellant, dismissed the revision petition.

4. The learned single Judge having found that the appellant was not even prepared to pay the fair rent and taking note of the subsequent events relating to eviction and recovery of possession dismissed the writ petition.

Submissions:-

5. The learned counsel for the appellant contended that in spite of a valid lease, the appellant was termed as encroacher. According to the learned counsel, there was no factual or legal basis for revising the rent to Rs.45,610/- per month. The delay in payment of monthly rent was justified by the learned counsel on the ground that the third respondent refused to receive the rent during the currency of the proceedings. According to the learned counsel, while revising the rent from Rs.1,160/- to Rs.45,610/-, the prescribed procedures were not followed by the second respondent and as such, the order is bad in law. The learned counsel further contended that the respondent abruptly took possession of the property and deprived the students their playground.

Discussion:

6. The appellant entered into a lease agreement with Agastheeswarar Thirukoil, Villivakkam, in respect of 7 acres of land in R.S.No.165/1. The land is situated in a coveted locality. Thereafter, the appellant managed to obtain a sale deed for one acre of land. The sale deed was executed on 31 March 1992. The appellant has been in possession of the remaining extent of six acres on the strength of the original lease, dated 31 January 1966. The appellant used the land for conducting an aided institution and to maintain a playground.

7. The documents available on record indicates that the appellant has been paying monthly rent without fixing fair rent. The Joint Commissioner, vide proceedings dated 21 February 2003 fixed the monthly rent at Rs.45,610/- with effect from 1 November 2001. The appellant was given notice and reasonable opportunity, before revising the rent. The Executive Officer vide proceedings dated 20 March 2003 called upon the appellant to remit the entire arrears. The Executive Officer calculated the rent with periodical revision as per the Government Order in G.O.Ms.No.456. Though the appellant was called upon to pay the entire arrears, there was no response. The HR & CE Department, therefore terminated the tenancy with effect from 15 August 2008, by notice dated 1 August 2008.

8. The appellant neither paid the rent nor challenged the proceedings before the appropriate authority. The Joint Commissioner, HR & CE Department, therefore initiated proceedings under Section 78 of the Tamil Nadu Hindu Religious

and Charitable Endowments Act, 1959, for eviction. The Joint Commissioner issued show cause notices to the appellant on 21 October 2008 and 10 July 2015. The appellant in the reply, dated 16 December 2008 admitted that the school is in possession of 18250 Sq.ft of land. The appellant contended that the rent was arbitrarily fixed by the authorities. The Joint Commissioner directed the appellant to pay a sum of Rs.50 lakhs out of the total arrears of Rs.72,58,688/-. The hearing initiated pursuant to the show cause notices was adjourned periodically at the instance of the appellant. Finally, the Joint Commissioner passed the eviction order on merits.

9. The appellant challenged the order passed by the Joint Commissioner before the Commissioner, HR & CE Department. The Commissioner considered the entire matter and dismissed the revision petition by order dated 24 October 2016.

10. The land is owned by a Public Temple. The appellant has been using the land right from the year 1966. The rent was revised only after a considerable period. The appellant is not prepared to pay even the revised rent. The appellant wanted to enjoy the public property without making payment. There was no challenge made by the appellant to the order revising the monthly rent. It was only the subsequent eviction proceedings, which was challenged by the appellant before the Commissioner. The appellant is bound to pay the entire arrears in view of the finality reached to the order revising the monthly rent.

11. The HR & CE Department took possession of the land pursuant to the order passed by the statutory authority. The appellant failed to show bonafides by depositing at least a portion of the rental arrears. There is no question of permitting the appellant to enjoy the public property without paying the rent fixed by the authorities in accordance with the relevant guidelines. We are therefore of the view that the learned single Judge was right in dismissing the writ petition. We do not find any error or illegality in the said order warranting interference by entertaining this intra court appeal.

12. In the up shot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

svki

To

1.The Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Nungambakkam High Road,  
Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Nungambakkam High Road,  
Nungambakkam, Chennai - 600 034.

3.The Executive Officer,  
Agastheeswarar Thirukkoil,  
Villivakkam, Chennai - 600 049.

+1cc to the Government Pleader Sr.13861

+1cc to M/s.Narmadha Sampath,Advocate sr.13461

+1cc to M/s.A.S.Kailasam & Associates,Advocate sr.13525

Writ Appeal No.195 of 2017

pa(co)  
ss(13/03/2017)



WEB COPY